TEXAS REGISTER

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

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

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GOVERNOR

ATTORNEY GENERAL

EMERGENCY RULES

TEXAS DEPARTMENT OF AGRICULTURE

COTTON PEST CONTROL

PROPOSED RULES

OFFICE OF THE SECRETARY OF STATE

ELECTIONS

TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

COMMERCIAL FEED RULES

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ADMINISTRATION

HOUSING TRUST FUND RULES

COMPLIANCE ADMINISTRATION

TEXAS DEPARTMENT OF LICENSING AND REGULATION

COMBATIVE SPORTS

AUCTIONEERS

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

BOARD OF NURSE EXAMINERS

ADVANCED PRACTICE NURSES WITH LIMITED PRESCRIPTIVE AUTHORITY

ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

BOARD OF VOCATIONAL NURSE EXAMINERS

LICENSING

POLYGRAPH EXAMINERS BOARD

POLYGRAPH EXAMINER INTERNSHIP

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

GENERAL RULES OF PROCEDURES AND PRACTICES

STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

Texas Health and Human Services Commission

Texas Department of Insurance

Texas Lottery Commission

Manufactured Housing Division

Texas State Board of Public Accountancy

Public Utility Commission of Texas

Texas Rehabilitation Commission

South East Texas Regional Planning Commission

Texas A&M University, Board of Regents

Texas State University-San Marcos

Waco Urban Transportation Study MPO

Texas Water Development Board

Texas Workers' Compensation Commission

Open Meetings

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

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

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

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

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

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

THE GOVERNOR

As required by 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

Appointments for September 12, 2003

Appointed to the Texas Residential Construction Commission, pursuant to HB 730, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Thomas Killebrew of Fort Worth.

Appointed to the Texas Residential Construction Commission, pursuant to HB 730, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Kenneth Lester Davis of Weatherford.

Appointed to the University of North Texas Board of Regents for a term to expired May 22, 2009, Robert A. Nickell, of Dallas (Mr. Nickell is being reappointed).

Appointed to the University of North Texas Board of Regents for a term to expired May 22, 2009, Gayle W. Strange of Denton (Ms. Strange is being reappointed).

Appointed to the University of North Texas Board of Regents for a term to expired May 22, 2009, Rice M. Tilley, Jr. of Fort Worth (replacing George Pepper of Fort Worth whose term expired).

Appointed to the Interim Committee on Higher Education, pursuant to SB 1652, for a term until September 1, 2005, Robert W. Shepard of Harlingen.

Appointed to the Interim Committee on Higher Education, pursuant to SB 1652, for a term until September 1, 2005, Jodie Lee Jiles of Houston.

Appointed to the Interim Committee on Higher Education, pursuant to SB 1652, for a term until September 1, 2005, Jerry Farrington of Dallas.

Appointed to the Interim Committee on Higher Education, pursuant to SB 1652, for a term until September 1, 2005, Martin Basaldua of Kingwood.

Appointments for September 15, 2003

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2007, J. Helen Perkins, Ed. D. of DeSoto (replacing Matthew Washington of Missouri City who resigned).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2009, Diane Johnson Boddy of Henrietta (replacing J. Lee Jagers of Richardson whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2009, James Castro of San Antonio (replacing Gay McAlister of Austin whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2009, Alma Gloria Leal, Ed.D. of Rancho Viejo (Dr. Leal is being reappointed).

Appointed to the Texas State Board of Medical Examiners for a term to expire April 13, 2007, Christine L. Canterbury of Corpus Christi (replacing Saleh Sheniq of Houston who resigned).

Designating Timothy J. Flannery of Seabrook as Presiding Officer of the Interagency Council on Early Childhood Intervention for a term at the pleasure of the Governor. Mr. Flannery will replace Dimas Vasquez of El Paso.

TRD-200306003

♦ ♦ ♦

Executive Order

RP 28

Honoring the memory of those who died and the heroes who responded to the attacks against America on September 11, 2001.

WHEREAS, more than 3,000 innocent people lost their lives on September 11, 2001, when the United States of America suffered a series of attacks at the hands of vicious terrorists driven by hate and destruction; and

WHEREAS, these devastating assaults brought great anguish to our state and nation, they also prompted acts of great heroism and bravery as our fellow Americans responded to acts of aggression and hostility; and

WHEREAS, the United States Congress through Public Law 107-89 has designated September 11 of each year as Patriot Day;

WHEREAS, the Texas Legislature has passed and I have signed legislation that establishes each September 11th as Texas First Responders Day in honor of the bravery, courage, and determination of Texas men and women who assist others in emergencies such as that observed in these terrible attacks;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Thursday, September 11, 2003, shall be a day of prayer and remembrance in Texas to honor the lives and the memory of those who lost their lives and those first responders who committed acts of great bravery during the events of September 11, 2001.

All state employees along with the people of Texas are encouraged to observe a moment of silence beginning at 7:46 a.m. central daylight time to honor the innocent victims who lost their lives as a result of these terrorist attacks.

I further order that, in accordance with a proclamation issued by the President of the United States and by my powers under the Texas Government Code, the flags of the United States of America and of the State of Texas on the state Capitol Building and in the Capitol Complex, at the Governor's Mansion, and upon all public buildings, grounds, and facilities throughout the state shall be flown at half-staff at on Thursday, September 11, 2003. I further direct that these flags shall be flown at half-staff for the same length of time at all Texas offices and facilities abroad. Individuals, businesses, municipalities, counties, and other political subdivisions in Texas are encouraged to fly these flags

at half-staff for the same length of time as a sign of respect and honor for those who lost their lives in these terrorist attacks.

Thursday, September 11, 2003, shall also be recognized as a day to honor Texas first responders through appropriate ceremonies in the public schools and other places.

This executive order supersedes all previous orders inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 9th day of September, 2003.

Rick Perry, Governor

TRD-200305945

♦ ♦ ♦

PROCLAMATION 41-2971

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, federal law requires state legislatures to redraw congressional district lines after each decennial census; and

WHEREAS, the Texas legislature has not drawn new district lines to reflect the changes in Texas population since the results of the last census were released; and

WHEREAS, the people have placed the power to call and convene the legislature into special session in the hands of the Chief Executive Office of the State; and

WHEREAS, there are other issues of importance to the state that require the attention of the legislature;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call an extraordinary session of the 78th Legislature, to be convened in the city of Austin, commencing at noon on Monday the 15th day of September 2003, for the following purposes:

To consider legislation relating to congressional redistricting.

To consider legislation relating to state fiscal management, including adjustments to certain school district fiscal matters made necessary by recent changes in state fiscal management; making related appropriations.

To consider legislation relating to the dates of certain elections, the procedures for canvassing the ballots for an election, and the counting of certain ballots voted by mail.

To consider legislation modifying the filing period and related election dates for the primary elections in Texas.

To consider legislation relating to the financing, construction, improvement, maintenance, and operation of toll facilities by the Texas Department of Transportation and the disposition of money generated by the driver responsibility program, fines imposed for certain traffic offenses, and certain fees collected by the Department of Public Safety of the State of Texas; making an appropriation.

To consider legislation relating to the reorganization of, efficiency in, and other reform measures applying to state government.

To consider legislation appropriating fees established by legislation from the 78th Regular Session of the Texas Legislature that remain unappropriated. This matter shall be strictly construed to only include fees that were established during that session of the legislature.

Legislation relating to making an appropriation for the purpose of returning to a fund outside of the state treasury cash that was transferred from the fund to the general revenue fund.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

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 9th day of September 2003.

Rick Perry, Governor

ATTESTED BY: Geoffrey S. Connor, Secretary of State

TRD-200305944

♦ ♦ ♦

THE ATTORNEY GENERAL

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

Opinions

Opinion No. GA-0099

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

The Honorable Tim Curry

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196-0201

Ms. Susan A. Spataro, C.P.A., C.M.A.

Travis County Auditor

Post Office Box 1748

Austin, Texas 78767

Re: Whether, if the Harris, Tarrant, or Travis County commissioners court elect to increase district judges' county salaries under §§32.101, 32.220, or 32.227 of the Government Code, the state comptroller must reduce the judges' state salaries under §659.012 of the Government Code (RQ-0079-GA)

SUMMARY

If the commissioners court of Harris, Tarrant, or Travis county chooses to increase its district judges' county salaries under §§32.101, 32.220, or 32.227 of the Government Code, the comptroller may not reduce the judges' state salaries in accordance with §659.012(e) of the same code. To the extent the General Appropriations Act requires the comptroller to reduce the state salaries in this situation, it unconstitutionally seeks to amend general law.

Opinion No. GA-0100

The Honorable Jose R. Rodriguez

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether a school district's contract for "a comprehensive energy management consultation" is an energy savings performance contract under Education Code §44.901 (RQ-0030-GA)

SUMMARY

For purposes of §44.901 of the Education Code, an energy savings performance contract is a contract to install or implement energy or water conservation-related improvements or equipment, the costs of which the provider guarantees will be offset by the resulting utility cost savings. *See Act of June 2, 2003, 78th Leg., R.S., H.B. 2425, §5 (to be codified at TEX. EDUC. CODE ANN. §44.901(a)). A contract solely to purchase energy-conservation-related services is not an energy savings performance contract for purposes of §44.901.*

Opinion No. GA-0101

The Honorable Mark Burtner

Lamar County Attorney

119 North Main Street

Paris, Texas 75460

Re: Whether a sheriff may contract personally to provide security to a private entity (RQ-0031-GA)

SUMMARY

The sheriff of Lamar County may not enter into a contract which would oblige him to provide security services at the behest of, and solely to, a private apartment complex.

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

TRD-200306031
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 16, 2003

♦ ♦ ♦

Request for Opinions

RQ-0098-GA

Requestor:

The Honorable Harvey Hilderbran

Chair, State Cultural and Recreational Resources Committee

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Eligibility of certain persons to vote in an election held by the Jonah Water Special Utility District (Request No. 0098-GA)

Briefs requested by October 10, 2003

RQ-0099-GA

Requestor:

The Honorable Travis J. Koehn

Criminal District Attorney, Austin County

One East Main

Bellville, Texas 77418-1598

Re: Whether a county clerk may charge a fee for posting a notice of a public meeting (Request No. 0099-GA)

Briefs requested by October 10, 2003

RQ-0100-GA

Requestor:

The Honorable Jack Skeen, Jr.

Criminal District Attorney, Smith County

Smith County Courthouse

100 North Broadway, 4th Floor

Tyler, Texas 75702

Re: Whether a commissioners court may delegate approval of budget transfers within a county department (Request No. 0100-GA)

Briefs requested by October 10, 2003

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

TRD-200306002
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 15, 2003

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for Pest Management Zone 2, Areas 1, 2 and 3. The department is acting on behalf of cotton farmers in Zone 2, Areas 1, 2, and 3. Area 1 includes Duval and Webb counties. Area 2 includes Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas. Area 3 includes Aransas, San Patrico and south and east of U.S. Highway 59 in Bee and Live Oak counties.

A prior emergency amendment was published by the department in the September 5, 2003 issue of the *Texas Register* (28 TexReg 7515), which extended the cotton destruction deadline for these areas from its standard date of September 1 to its current deadline of September 14, 2003. The present emergency rule will amend that emergency filing and extend the cotton destruction deadline for these areas through September 21, 2003. The department believes that changing the cotton destruction date is both necessary and appropriate. This extension is effective only for the 2003 crop year.

The unusually wet weather earlier this season caused growers to plant late or replant their cotton crops. In addition, the occurrence of a hurricane in the month of July has resulted in a significant delay in the development of the cotton crop, which has prevented many cotton producers from harvesting before the September 14 deadline extension. A failure to act to extend the cotton destruction deadline again could create a significant economic loss both to Texas cotton producers in these areas and to the state's economy.

The emergency amendment to §20.22(a) changes the date for cotton stalk destruction for Zone 2 Areas 1, 2, and 3, extending the deadline through September 21,2003.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall be performed periodically to prevent the presence of fruiting structures. Destruction of all cotton plants in Zones 9 and 10 shall be accomplished by shredding and plowing and completely burying the stalk. Soil should be tilled to a depth of 2 or more inches in Zone 9 and to a depth of 6 or more inches in Zone 10.

Figure: 4 TAC 20.22(a)

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on September 12, 2003.

TRD-200305946
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: September 12, 2003
Expiration Date: September 23, 2003
For further information, please call: (512) 463-4075

♦ ♦ ♦

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

The Office of the Secretary of State proposes to revise 1 TAC Chapter 81, Subchapter F, concerning primary election funding. Sections 81.101 - 81.135 are proposed for repeal. The Office proposes new §§81.101 - 81.134. The new sections concern the financing of the 2004 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The new sections are necessary for the proper and efficient conduct of the 2004 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Geoffrey Connor, Secretary of State, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Connor has determined also that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2004 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small or micro business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

Due to significant budgetary constraints, for the 2004 primary, the Secretary of State is limiting primary funding for each party to an amount not greater than 83.5% of the amount provided for the 2002 primary.

1 TAC §§81.101 - 81.135

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

The sections are proposed for repeal under Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

Statutory Authority: Election Code, §31.003 and §173.006.

No other sections are affected.

§81.101. Application of Rules.
§81.102. Primary Funds Defined.
§81.103. Bank Account for Primary-Fund Deposits and Expenditures.
§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.
§81.105. Payee of Checks from Primary-Fund Account Restricted.
§81.106. Deposits.
§81.107. Primary-Fund Records.
§81.108. Transfer of Records to New County Chair.
§81.109. Political-Party Costs not Payable with Primary Funds.
§81.110. Fidelity Bond Purchase.
§81.111. Interest on Start Up Loan to Open Primary Fund is not Reimbursable.
§81.112. List of Candidates and Filing Fees.
§81.113. Misuse of State Funds.
§81.114. Conflicts of Interest.
§81.115. Requirement for Competitive Bids for Services or Products.
§81.116. Contracting for Services.
§81.117. Estimating Voter Turnout.
§81.118. Number of Election Workers per Polling Place.
§81.119. Flex Scheduling of Precinct Workers.
§81.120. County Chair's Compensation.
§81.121. Compensation for Election-Day Workers.
§81.122. Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.
§81.123. Personnel Payroll Taxes and Benefits.
§81.124. Administrative Personnel Limited.
§81.125. Number of Paper or Electronic-Voting-System Ballots per Voting Precinct.
§81.126. Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct.
§81.127. Training Reimbursement to Attend County Chairs Election Law Seminar.
§81.128. Office Equipment and Supplies.
§81.129. Telephone and Postage Charges.

§81.130. Office Rental.

§81.131. Payment for Use of County-Owned Equipment.

§81.132. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).

§81.133. Cost of Early Voting to Be Paid by the County.

§81.134. No Charge for Use of a Public Building as Polling Place; Political Conventions.

§81.135. Legal Expenses.

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

Filed with the Office of the Secretary of State on September 17, 2003.

TRD-200306032
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-9874

♦ ♦ ♦

1 TAC §§81.101 - 81.134

The new sections are proposed under Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

Statutory Authority: Election Code, §31.003 and §173.006.

No other sections are affected.

§81.101. Application of Rules.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State of a Primary Finance Cost Estimate does not relieve the chair, or any employee of the primary fund, of their responsibility to comply with administrative rules issued by the Secretary of State, or with any statute governing the use of primary funds.

§81.102. Primary Funds Defined.

(a) Pursuant to §173.031 of the Texas Election Code, primary funds consist of:

(1) all filing fees;

(2) contributions to the fund;

(3) state appropriations; and

(4) the income earned by the fund.

(b) Any refund of money expended from a primary fund is considered part of the primary fund.

§81.103. Bank Account for Primary-Fund Deposits and Expenditures.

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds; any interest earned in such an account becomes part of the primary fund.

(b) The county chair, or any employee of the primary fund, shall not commingle primary funds with any other fund or account.

(c) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 60 DAYS."

(d) The county chair shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the primary-fund records and must be submitted to the Secretary of State with the final cost report.

(e) After all 2004 primary expenditures have been paid, the primary bank account must be closed and the remaining primary funds returned to the Secretary of State.

§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.

(a) Except as provided by this section, the county chair, or an authorized agent of the county chair, shall sign all checks drafted on the primary-fund account.

(b) The county chair must authorize all primary-fund expenditures.

(c) The county chair must sign all of the following drawn on a primary-fund account:

(1) checks issued for an amount of $1,000 or greater;

(2) payroll checks to administrative personnel; and

(3) checks to sole-source vendors.

(d) The county chair or an authorized agent shall not sign a check drawn on a primary-fund account with a rubber stamp or other facsimile of the signature.

§81.105. Payee of Checks from Primary-Fund Account Restricted.

(a) Except as provided by this section, an individual, who is authorized to draft primary-fund checks, shall make checks payable to an entity or a person. An individual, who is authorized to draft primary-fund checks, may draft a check payable to "cash" or "bearer" only to establish a petty-cash fund.

(b) An individual authorized to draft primary-fund checks shall not make checks payable to the county party as contributions or to election judges for reimbursement for payments to election clerks.

§81.106. Deposits.

The county chair, or an authorized agent of the county chair, shall:

(1) deposit all filing fees, contributions, and miscellaneous receipts into the primary fund; and

(2) maintain an itemized list detailing the source of all funds deposited into the primary fund including, but not limited to, all candidate filings.

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

(1) 22 months following the primary elections; or

(2) the conclusion of any relevant litigation or official investigation.

(b) In order to receive approval of a final cost report, the county chair shall transmit copies of receipts, bills, invoices, contracts,

competitive bids, petty-cash receipts for items and services over $2,000 and copies of all monthly bank statements, electronic bookkeeping records (i.e.: Quicken Quickbooks, etc...), or check register and any other related materials documenting primary-fund expenditures. Purchase requisitions are not considered receipts and may not be remitted as such.

(c) Unless otherwise provided by the Secretary of State, not later than July 1 of the year in which the primary elections occur, the county chair shall:

(1) file a completed primary-fund-account reconciliation;

(2) return all unexpended and uncommitted primary funds.

§81.108. Transfer of Records to New County Chair.

(a) The county chair shall transfer in an orderly manner to his or her successor or the appropriate county committee all primary-election records, including financial records listed under §81.107 of this title (relating to Primary-Fund Records), required by law to be maintained.

(b) If a vacancy occurs in the office of county chair, the county executive committee shall appoint an individual to serve as the custodian of primary-election records until a new county chair is appointed or elected.

§81.109. Political-Party Costs not Payable with Primary Funds.

(a) Pursuant to §173.001 of the Texas Election Code, only expenses necessary for and directly related to the conduct of primary elections are payable from primary funds.

(b) Political expenses and expenses for any activity forbidden by statute or rule are not primary costs subject to primary fund reimbursement. Examples of non-payable expenses include, but are not limited to, the following:

(1) expenses incurred in connection with a convention of a political party;

(2) any food or drink items;

(3) stationery not related to the conduct of the primary election; or

(4) costs associated with voter-registration drives or get-out-the-vote campaigns.

§81.110. Fidelity Bond Purchase.

(a) An individual with responsibilities that include the receipt or expenditure of primary funds may purchase a fidelity bond with money from the primary fund.

(b) An individual purchasing a bond under this section shall base the amount of the bond on the anticipated total amount of primary funds that the individual will collect and disburse from December 1 before the primary elections to the last day of the month in which the final primary election occurs. The amount used for the purpose of determining the amount of the bond shall not exceed $50,000, unless a higher amount is approved by the Secretary of State

§81.111. Interest on Start Up Loan to Open Primary Fund is not Reimbursable.

(a) A party chair may not use primary funds, which are subsequently approved by the Secretary of State, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

(b) A party chair may receive an initial distribution of primary funds from the Secretary of State by filing a 2004 General Primary Cost Estimate on or before November 3, 2003.

§81.112. List of Candidates and Filing Fees.

Not later than January 12, 2004, the county chair shall file with the Secretary of State a complete list of candidates, including the name of the candidate, the office sought, and the amount of the filing fee paid (or a notation that the candidate filed a petition in lieu of a filing fee). (Note: The amount of filing fees paid must equal the amount reported on the Final Cost Report. If any additions or deletions are made to the list of candidates, after being filed with the Secretary of State, a supplemental list of candidates must be filed with the Secretary of State, the county clerk and the state chair.)

§81.113. Misuse of State Funds.

The Secretary of State shall refer any misuse or misappropriation of primary funds to the appropriate prosecuting authority for the enforcement of all civil and/or criminal penalties.

§81.114. Conflicts of Interest.

(a) No disbursements may be made from the primary fund to the county chair personally, or to an entity or business in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest, except for payments for:

(1) election day workers;

(2) incidental administrative costs; or

(3) the county chair's compensation.

(b) For the purposes of this section, "family" is defined as individuals related within the third degree of consanguinity (blood) or the second degree of affinity (marriage).
Figure: 1 TAC §81.114(b)

§81.115. Requirement for Competitive Bids for Services or Products.

(a) This section does not apply to expenditures of $2,000 or less. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section.)

(b) Unless prior approval from the Secretary of State is obtained, the county chair must purchase all services and products, including election kits and assembly kits, using competitive bids from no less than three sources.

(c) The county chair must document or otherwise provide an explanation regarding the lack of available bids from vendors. This documentation or explanation must be submitted with the 2004 General Primary Election Cost Estimate.

(d) If the county chair contracts with the county election official who has a term contract for election supplies or services, then competitive bids are not required for term-contract supplies or services if the county entered the term contract pursuant to regular county purchasing rules. If a term contract is utilized, a letter explaining the use of the term contract must be provided. The letter must be signed by the county official and the county purchasing agent stating that supplies were purchased for the primary election from a vendor with which they have a term contract. The letter must be submitted with the 2004 Primary Election Cost Estimate.

§81.116. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in the following figure, with necessary modifications as determined by the chair, to determine the estimated voter turnout for the 2004 primary elections. This general formula must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.
Figure: 1 TAC §81.116(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.117, 81.124,

and 81.125 of this title (relating to the Number of Election Workers per Polling Place, Number of Paper or Electronic Voting System Ballots per Voting Precinct, and Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e. ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the cost of the election.

§81.117. Number of Election Workers per Polling Place.

(a) The county chair shall use the formula set out in the following figure to determine the number of election workers allowable for each polling place.

Figure: 1 TAC §81.117(a)

(b) Each polling place must have, at the minimum, a presiding judge, an alternate judge (clerk), and a clerk.

§81.118. Flex Scheduling of Precinct Workers.

(a) The county chair may hire more than two clerks if the formula provided under §81.117 of this title (relating to Number of Election Workers per Polling Place) indicates that more than two clerks are necessary.

(b) If the formula in §81.117 of this title indicates that additional election workers are necessary, the presiding judge may hire individuals to work in shifts. The county chair may assign clerks to work in shifts that end before the examination or counting of the ballots begins.

§81.119. County Chair's Compensation

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections. (Note: Ballot reprints, legal fees, programing errors, reprograming costs or similar corrective measures will not be included in the formula for determining the county chair's compensation. Additionally, if the county chair contracts for election services with the county, the activities contracted for will not be included in the compensation formula for the county chair.)

(b) The Secretary of State shall not authorize payment under this section until the county party's 2004 Final Primary Election Cost report has been approved. The Secretary of State shall notify the county chair of this approval by letter.

(c) After all other expenses have been paid, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The Secretary of State may deny compensation to county chairs who file delinquent final-cost reports.

§81.120. Compensation for Election-Day Workers.

(a) Except as provided by subsection (b) of this section, the compensation paid to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the 2004 general-primary and primary-runoff elections shall be $7.00 per hour, if the worker attends a training class certified by the Secretary of State or $5.15 per hour if the worker does not attend a training class.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) compensation which is more than $5.15/$7.00 per hour. (Note: The county executive committee must provide a cost estimate for hiring employees to work at the central counting station. Estimates must be provided for each position for individuals hired pursuant to Texas Election Code §§127.002, 127.003, or 127.004.)

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early-voting-ballot board.

(1) Members of the early voting ballot board may only be compensated for the actual number of hours worked.

(2) Additionally, members may reconvene to process provisional or late ballots. The provisional ballot/late counting process must be completed not later than the 7th day after the primary or primary runoff elections.

(f) Except as provided by §81.121 of this title (relating to Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges), the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.121. Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.

(a) Training materials may be ordered free of charge from the Secretary of State.

(b) The county chair may not be reimbursed for materials published and provided by the Secretary of State.

(c) Compensation for the election judge or clerk who delivers and picks up the election records, equipment, and unused supplies may not exceed $15 per polling-place location.

(d) The election judge or the judge's designee may receive a delivery fee not to exceed $15. A copy of the signed attendance roster for an election school must be maintained and may be requested by the Secretary of State for auditing purposes.)

§81.122. Personnel Payroll Taxes and Benefits.

(a) The county chair shall follow all applicable federal and state laws with respect to payroll taxes. (The County Chairs Bookkeeping Guide provides a table that sets out payroll taxes as they apply to election day workers.)

(b) The county chair may not use primary funds to pay penalties or interest resulting from a failure to file required tax returns or from failure to pay the employer's portion of employment taxes.

(c) The county chair shall maintain copies of all federal and state payroll tax returns and forms, and keep such copies with the county primary records. (The county chair shall also transmit copies of these records to the Secretary of State at the Secretary's request.)

(d) The county chair may not pay for group medical, dental, life insurance or retirement benefits with primary funds.

§81.123. Administrative Personnel Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections. (Please note that for the 2002 Primary and Runoff Elections, 362 of the 508 county chairs reported $0 in administrative personnel costs.)

(c) Pursuant to §81.114 of this title (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) The county chair shall obtain prior written approval from the Secretary of State before administrative personnel are hired under this section. (The Secretary of State encourages the use of part-time administrative personnel.)

(e) If administrative personnel are required for the conduct of the primary election, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than December 1, 2003, and ending no later than the last day of the month in which the last primary election is held.

(f) The county chair shall submit to the Secretary of State a list of all necessary personnel to be paid from the primary fund. This list must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. (The county chair must also attach this information to each primary cost estimate and to the 2004 Final Primary Election Cost Report.)

(g) The county chair shall use the formula set out in the following figure to calculate the maximum total gross salaries that may be paid to administrative personnel. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid for similar work or services in the same area. In no circumstance may an employee who is paid from the primary fund be compensated more than $2,500 for any one-month's work. If an individual is paid from the primary fund and that individual is also leasing space, furniture, or equipment to the party for the primary-election, then the lease amounts must be added to that person's salary to determine whether the allowable administrative-salary limit has been reached.
Figure: 1 TAC §81.123(g)

(h) If the county chair contracts with third parties or the county-elections officer for election services, the overall administrative personnel costs must be reduced to reflect the actual amount of work performed by the primary fund staff. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(i) The Secretary of State may disallow full payment for administrative personnel if it is determined that the contracting county-elections officer substantially performed the conduct of the election.

§81.124. Number of Paper or Electronic-Voting-System Ballots per Voting Precinct

(a) The county chair shall determine the minimum number of ballots to be furnished to each polling place based on the estimated voter turnout formula established pursuant to §81.116 of this title (relating to Estimating Voter Turnout). The county chair shall not distribute to a polling place fewer ballots than the amount indicated by the formula provided by §81.116 of this title.

(b) If the chair determines that more ballots than the minimum are necessary, he or she may order a maximum number of ballots up to an amount that is equal to the number of registered voters in the precinct.

(c) In no event should a polling-place ballot supply be limited so as to impede the voting process or jeopardize voting rights.

§81.125. Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in the following figure to determine the number of voting machines, precinct ballot counters, DRE's and punch-card voting devices allowable for each precinct.
Figure: 1 TAC §81.125(a)

(b) In counties where voting machines are used, the county chair should make a special assessment of whether the number of voting machines calculated according to the formula in subsection (a) of this section is adequate. Based on this determination, the chair should adjust the cost estimate and procurement of voting machines.

(c) If a county chair determines that the number of voting machines, precinct ballot counters, DRE's or punch-card voting devices authorized under the formula is inadequate, he or she must obtain permission from the Secretary of State to obtain additional machines, counters, or devices.

§81.126. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the Secretary of State shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee to attend the Secretary of State's Election Law Seminar for County Chairs. (The Secretary of State shall provide travel reimbursement forms at the seminar.)

(b) The Secretary of State shall reimburse the county chair or the county chair's designee for:

(1) mileage (if driving personal vehicle);

(2) airfare (coach only);

(3) airport transfers;

(4) airport parking;

(5) lodging; and

(6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The Secretary of State shall use the Official State Mileage Guide to determine distances traveled to attend the Election Law Seminar for County Chairs. The Secretary of State shall reimburse mileage claims based on $0.35 per mile.

(d) The Secretary of State shall reimburse actual lodging expenses in an amount not to exceed $80 per day, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the Secretary of State shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the Secretary of State in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The Secretary of State shall make all travel reimbursement warrants payable to the county chair.

§81.127. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning December 1, 2003, and ending not later than the last day of the month in which the last primary election is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this title (relating to Conflicts of Interest)).

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients.

(e) The purchase of office supplies necessary for the administration of the primary election is payable from the primary fund. (This includes the purchase of two paperback copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over $500.

(h) The county chair may not pay notary public expenses from the primary fund.

§81.128. Telephone and Postage Charges.

(a) The Secretary of State shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than December 1, 2003 and ending no later than the last day of the month in which the last primary election is held.

(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.

(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.

§81.129. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections. (Please note that for the 2002 Primary and Runoff Elections, 377 of the 508 county chairs reported $0 in office rental costs.)

(b) The Secretary of State shall reimburse necessary office-space-rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than December 1, 2003, and ending not later than the last day of the month in which the last primary election is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building,

(d) Office rent shall not exceed the fair market rate for office space currently-rented in the same area. (Note: The Secretary of State will reimburse the party for office space based on a formula of 135 square feet of space per individual utilizing such space. For example: if the party has three workers in the leased space, the Secretary of State will only reimburse expenses necessary to lease 405 square feet of office space.)

(e) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(f) The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this title (relating to Conflicts of Interest)).

(g) If the party leases space for the purpose of the primary only, the county chair shall transmit a copy of the three competitive bids obtained as well as the lease agreement to the Secretary of State, along with a copy of the 2004 Primary Election Cost Estimate. (Note: If the party maintains a lease, irrespective of the conduct of the primary, the cost of that lease will not be reimbursed by the state as a primary expense.)

(h) The county chair shall transmit to the Secretary of State, with the next primary election cost estimate or report, any change in a lease agreement. The county chair shall also provide an explanation regarding any change in the lease.

§81.130. Payment for Use of County-Owned Equipment.

(a) Section 123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are $16 per lever-voting machine, $5 per punch-card voting device, $5 for each unit of tabulating equipment and $5.00 for each unit which makes up a DRE).

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county shall be reimbursed for actual expenses if the county's computer system is used as the central-counting-station ballot accumulator. (The county shall calculate the cost to be reimbursed by using the same cost-accounting techniques used by the county in charging county departments for use of its data-processing services. If the county does not have such a formula, then the reimbursement shall be calculated based on $1 per 100 ballots tabulated.)

(d) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county owned equipment to the Secretary of State for review with the 2004 Final Cost Report.

(e) The county chair must immediately notify the Secretary of State if the actual number of voting devices used during the primary or runoff exceed the approved number of devices listed on the initial primary cost estimate. This notice must include a new estimate with respect to the use of the additional voting devices. The notice required by this subsection must be submitted in writing.

(f) The county chair shall not use primary funds to pay expenses related to the use of noncounty-owned equipment, including but not limited to ballot boxes and voting booths, without written permission from the Secretary of State. The county chair must immediately notify the Secretary of State if a line item amount will exceed the cost provided on the initial primary cost estimate. This notice must include a new estimate with respect to the increased cost. The notice required by this subsection must be in writing.

§81.131. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).

(a) The Model Election Services Contract (the "Model Contract") prescribed by the Secretary of State is adopted by reference. Copies of the Model Contract may be obtained from the Secretary of State.

(b) The county chair shall use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The county chair shall submit to the Secretary of State for approval any change to the Model Contract or any alternate contract that the chair desires to use. A contract submitted under this subsection may not be executed prior to the chair receiving written approval of the contract from the Secretary of State.

(d) Prior to the time that the chair submits final payment, the county elections officer must submit an accounting of the actual costs incurred in the performance of the election-services contract.

(e) Prior to the final payment of 25% of primary funds, the county chair shall provide to the Secretary of State, along with the Final Cost Report, a detailed billing of all actual costs incurred in the performance of the election-services contract.

(f) The Secretary of State may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules.

(g) A contract may not allow for reimbursement for training of election workers or providing materials published by the Secretary of State.

(h) Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund.

(i) A county-elections officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(j) Costs associated with an election-services contract are not counted toward the administrative salary limits established under §81.123 of this title (relating to Administrative Personnel Limited).

(k) County officials who contract or conduct joint primaries must pay all bills for items they order on behalf of the parties, and seek reimbursements from the parties.

§81.132. Cost of Early Voting to Be Paid by the County.

(a) Pursuant to §173.003 of the Texas Election Code, the only expense to be paid from primary funds for early voting is ballot costs.

(b) The county shall pay for voting-by-mail kits and their postage, early-voting workers, and all other costs incurred that are related to early voting.

(c) The county chair shall not include expenses related to early voting in a primary-election-services joint resolution or a primary cost report. (Note: Expenses related to the early-voting-ballot board are payable from the primary fund.)

§81.133. No Charge for Use of a Public Building as Polling Place; Political Conventions.

(a) Pursuant to §43.033 of the Texas Election Code, no charge may be made for the use of a public building as a polling place if that building is normally open for business on election day.

(b) A central counting station is subject to subsection (a) of this section.

(c) Primary funds may not be used to pay any charge for the use of a building for a state or county political convention.

§81.134. Legal Expenses.

(a) The county chair shall contact the Secretary of State's Elections Division for legal advice concerning routine election law questions. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-2216. There is no charge for this service.)

(b) The Secretary of State shall not provide primary-fund reimbursement for legal expenses resulting from the negligent or wrongful acts of the county chair, a member of the county executive committee, the county executive committee, or a staff member performing a statutory duty.

(c) The Secretary of State shall only pay legal expenses related to litigation concerning the conduct of the primary election.

(d) The county chair shall contact the Secretary of State before entering into a contract for legal services in order to obtain a determination from the Secretary as to whether the legal services are payable from the primary fund.

(e) The Secretary of State shall not reimburse legal expenses if the county chair fails to notify the Secretary of State of litigation within three business days following the receipt of service of process.

(f) Not later than 14 days after the county chair retains an attorney, the county chair shall provide to the Secretary of State written information concerning the background of the case and an estimate of the cost to defend the case.

(g) The county chair shall provide to the Secretary of State copies of all invoices related to legal expenses. The Secretary of State shall review all invoices for legal expenses and make a determination as to their reasonableness based on the novelty and complexity of the legal issues involved. The Secretary of State shall base payment of legal expenses upon the pay scale currently reflected in the State Bar of Texas Attorney Economic Survey--Hourly Rates in Texas Law Firms.

(h) The county chair shall file a final invoice for legal expenses no later than July 1, 2004, unless the chair has requested and received a written authorization from the Secretary of State to extend the deadline.

(i) All legal billings submitted to the Secretary of State for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code).

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

Filed with the Office of the Secretary of State on September 17, 2003.

TRD-200306033
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-9874

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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

The Office of the Secretary of State proposes to revise 1 TAC Chapter 81, Subchapter G, concerning joint primary election funding. Sections 81.145 - 81.157 are proposed for repeal. The Office proposes new §§81.145-81.157. The new sections concern the financing of the 2004 joint primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of joint primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The new sections are necessary for the proper and efficient conduct of the 2004 joint primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Geoffrey Connor, Secretary of State, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Connor has determined also that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2004 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small business or micro-business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

Due to significant budgetary constraints, for the 2004 primary, the Secretary of State is limiting primary funding for each party to an amount not greater than 83.5% of the amount provided for the 2002 primary.

1 TAC §§81.145 - 81.157

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

The sections are proposed for repeal under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. The sections are also proposed for repeal under the Texas Election Code, §172.126(c) and (i) and §173.011(c) which provide the Office of the Secretary of State with the authority to prescribe procedures for appointment of election day workers, to ensure orderly and proper administration of as well as fair and efficient financing of joint primary elections.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by the proposed repeal.

Statutory Authority: Election Code, §§31.003, 172.126, 173.011

Election Code §173.006 is affected.

§81.145. Recommended Deadlines to Comply with Statutory Requirements for the Conduct of Joint Primaries.
§81.146. Applicability of Other Rules.
§81.147. County Clerk/Elections Administrator to Conduct Joint Primary.
§81.148. Appointment of Various Election Officials.
§81.149. Number of Election Workers per Joint Polling Place.
§81.150. Qualifications of Co-Judges and Alternates Co-Judges.
§81.151. Authority of Co-Judge for Joint-Primary-Polling Places, Joint-Primary Central Counting Station, and Joint-Primary-Early-Voting-Ballot Board.
§81.152. Estimating Voter Turnout for Joint Primaries.
§81.153. Delivery of Election Records and Supplies.
§81.154. Ballots for Joint Primary Elections.
§81.155. Returning Surplus Funds.
§81.156. Liability of County Clerk or Elections Administrator.
§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector.)

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

Filed with the Office of the Secretary of State on September 17, 2003.

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Ann McGeehan
Director of Elections
Office of the Secretary of State
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1 TAC §§81.145 - 85.157

The new sections are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. The new sections are also adopted under the Texas Election Code, §172.126(c) and (i) and §173.011(c) which provide the Office of the Secretary of State with the authority to prescribe procedures for appointment of election day workers, to ensure orderly and proper administration of as well as fair and efficient financing of joint primary elections.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by these proposed rules.

Statutory Authority: Election Code, §§31.003, 172.126, 173.011

Election Code §173.006 is affected.

§81.145. Recommended Deadlines to Comply with Statutory Requirements for the Conduct of Joint Primaries.

(a) November 14, 2003: Recommended date by which county chairs who wish to conduct a joint primary should meet with the county clerk/elections administrator to determine whether to enter into a joint resolution to conduct the primary, and to determine the estimated number of election judges and clerks, members of the early-voting-ballot-board, and central counting station personnel to be appointed from the parties. Additionally, the parties and the county clerk/elections administrator should determine which voting system(s), ballot formats, and precinct consolidation or combination plans (if applicable) will be used. (It is permissible to create separate consolidation or combination plans for each party, provided that every consolidated or combined precinct has a co-judge representing each party.)

(b) December 1, 2003: Recommended date by which the commissioners court should vote on approval of joint resolution. The joint

resolution must include the required number of joint-precinct-polling places and the number of co-judges and clerks for each joint-precinct location. The commissioners court resolution approving the joint primary must also be signed by the county clerk or elections administrator, and the county chair of both parties entering into the agreement.

(c) December 8, 2003 (2nd Monday in December): Statutory date for each party chair to deliver lists of names of election judges and clerks, early-voting-ballot-board members, and central counting station personnel (if applicable) to the county clerk/elections administrator.

(d) January 20, 2004: Deadline to file final cost estimate and joint resolution. Recommended date to make modifications to the joint resolution regarding the number of joint polling places and the number of polling-place personnel. Any modifications must be signed by the county clerk/elections administrator and both party chairs.

§81.146. Applicability of Other Rules.

Except for areas of conflict, the general-primary-finance rules of Subchapter F of this chapter (relating to Primary Elections) apply to the conduct of joint primaries.

§81.147. County Clerk/Elections Administrator to Conduct Joint Primary.

(a) Pursuant to §172.126(a) of the Texas Election Code, the county clerk/elections administrator shall supervise the overall conduct of joint primary elections.

(b) The county clerk/elections administrator is responsible for:

(1) appointing election judges and clerks;

(2) determining the ballot format and type of voting system for each precinct; and

(3) procuring election equipment and supplies.

§81.148. Appointment of Various Election Officials.

(a) Upon receipt of the lists of names of election judges and clerk from each county chair (list must be submitted by December 8, 2003), the county clerk/elections administrator shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct. (These selections are made in accordance with §32.002(c) of the Texas Election Code and §81.152 of this title (relating to Estimating Voter Turnout for Joint Primary.))

(b) The county clerk/elections administrator shall determine the total number of election workers required and select from the party chairs' list the individuals to be appointed as co-judges, members of the early-voting-ballot board, and central counting station personnel. The county clerk/elections administrator shall ensure party balance in these selections.

(c) If the total number of individuals serving on the early-voting-ballot board or at the central counting station is an odd number, the county clerk/elections administrator shall appoint an additional member from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.149. Number of Election Workers per Joint Polling Place.

(a) The county clerk/election administrator shall use the table set out in the following figure, to determine the number of election workers allowable for each joint polling place.

(b) Each polling place shall have no less than one co-judge from each party and one clerk from each party.

(c) If the total number of workers is an odd number, the county clerk/elections administrator shall appoint an additional worker from the list of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. (If precincts have been consolidated or combined for the joint primary, then the highest number of votes is determined by adding together the votes from the consolidated or combined precincts.)
Figure: 1 TAC §81.149(c)

§81.150. Qualifications of Co-judges and Alternates Co-judges.

The presiding co-judge and alternate co-judge must be a qualified voter of a precinct that is included in the consolidated or combined precincts in which they are serving.

§81.151. Authority of Co-Judge for Joint-Primary-Polling Places, Joint-Primary Central Counting Station, and Joint-Primary-Early-Voting-Ballot Board.

(a) A co-judge may only process provisional voters from the judge's own party. (This applies to the provisional process at the polling place.)

(b) A co-judge may only determine a voter's intent on an irregularly marked ballot cast by a voter from the co-judge's own party. (This limitation applies to individuals serving in a co-judge capacity at the polling place, early-voting-ballot board, or central counting station.)

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in the following figure.
Figure: 1 TAC §81.152(a)

(b) The county clerk/elections administrator shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county clerk/elections administrator shall enter this information in Section B of the Joint Primary Resolution.

§81.153. Delivery of Election Records and Supplies.

(a) In joint precincts using an electronic voting system in which only one ballot box is used, the co-judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the election supplies. (Note: A county clerk/elections administrator may use separate ballot boxes for each party when using electronic voting systems.)

(b) The co-judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the other co-judge or a clerk to deliver the ballot box.

(c) In a jurisdiction using paper ballots, each co-judge shall deliver their party's ballot box and election returns.

§81.154. Ballots for Joint Primary Elections.

The county clerk/elections administrator shall prepare ballots in a joint primary so that each party's ballots are easily distinguishable. The county clerk or elections administrator may use different colors of paper in order to achieve this distinction. (Note: Yellow paper may not be used. Only sample ballots may be printed on yellow paper.)

§81.155. Returning Surplus Funds.

Immediately following final payment of necessary expenses for conducting the joint primary elections (but no later than July 1), the county

chair shall remit any surplus in the primary fund account to the Secretary of State. (The county chair shall remit the surplus regardless of whether state funds were requested by the chair.)

§81.156. Liability of County Clerk or Elections Administrator.

The county clerk/elections administrator is not liable, in his or her official or individual capacity, for debts related to the conduct of a joint primary incurred by the county executive committee or county chairs resulting from an insufficient legislative appropriation.

§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector.)

(a) Before the county chair may make final payment, the county-elections officer must submit to the Secretary of State an accounting of actual costs incurred in conducting the joint-primary election.

(b) Before the Secretary of State may reimburse the final 25% of primary funds requested, the county elections officer must submit to the Secretary of State a detailed billing of all actual costs with the Final Cost Report.

(c) The Secretary of State may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule.

(d) If the joint elections agreement requires the county-elections officer to directly pay the costs associated with the joint election, then the county chair shall remit the total amount of state funds forwarded to the county chair pursuant to section B of the Final Cost Estimate to the county clerk no later than the fifth day after receipt of the funds.

(e) The cost estimate may not provide for reimbursement for training of election workers or for materials provided by the Secretary of State.

(f) The county may not reimburse from primary-election funds, regular pay for personnel normally employed by the county.

(g) The joint resolution for the 2004 primary elections may not provide for any salary or compensation for the county-elections officer for the performance of any statutory duty or service. (Note: Joint Primary Election Agreements do not count against the administrative salary limits set out under §81.123 of this title (relating to Administrative Personnel Limited).)

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

Filed with the Office of the Secretary of State on September 17, 2003.

TRD-200306035
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-9874

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TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §61.1

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to TAC 4, Part 3, §61.1 concerning Definitions of the Commercial Feed Rules in paragraphs (3) and (4). The amendment lowers the level of aflatoxin allowed for ammoniation of grains and oilseeds. We are also proposing to add a definition for "Cottonseed, Feed Grade" under Definitions which requires renumbering definitions in paragraphs (10) through (18). The proposed effective date for the amendments is January 1, 2004.

Dr. George Latimer, Texas State Chemist, has determined that there for the first five-year period there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Latimer has also determined that the changes are necessary in paragraphs (3) and (4) because the public benefit set forth in the testimony at an open meeting held July 8, 2003 in College Station was that the 1000 parts per billion (ppb) level was not sufficiently protective of the industry or the consumer. The new paragraph defining "Cottonseed, Feed Grade" is needed to protect business and consumers against misbranding. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, TX 77841-3160; by fax at (979) 845-1389 or by e-mail at g-latimer@tamu.edu.

The amendment is proposed under Texas Agriculture Code 141, §141.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code 141, of the Texas Commercial Feed Control Act, Subchapter A, §141.001, is affected by the proposed amendment.

§61.1. Definitions.

Except where otherwise provided, the terms and definitions adopted by the Association of American Feed Control Officials in the last published edition of the annual Official Publication are hereby adopted by reference as the terms and definitions to control in this title. The publication is available from the Association of American Feed Control Officials. In addition, the following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise:

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

(3) Ammoniated Corn--The product obtained by treating whole corn containing no more than 500 [~~1000~~] parts per billion (ppb) aflatoxin with anhydrous ammonia under specified conditions of temperature and pressure approved by the Service. Ammoniated corn is not to be considered a single ingredient product. [~~It is to be used solely in feeds for ruminants.~~]

(4) Ammoniated Cottonseed--The product obtained by treating whole cottonseed containing no more than 500 [~~1000~~] parts per billion (ppb) aflatoxin under specified conditions of temperature and pressure approved by the Service. Ammoniated cottonseed is not to be considered a single ingredient product. [~~It is to be used solely in feeds for ruminants.~~]

(5) - (9) (No change.)

(10) Cottonseed, Feed Grade--Sound, mature, unhulled seed of the genus *Gossypium* left after ginning. Free fatty acids shall not exceed 12.5%, moisture shall not exceed 20%, and foreign matter shall not exceed 10%.

(11) [~~(10)~~] Natural--Describes a feed or feed ingredient produced solely by or derived solely from plants, animals or minerals, whether unprocessed or processed according to generally accepted industry standards, which has not been exposed to ionizing radiation and does not contain any man-made materials except in such amounts as might occur unavoidably in good processing practices. The term is understood to include as "natural" flavors and flavorings so designated under 21 CFR 501.22(a)(3).

(12) [~~(11)~~] Organic--When applied to a product, to a compound, to a mixture of compounds or to a specific constituent used as an ingredient means that the claim of the product, compound, mixture of compounds, or constituent to be organic has been allowed or allowed with restriction by the United States Department of Agriculture's National Organic Program or the Texas Department of Agriculture's Organic Certification Program. (Materials described as organic must still conform to the Texas Commercial Feed Control Act if they are used in feeds.)

(13) [~~(12)~~] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(14) [~~(13)~~] Pet Food--Any commercial feed prepared and distributed for consumption by a dog or cat or an animal normally maintained in a cage or tank in or near the household(s) of the owner such as, but not limited to, gerbils, hamsters, birds, fish, snakes and turtles.

(15) [~~(14)~~] Salvage--When applied to an ingredient or combination of ingredients, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap. Does not apply to recovered production line products which are suitable for reprocessing.

(16) [~~(15)~~] Service--Texas Feed and Fertilizer Control Service.

(17) [~~(16)~~] Toxin--Any compound causing adverse biological effects including, but not limited to, poisons, carcinogens or mutagens, produced by an organism avoidably present at any level or unavoidably present at levels in a feed above those authorized by the Service.

(18) [~~(17)~~] Weed seeds--Those seeds declared prohibited or restricted noxious weed seeds by the Texas Agriculture Code, §61.008 (concerning Noxious Weed Seeds).

(19) [~~(18)~~] Wildlife--Any feral animal, any animal not normally considered as domesticated in Texas or any animal living in a state of nature.

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

Filed with the Office of the Secretary of State on September 8, 2003.

TRD-200305834

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: January 1, 2004

For further information, please call: (979) 845-1121

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SUBCHAPTER G. INSPECTION, SAMPLING, AND ANALYSIS

4 TAC §61.41

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes an amendment to TAC 4, Part 3, §61.41(a) concerning reference to the 16th Edition of the Official Methods of Analysis of AOAC International. The proposed effective date for the amendment to the rule is January 1, 2004.

Dr. George W. Latimer, Jr., Texas State Chemist, has determined that there will be no fiscal implications for state or local government as a result of changing the rule.

Dr. Latimer has also determined that the public benefit as a result of enforcing the rule will be to allow the Office to use new and improved methods in the enforcement of the Law. There is no effect on small business.

Comments on the proposal may be submitted to Dr. George W. Latimer, Jr. at Office of the Texas State Chemist, P.O. Box 3160, College Station, TX 77841-3160, by e-mail (g-latimer@tamu.edu) or by fax at (979) 845-1389.

The amendment is proposed under Texas Agriculture Code 141, §141.004 Rules; Minimum Standards, which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, 141, of the Texas Commercial Feed Control Act, Subchapter A, §141.102, is affected by the proposed amendment.

§61.41. Sampling and Analytical Procedures.

(a) The Service hereby adopts by reference the most recent [~~16th~~] edition of the *Official Methods of Analysis of the AOAC International* as delineating the sampling and analytical procedures to be applied under the Act and this title.

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

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

Filed with the Office of the Secretary of State on September 8, 2003.

TRD-200305835

Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist
Proposed date of adoption: January 1, 2004
For further information, please call: (979) 845-1121

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.15, concerning Integrated Housing Rule.

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

Ms. Carrington also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to promote integrated housing. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, business, or micro-business required to comply with the new section as proposed. The proposed new section will not have any impact on any local economy.

Comments may be submitted to the Center for Housing Research, Planning, and Communications, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail at info@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306

The proposed new section affects no other code, article, or statute.

§1.15. Integrated Housing Rule.

(a) Purpose. It is the purpose of this section to outline the guidelines related to the provision of integrated housing as it relates to the Department's programs.

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

(1) Board--The governing board of the department.

(2) Colonia--A geographic area located in a county any part of which is within 150 miles of the international border of this state and that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Texas Water Development Board.

(3) Department--The Texas Department of Housing and Community Affairs.

(4) General population--Not segregated by type of disability or special needs status.

(5) Housing development--Property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department and that is financed under the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas.

(6) Integrated housing--Normal, ordinary living arrangements typical of the general population. Integration is achieved when individuals with disabilities choose ordinary, typical housing *units* that are located among individuals who do not have disabilities or other special needs. Regular, integrated housing is distinctly different from assisted living arrangements.

(7) Large housing development--Single or multifamily housing development that has 50 or more units.

(8) Mulitfamily housing development--A project that contains five or more housing units.

(9) Persons with Disabilities--A household composed of one or more persons, at least one of whom is an individual who is determined to:

(A) Have a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the disability could be improved by more suitable housing conditions; or

(B) Have a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007); or

(C) Be the surviving member or members of any family that had been living in an assisted unit with the deceased member of the family who had a disability at the time of his or her death; or

(D) Be legally responsible for caring for an individual described by subparagraph (A) or (B) of this paragraph.

(10) Scattered Site--One to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site.

(11) Small housing development--Asingle or multifamily housing development that has less than 50 units.

(12) Special Needs Populations--Persons who:

(A) are considered to be disabled under state or federal law,

(B) are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program,

(C) are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise (these include: persons with alcohol and/or drug addictions, colonia residents, persons with disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, and migrant farmworkers), or

(D) are legally responsible for caring for an individual described by subparagraph (A), (B), or (C) of this paragraph and meet the income guidelines established by the Board.

(13) Tenant-Based Rental Assistance--A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. The assistance is provided for the tenant, not for the project.

(14) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services. Tenant participation in services cannot be required.

(15) Transitional housing--A project that has as its purpose facilitating the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes but is not limited to housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities, homeless families with children, and victims of domestic violence.

(16) Unit--Any residential rental unit in a housing development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(c) Procedures.

(1) A housing development may not restrict occupancy solely to people with disabilities or people with disabilities in combination with other special needs populations.

(A) Large housing developments shall provide no more than 18 percent of the units of the development set-aside exclusively for people with disabilities. The units must be dispersed throughout the development.

(B) Small housing developments shall provide no more than 36 percent of the units of the development set-aside exclusively for people with disabilities. These units must be dispersed throughout the development.

(2) Set aside percentages outlined in paragraph (1)(A) and (B) of this subsection refer only to the units that are to be solely restricted for person with disabilities. This section does not prohibit a property from having a higher percentage of occupants that are disabled.

(3) Property owners may not market a housing development entirely, nor limit occupancy to, persons with disabilities.

(d) Exceptions.

(1) Scattered site development and tenant based rental assistance is exempt from the requirements of this section.

(2) Transitional housing is exempt from the requirements of this section, but must be time limited, with a clear and convincing plan for permanent integrated housing upon exit from the transitional situation.

(3) This section does not apply to housing developments designed exclusively for the elderly.

(4) This section does not apply to housing developments designed for other special needs populations.

(e) Board Waiver. The Board may waive the requirements of this rule to further the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause.

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

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

TRD-200305975
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 475-3726

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CHAPTER 51. HOUSING TRUST FUND RULES

10 TAC §§51.1 - 51.3, 51.5 - 51.14, 51.17, 51.18

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§51.1-51.3, 51.5-51.14, 51.17, and 51.18, concerning the Housing Trust Fund rules.

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

Ms. Carrington also has determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, business or micro-business required to comply with the repeal as proposed. The proposed repeal will not have an impact on any local economy.

Comments may be submitted to Denise Sockwell, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: dsockwel@tdhca.state.tx.us

The proposed repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed repeal affect no other code, article or statute.

§51.1. Purpose.
§51.2. Program Goals and Objectives.
§51.3. Definitions.
§51.5. Allocation of Housing Trust Funds.
§51.6. Basic Eligible Activities.
§51.7. Ineligible Activities and Restrictions.
§51.8. Maintenance of Effort.
§51.9. Application for Procedure and Requirements.
§51.10. Criteria for Funding.
§51.11. Prohibition against Discrimination.
§51.12. Other Program Requirements.
§51.13. Citizen Participation.
§51.14. Records To Be Maintained.
§51.17. Funding Cap.
§51.18. Waiver.

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

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

TRD-200305993
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 475-3726

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10 TAC §§51.1 - 51.13

The Texas Department of Housing and Community Affairs (the Department) proposes new §§51.1-51.13, concerning the Housing Trust Fund rules. These sections are proposed new in order to implement new legislation enacted by the 78th Legislative Session. Chapters 50; 53; and Chapter 1, Subchapter B, of this title, referenced in these new sections, were proposed and published in the August 29, 2003, issue of the *Texas Register*. Chapter 60 of this title, referenced in these new sections, are also being proposed in this issue of the *Texas Register*.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Carrington also has determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules for Housing Trust Fund within the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing for Texans through the housing trust fund program administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, business or micro-business required to comply with the new sections as proposed. The proposed new sections will not have an impact on any local economy.

Comments may be submitted to Denise Sockwell, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: dsockwel@tdhca.state.tx.us

The proposed new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new sections affect no other code, article or statute.

§51.1. Purpose.
This Chapter clarifies the use and administration of the Housing Trust Fund. The fund is created pursuant to Texas Government Code Section 2306.201.

§51.2. Program Goals and Objectives.
Use of the Housing Trust Fund is limited to providing:

(1) assistance for individuals and families of low, very low income and extremely low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low, very low income and extremely low income; and

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low, very low income and extremely low income.

§51.3. Definitions.
The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Deficiencies--The absence of information or a document from the Application which is important to a review and scoring of the Application as required in this rule.

(2) Affordable Housing--Housing for which low, very low, and extremely low income families are not required to pay more than 30% of monthly adjusted income for the mortgage payment and utilities, or rent and utilities, computed in accordance with the federal regulations for the Section 8 Existing Housing Program set forth in the Code of Federal Regulations, Title 24, Part 5, Subpart F.

(3) Applicant--An eligible entity which is preparing to submit or has submitted an application for Housing Trust Fund assistance and is assuming contractual liability and legal responsibility by executing the written agreement with the Department.

(4) Board--The governing board of the Department.

(5) Capacity Building--Educational and organizational support assistance to promote the ability of community housing development organizations and nonprofit organizations to maintain, rehabilitate and construct housing for low, very low, and extremely low income persons and families. This activity may include but is not limited to:

(A) organizational support to cover expenses for training, technical and other assistance to the board of directors, staff, and members of the nonprofit organizations or community housing development organizations;

(B) technical assistance and training related to housing development, housing management, or other subjects related to the provision of housing or housing services; or

(C) studies and analyses of housing needs.

(6) Community Housing Development Organizations--A nonprofit organization that satisfies the requirements of Section 53.63 of this title, as proposed.

(7) Department--The Texas Department of Housing and Community Affairs.

(8) Eligible Applicants--Local units of government, public housing authorities, community housing development organizations, nonprofit organizations, for profit entities, and persons and families of low, very low, and extremely low income.

(9) Extremely Low Income-- Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size. In accordance with Rider 3 to the Department's 2004-2005 Legislative appropriation, and published by the Department, those counties where the median family income is lower than the state average median family income, applicants targeting households at or below 30% of the median income of the area may use the average state median family income based on number of persons in a household.

(10) Housing Development Costs--The total of all costs incurred, or to be incurred, by the Development Owner in acquiring, constructing, rehabilitating and financing a Development as determined by the Department based on the information contained in the Applicant's application. Such costs include reserves and any expenses attributable to commercial areas.

(11) Housing Development--Any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards consistent with those prescribed in the Housing Trust Fund Property Standards, found in the Program Guidelines, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by persons and families of low, very low, and extremely low income, and persons with special needs. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances.

(12) HUD--The United States Department of Housing and Urban Development, or its successor.

(13) Local Units of Government--A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(14) Low Income Persons and Families--Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(15) Nonprofit Organization--Any public or private, nonprofit organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(C) has a tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, §501(c), as amended.

(16) NOFA--Notice of Funding Availability, published in the Texas Register.

(17) Person with Special Needs--

(A) persons with disabilities, persons with alcohol or other drug addictions, persons with HIV/AIDS and their families, the elderly, victims of domestic violence, persons living in colonias, and migrant farm workers; and

(B) any persons legally responsible for caring for an individual described by subparagraph (A) of this paragraph and meets the income guidelines of a person of low, very low or extremely low income.

(18) Public Agency--A branch of National, State or Local Government.

(19) Public Housing Authority--A housing authority established under the Texas Local Government Code, Chapter 392.

(20) Recipient--Community housing development organization, nonprofit organization, for profit entity, local unit of government, or public housing authority that is approved by the Department to receive and administer housing trust funds in accordance with these rules.

(21) Rental Housing Development--A project for the acquisition, new construction, reconstruction or rehabilitation of multifamily or single family rental housing, or conversion of commercial property to rental housing.

(22) Rural Project--A project located within an area which:

(A) is situated outside the boundaries of a PMSA or MSA; or

(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000, and does not share boundaries with an urbanized area; or

(C) has received financing or has received a commitment for financing from the United States Department of Agriculture Rural Housing Services.

(23) State--The State of Texas.

(24) Statute--Texas Government Code Chapter 2306.

(25) Very low Income Persons and Families--Families whose annual incomes do not exceed 60% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

§51.4. Allocation of Housing Trust Funds.

(a) Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with §2306.111(d) through (g), Texas Government Code.

(b) The Department shall utilize its best efforts to target housing trust funds allocated each fiscal year to housing assistance for individuals and families earning less than 60% of median family income.

(c) Bond indenture requirements governing expenditure of bond proceeds deposited in the housing trust fund shall govern and prevail over all other allocation requirements established in this section. However, the Department shall distribute these funds in accordance with the requirements of this section to the extent possible.

§51.5. Basic Eligible Activities.

The Department shall make grants and loans from the Housing Trust Fund to Eligible Applicants for purposes consistent with §51.2 of this title and §2306.202 of Texas Government Code.

§51.6. Ineligible Activities and Restrictions.

(a) Displacement of Existing Affordable Housing. Housing Trust Funds shall not be utilized on a development that has the effect of permanently displacing low, very low, and extremely low income persons and families. Residents of a development to be rehabilitated by Housing Trust Funds must be provided the opportunity to lease and occupy a comparable affordable dwelling unit in the development upon completion of the development. The landlord must provide all persons and families affected by the rehabilitation with:

(1) Notice in writing within a reasonable time indicating the right to remain in the dwelling unit or the need to relocate; and

(2) payment of the costs of temporary relocation, including moving costs and any increase in rent.

(b) If a Housing Trust Fund recipient violates the permanent dislocation provision of subsection (a) of this section, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

(c) Restrictions on Communication.

(1) The Applicant or other person that is active in the ownership or control of the proposed activity, or individual employed as a lobbyist or in another capacity on behalf of the application, may not communicate with any Board member with respect to the application during the period of time starting with the time an application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(2) Applicants are restricted from communication with Department staff as described in this subsection. The Applicant or other person that is active in the ownership or control of the application, or individual employed as a lobbyist or in another capacity on behalf of the application, may communicate with an employee of the Department with respect to the Development so long as that communication satisfies the conditions established under subparagraphs (A) through (E) of this paragraph. Communication with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(A) The communication must be restricted to technical or administrative matters directly affecting the Application;

(B) The communication must occur or be received on the premises of the Department during established business hours;

(C) Communication with the Executive Director, the Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Single Family Finance Production, the Director of Portfolio Management and Compliance, and the Director of Real Estate Analysis of the Department must only be in written form which includes electronic communication through the Internet;

(D) Communication with other Department staff may be oral or in written form which includes electronic communication through the Internet; and

(E) A record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication.

(d) Ineligible Applicants: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) Applicants who have not satisfied all threshold requirements described in this chapter, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

(3) Applicants who have submitted incomplete applications;

(4) Applicants that have been otherwise barred by the Department;

(5) Applicant or developer, or their staff, that violate the state revolving door policy.

(e) The Department will not recommend an application for funding if it includes a principal who is or has been:

(1) Barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

(2) The subject of enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity; or

(3) If the applicant has unresolved compliance or audit findings related to previous or current funding agreements with the Department.

(4) Has breached a contract with a public agency.

(f) Material Noncompliance. Each Application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title, as proposed. Applications found to be in Material Noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(g) Rental Housing Development Site and Development Restrictions. The following restrictions apply to Rental Housing Developments only.

(1) Floodplain. Any Development proposing new construction located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No Developments proposing rehabilitation will be permitted in the 100 year floodplain unless they already are constructed in accordance with the policy stated above for new construction or are able to provide evidence of flood insurance on the buildings and the contents of the units.

(2) Ineligible Building Types. Applications involving Ineligible Building Types will not be eligible for an award. Those buildings or facilities which are ineligible are as follows:

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the

homeless and single room occupancy units) are ineligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) Any elderly development of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any elderly development with any units having more than two bedrooms.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.

(F) Any Development, other than an elderly Development, in which more than 40% of the total Units have the same number of bedrooms. For purposes of this limitation, a den, study or other similar space that otherwise has the potential to meet the definition of a bedroom will be considered a bedroom.

(3) Limitations on the Size of Developments.

(A) The minimum Development size will be 16 Units.

(B) Developments involving new construction will be limited to 250 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions.

(4) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

§51.7. Application Procedure and Requirements.

(a) In distributing funds, the Department will release a NOFA and/or request for proposals that identifies the uses of the available funds and the specific criteria that will be utilized in evaluating applicants.

(b) Applications containing false information and Applications not received by the deadline will be disqualified. Disqualified applicants are notified in writing. All Applications must be received by the Department by 5:00 p.m. on the date identified in the NOFA, regardless of method of delivery.

(c) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within three business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within five business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an Application in any manner after the filing deadline, except in response to a direct request from the Department.

(d) Rental Housing Developments will undergo a review as follows:

(1) Threshold Evaluation. Applications submitted for Rental Housing Developments will be required to comply with the threshold criteria required under Section 50.9(f) of this title, as proposed, which are those required for the Housing Tax Credit Program.

(2) Scoring Evaluation. For an Application to be scored, the Application must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the scoring criteria identified in the NOFA

(3) Financial Feasibility Evaluation. After the Application is scored, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate funding amount and terms. In making this determination, the Department will use the Underwriting Rules and Guidelines, Section 1.32 of this title, as proposed.

(4) A site visit will be conducted. Applicants must receive recommendation for approval from the Department to be considered for funding by the Board.

(5) Each Rental Housing Development Application will be notified of their score in writing no later than seven days after all applications received have been scored. Subsequently, the recommendation regarding their Application will be made on the Department's web site at least 7 days prior to the Board meeting where the awards will be approved.

(6) Board approval for the award of Development activity funds is conditional upon a completed loan closing and any other conditions deemed necessary by the Department.

(e) Applications other that Rental Housing Developments will be reviewed and evaluated in accordance with the NOFA for that activity.

(f) Applicants may appeal staff's decisions regarding their applications consistent with Section 1.7 of this title.

§51.8. Criteria for Funding.

(a) In considering applications for funding, the Department considers the following requirements under §2306.203(c), Texas Government Code, and such others as may be enumerated during the funding cycle:

(1) Minimum Eligibility Criteria. To be considered for funding, an Applicant must first demonstrate that it meets each of the following threshold criteria:

(A) The application is consistent with the requirements established in this rule.

(B) The applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing development.

(C) The proposal addresses and identifies a housing need. This assessment will be based on statistical data, surveys and other indicators of need as appropriate.

(2) Evaluation Factors. The criteria used to rank applications, as more fully reflected in the NOFA, will include at a minimum the:

(A) leveraging of federal funds including the extent to which the project will leverage State funds with other resources, including federal resources, and private sector funds;

(B) cost-effectiveness of a proposed development; and

(C) extent to which individuals and families of very low income and extremely low income are served by the development.

(b) The Board has final approval on all recommendations for funding.

(c) Eligible Applicants that have been approved for funding and that require a material change in the project description must provide a written request for the material change to the Department prior to implementing the change.

(1) A material change may include, but is not limited to, the following:

(A) Change in project site;

(B) Change in the number of units or set asides; and

(C) Increase in funding.

(2) Failure to comply with this subsection may result in the termination of funding to the applicant.

(d) The Executive Director of the Department may approve nonmaterial changes in the project description and in the scope of work to be performed for clarification and necessary administrative adjustments, provided that any such change does not increase the dollar amount of the original award of funds.

§51.9. Other Program Requirements.

(a) Employment opportunities. In connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, opportunities for training and employment shall be given to low, very low, and extremely low income persons residing within the area in which the project is located.

(b) Conflict of Interest.

(1) Conflict Prohibited. No person described in paragraph (2) of this subsection who exercises or has exercised any functions or responsibilities with respect to Housing Trust Fund activities under the Statute or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Housing Trust Fund assisted activity, or have an interest in any Housing Trust Fund contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Recipient.

(c) Right to Inspect and Monitor.

(1) The Department may, at any time, inspect and monitor the records and the work of the project so as to ascertain the level of project completion, quality of work performed, inventory levels of stored material, compliance with the approval plans and specifications, property standards, and program rules and requirements.

(2) Any unsatisfactory findings in the inspection may result in a reduction in the amount of funds requested or termination of funding.

(3) Within 45 days of completion of any construction, and before the release of any retainage funds, Recipients are required to notify the Department of the completion by submitting a certificate of completion and any other documents required by program guidelines, including, but not limited to, the following:

(A) Architect's Certification of Substantial Compliance;

(B) Recipient's Certificate of Substantial Completion; and

(C) Recipient's and supplier's Release of Lien and warrantee.

(4) The Department performs a final close-out visit and assists owners in preparing for long-term compliance requirements upon completion of project development.

(d) Compliance.

(1) Recipient must maintain compliance with each of its written agreements with the Department.

(2) Restrictions are stated and enforced through a regulatory agreement.

(3) These restrictions include, but are not limited to the following:

(A) Rent restrictions;

(B) Record keeping and reporting; and

(C) Income targeting of tenants.

(4) The Department monitors compliance with project restrictions and any other covenants by Recipient in any Housing Trust Fund agreement. An annual per unit compliance fee is charge for this review.

(5) Prior to the leasing of any units, project owners are provided guidance and training by the Department to assist project owners in adhering to restriction and reporting requirements.

(e) For funds being used for multifamily rental properties, the recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in Chapter 60 of this title, as proposed.

§51.10. Citizen Participation.

(a) The Department holds at least one public hearing annually, and additional public hearings prior to consideration of any proposed significant changes to these rules, to solicit comments from the public, eligible applicants, and Recipients on the Department's rule, guidelines, and procedures for the Housing Trust Fund.

(b) The Department considers the comments it receives at public hearings. The Board annually reviews the performance, administration, and implementation of the Housing Trust Fund in light of the comments it receives. The Board also reviews funding goals and set-asides relating to Allocation of Housing Trust Funds.

(c) Applications for Housing Trust Funds are public information and the Department shall afford the public an opportunity to comment on proposed housing applications prior to making awards.

(d) Complaints will be handled in accordance with the Department's complaint procedures of Section 1.2 of this title.

§51.11. Records to be Maintained.

(a) Recipients are required, at least on an annual basis, to submit to the Department information including, but not limited to:

(1) such information as may be necessary to determine whether a project is benefiting low, very low, and extremely low income persons and families;

(2) the monthly rent or mortgage payment for each dwelling unit in each structure assisted;

(3) such information as may be necessary to determine whether Recipients have carried out their housing activities in accordance with the requirements and primary objectives of the Housing Trust Fund and implementing regulations;

(4) The size and income of the household for each unit occupied by a low, very low, or extremely low income person or family;

(5) Data on the extent to which each racial and ethnic group and households have applied for and benefited from any project or activity funded in whole or in part with funds made available under the Statute. This data shall be updated annually; and

(6) A final statement of accounting upon completion of the project.

(b) Recipients shall maintain records pertinent to the tenant's files for a period of at least three years.

(c) Recipients shall maintain records pertinent to funding awards including but not limited to project costs and certification work papers for a period of at least five years.

(d) Recipient shall maintain records in an accessible location.

§51.12. Funding Cap.

No more than 10% of the housing trust funds may be allocated to any single project for each fiscal year.

§51.13. Waiver.

The Board may, in its discretion, waive any one or more of the rules set forth in this chapter to accomplish its legislative mandates or for other compelling circumstances.

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

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

TRD-200305992
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 475-3726

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING AND ASSET MANAGEMENT

10 TAC §60.1

The Texas Department of Housing and Community Affairs (the Department) proposes new §60.1, concerning Compliance Administration. This section is proposed new in order to implement new legislation enacted by the 78th Legislative Session. Chapter 1, Subchapter B, of this title, referenced in this new section, has been proposed in the August 29th issue of the *Texas Register* (28 TexReg 7076-7088).

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

Ms. Carrington also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to permit the adoption of new rules for compliance of programs for the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, business or micro-business required to comply with the new section as proposed. The proposed new section will not have an impact on any local economy.

Comments may be submitted to Sara Newsom, Portfolio Management and Compliance, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas, 78711-3941 or by e-mail at the following address: snewsom@tdhca.state.tx.us

The proposed new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new sections affects no other code, article or statute.

§60.1. Compliance Monitoring Policies and Procedures.

(a) Purpose. The Department monitors rental developments receiving assistance from the Department, including Housing Tax Credits, during the construction period and continuing to the end of the long term Affordability Period. The Compliance Division monitors to ensure owners comply with Chapter 2306, Texas Government Code, program rules and regulations, LURA requirements, and any conditions and representations imposed by the application or award of funds. Compliance processes, eligibility procedures, forms, and further programmatic details are set out in the individual program rules and the Owner's Compliance Manuals prepared by the Department's Compliance Division, as amended from time to time. The rules under this section address processes, reports and records that may be required by the Department to enable the Department to monitor a Development for violations of the program's federal and state rules and regulations. These rules do not address forms and other records that may be required of development owners by the IRS or other governmental entities more generally, whether for purposes of filing annual returns or supporting development owner tax positions during an IRS or other governmental audit.

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

(1) Affordability Period -- The affordability period commences on the effective date of the Land Use Restriction Agreement or the first day of the compliance period as defined by Section 42 of the Internal Revenue Code and continues through the appropriate program's affordability requirements or termination of LURA, which ever

is later. The term of the affordability period shall be imposed by deed restriction.

(2) Board -- The governing board of the Department.

(3) Department -- The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established under Chapter 2306 of Texas Government Code.

(4) Development - A property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department and that is financed under the provisions of Chapter 2306, Texas Government Code, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances;

(B) single and multifamily dwellings in rural and urban areas; and

(C) developments monitored by the Department under the Affordable Housing Disposition Program are also included in this definition.

(5) Low Income Unit -- A unit that complies with the income restrictions and occupancy requirements of the housing programs administered by the Department.

(6) Material Non-Compliance -- A Development located within the State of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such Development is equal to or exceeds 30 points in accordance with the material non-compliance provisions, methodology and point system of this title. A Development located outside the State of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such Development is equal to or exceeds 30 points in accordance with the material non-compliance provisions, methodology and point system of this title. When Developments are layered with more than one program, the Compliance History will reflect the highest score.

(c) Construction Inspections. The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements through the entire construction or rehabilitation phase associated with any Development funded by the Department, including Housing Tax Credits. The Department will monitor under this requirement by requiring a copy of reports from all construction inspections performed for the lender and/or Syndicator for the Development. Those reports must indicate that the Department may rely on the reports. The Department may contract with third party inspector to conduct inspections when the Department acts as the first lien lender. The Department may provide inspectors for the lenders and/or Syndicator with required documentation to be completed that will confirm satisfaction of the requirements of this rule. The Applicant must provide the Department with copies of all inspections made throughout the construction of the Development within fifteen days of the date the inspection occurred. In addition, the Department may inspect or obtain a Third-Party inspection for purposes of monitoring during the construction phase. Plans or specifications for the Development shall be provided to the Department, or any Third-Party Inspector upon request. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use its division responsible for credit underwriting matters and its division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase (Section 2306.081, Texas Government Code). Developments having financing from TX-USDA-RHS will be exempt from these inspections, provided that the development owner provides the Department with copies of all inspections made by TX-USDA-RHS throughout the construction of the Development within fifteen days of the date the inspection occurred.

(d) On Going Monitoring. During the Affordability Period, the Department will monitor compliance with all representations made by the development owner in the Application and in the LURA, whether required by the applicable program rules, regulations, including HOME Final Rule, Section 42 of the Internal Revenue Code, Treasury Regulations or other rulings of the IRS, Community Planning and Development (CPD) Notices, or undertaken by the development owner in response to Department requirements or criteria.

(e) Compliance History.

(1) Prior to Board approval of any project application, the Compliance Division shall assess the compliance history of the Applicant and any Affiliate of the Applicant with respect to all applicable requirements. Information from all Divisions of the Department is utilized to determine compliance with applicable requirements. (Section 2306.057, Texas Government Code) The Compliance Division will provide the Board:

(A) the compliance history of the Applicant and any Affiliate of the Applicant with respect to all applicable requirements;

(B) the compliance issues associated with the proposed project; and

(C) a written report regarding the results of the assessments.

(2) The Board shall fully document and disclose any instances in which the Board approves a project Application despite any non-compliance associated with the Project, Applicant, or Affiliate.

(f) Reserve Deposits.

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

(A) Bank Trustee -- a bank authorized to do business in this state, with the power to act as trustee.

(B) Department Assistance -- any state or federal assistance administered by or through the Department, including housing tax credits.

(C) First Lien Lender -- a lender whose lien has first priority.

(D) Reserve Account - an individual account:

(i) created to fund any necessary repairs for a multifamily rental housing Development; and

(ii) maintained by a first lien lender or bank trustee.

(2) If the Department is the first lien lender with respect to the Development, each owner who receives Department assistance for a multifamily rental housing Development that contains 25 or more rental units shall deposit annually into a reserve account:

(A) for the year 2004:

(i) not less than $150 per unit per year for units one to five years old; and

(ii) not less than $200 per unit per year for units six or more years old; and

(B) for each year following the year 2004, the amounts per unit per year as described by paragraph (2)(A) of this subsection.

(3) A Land Use Restriction Agreement or Restrictive Covenant between the development owner and the Department must require the Owner to begin making annual deposits to the reserve account on the date that occupancy of the multifamily rental housing Development stabilizes (as defined by the first lien lender or in the absence of a first lien lender other than the Department, the date the Development is at least 90% occupied) or the date that permanent financing for the Development is completely in place (as defined by the first lien lender or in the absence of the first lien lender other than the Department, the date when the permanent loan is executed and funded), whichever occurs later, and shall continue making deposits until the earliest of the following dates:

(A) the date of any involuntary change in Ownership of the Development;

(B) the date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) the date on which the Development is demolished;

(D) the date on which the Development ceases to be used as multifamily rental Development; or

(E) the end of the Affordability Period specified by the land use restriction agreement or restrictive covenant.

(4) With respect to multifamily rental Developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, the development owner shall set aside the repair reserve amount as a reserve for capital improvements as described in paragraph (2) of this subsection. The reserve must be established for each unit in the Development, regardless of the amount of rent charged for the unit.

(5) Beginning with the 11th year after the awarding of any financial assistance for the Development by the Department, the owner of a multifamily rental housing Development shall contract for a third-party physical needs assessment at appropriate intervals that are consistent with lender requirements with respect to the Development. If the first lien lender does not require a third-party physical needs assessment or if the Department is the first lien lender, the owner shall contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the Development by the Department. The owner of the Development shall submit to the Department copies of the most recent third-party physical needs assessment conducted on the Development, any response by the owner to the assessment, any repairs made in response to the assessment, and information on any necessary changes to the required reserve based on the assessment. The first lien lender or owner shall submit the physical needs assessment, any response thereof, documentation of any repairs made as a result of the physical needs assessment, and/or any information on any adjustments to the amounts held in the replacement reserve account based upon the physical needs assessment to the Department within 30 days of receipt thereof. All physical needs assessments shall be consistent with the Department's Property Condition Assessment Rules and Guidelines in Section 1.36 of this title, as proposed.

(6) The Department may complete necessary repairs if the owner fails to complete the repairs as required by paragraph (5) of this subsection. Payment for those repairs must be made directly by the owner of the Development or through a reserve account established for the Development under this section.

(7) If notified of the development owner's failure to comply with a local health, safety, or building code, the Department may enter on the Development and complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and may pay for those repairs through a reserve account established for the Development under this section.

(8) The duties of the owner of a multifamily rental housing Development under this section cease on the date of a voluntary change in ownership of the Development, but the subsequent owner of the Development is subject to the deposit, inspection, and notification requirements of paragraphs (2), (3), (4), and (5) of this subsection.

(9) The first lien lender shall maintain the reserve account. In the event there is no longer a first lien lender, then paragraphs (2) and (4) of this subsection will no longer apply.

(10) The owner shall engage and pay any additional fees for an escrow agent acceptable to the Department to hold reserve funds in accordance with an executed escrow agreement and the rules set forth herein and Section 2306.186, Texas Government Code:

(A) where there is a first lien lender other than the Department or a bank trustee as a result of a bond indenture or housing tax credit syndication, the Department shall be a required signatory party in all escrow agreements for the maintenance of reserve funds and the accounts held for the purpose of maintaining the required reserve funds. The Department shall be given notice of any asset management findings or reports, transfer of money in reserve accounts to fund necessary repairs; and any financial data and other information pursuant to the oversight of the reserve accounts within 30 days of any receipt or determination thereof. The Department shall subordinate its other rights and responsibilities under the escrow agreement, including those described in subparagraph (B) of this paragraph, to the first lien lender subject to its ability to due so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination agreements as modified from time to time. The escrow agreement shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under Section 2306.186 of the Texas Government Code and as described in subparagraph (B) of this paragraph.

(B) Where the Department is the first lien lender and there is no bank trustee as a result of a bond indenture or housing tax credit syndication or where there is no first lien lender but the allocation of funds by the Department and Section 2306.186, Texas Government Code, requires that the Department oversee a reserve fund, the owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as bank trustee as necessary under this subsection. The Department shall retain the right to replace the escrow agent with another bank trustee due to breach of the escrow agents' responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement. The owner shall provide within 30 days of receipt or identification thereof:

(i) any and all inspections of the multifamily rental housing Developments and identification of necessary repairs, including requirements and standards regarding construction, rehabilitation, and occupancy that may enable quicker identification of those repairs;

(ii) written request, schedule for repayment to the reserve account, and identification of circumstances which may require that money in the reserve accounts:

(I) be used for expenses other than necessary repairs, including property taxes or insurance; and

(II) fall below mandatory deposit.;

(C) The Department shall evaluate the merit of the written request on a case by case basis and may require that the transaction be re-evaluated by the division responsible for underwriting multifamily Developments. The Executive Director is authorized but not obligated to grant such requests or enforce the provisions of this subsection.

(11) The Department shall assess an administrative penalty on development owners who fail to: establish a reserve account for repairs, make the Department a party to the escrow agreement for the reserve account, maintain the reserve account as required in this subsection, contract for the third-party physical needs assessment or make the identified repairs as required by this subsection. The administrative penalty shall be in addition to collecting the funds required to fulfill the Owner's obligations in this subsection. This subsection does not apply to a Development for which an Owner is required to maintain a reserve account under any other provision of federal or state law.

(g) Section 8 Voucher Holders. The Department will monitor to ensure development owners comply with Section 1.14 of this title regarding residents receiving rental assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C Section 1437f). (Sections 2306.269 and 2306.6728, Texas Government Code)

(h) Monitoring of Compliance. The Department may contract with an independent external party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with funding including Housing Tax Credits to the Development and appropriate State and Federal laws, as required by other State law or by the Board. (Section 2306.6719, Texas Government Code)

(i) Recordkeeping. development owners must comply with program recordkeeping requirements. In addition, records, including items listed in paragraphs (1) through (12) of this subsection, must be continuously kept for each qualified low income rental unit in the Development, commencing with lease up activities and continuing on an annual basis until the end of the Affordability Period. (Section 2306.072, Texas Government Code)

(1) the total number of residential rental units in the Development, including the number of bedrooms;

(2) the move in and move out date for each residential rental unit in the Development;

(3) which residential rental units are low income units and the income level of the residents broken into 30, 40, 50, 60 or 80 percent of the area median income;

(4) the rent charged for each residential rental unit including, with respect to low income units, documentation to support the utility allowance applicable to such unit and any rental assistance received;

(5) the number of occupants living in each low income unit;

(6) the low income rental unit vacancies and information that shows the date, and to whom, all available units were rented;

(7) the annual income certification of each tenant of a low income unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;

(8) documentation to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937;

(9) the total number of units reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(10) the race and ethnic makeup of each Development;

(11) the number of units occupied by individual receiving government supported housing assistance and the type of assistance received; and

(12) any additional information as required by the Department.

(j) Reporting. Each Development shall submit reports as required by the Department. Each Development that received financial assistance including Housing Tax Credits from the Department shall submit the information required under subsection (i) of this section in the annual Fair Housing Sponsor Report pursuant to Sections 2306.072 and 2306.0724, Texas Government Code. Section 1.11 of this title contains procedures regarding filing, and penalties for failure to file reports.

(1) Part A: the "Owner's Certification of Program Compliance"; Part B: the "Unit Status Report"; and Part C: "Tenant Services Provided Report" of the Fair Housing Sponsor Report must be provided to the Department no later than March 1st of each year, reporting data current as of January 1st of each reporting year. Part D: the "Owner's Financial Certification" shall be delivered to the Department no later than the last day in April each year, which includes audited financial statements, and income and expenses of the Development for the prior year. Full description of the Fair Housing Sponsor Report is contained in subsection (m) of this section.

(2) The Department maintains a summary of the information reported by the Fair Housing Sponsor Report pursuant to Section 2306.072(c)(6), Texas Government Code, in electronic and hard-copy formats available at no charge to the public.

(3) Rental Developments funded by HOME, Housing Trust Fund or any other rental programs funded by the Department shall provide tenant information provided on Part B; "Unit Status Report" at least quarterly during lease up and until occupancy requirements are achieved. Once all occupancy requirements are satisfied the Development shall submit tenant information at least annually as required by this subsection.

(4) Developments financed by tax exempt bonds issued by the Department shall report quarterly throughout the Qualified Project Period or until released by the Department.

(5) The Department retains the right to require the Owner to submit tenant data in the electronic format as developed by the Department. The Department will provide general instruction regarding the electronic transfer of data.

(k) Database. The Department shall create an easily accessible database that contains all Development compliance information

developed under this section including Development compliance information provided to the Department by The Texas State Affordable Housing Corporation. (Section 2306.081, Texas Government Code)

(l) Information Regarding Housing for Persons with Disabilities. Development owners of State or Federally assisted housing Developments with 20 or more housing units are required to report information regarding housing units designed for persons with disabilities into the Departments database system pursuant to Section 2306.078, Texas Government Code. The system allows a development owner with at least one housing unit designed for a person with a disability to enter the following information on the Department's Internet site:

(1) the name, if any, of the Development;

(2) the street address of the Development;

(3) the number of housing units in the Development that are designed for persons with disabilities and are available for lease;

(4) the number of bedrooms in each housing unit designed for a person with a disability;

(5) the special features that characterize each housing unit's suitability for a person with a disability;

(6) the rent for each housing unit designed for a person with a disability;

(7) the telephone number and name of the Development manager or agent to whom inquiries by prospective tenants may be made;

(8) the Department solicits the Owner's voluntary provision of updated information.

(m) Fair Housing Sponsor Report Certification and Review.

(1) On or before February 1st of each year, the Department will send each rental development owner the Fair Housing Sponsor Report Forms, as described in subsection (j)(1) of this section, to be completed by the Owner and returned to the Department in accordance with the dates outlined pursuant to subsection (j) of this section.

(2) Penalties and sanctions maybe assessed in accordance to Section 1.11(d) of this title for failure to provide a complete Fair Housing Sponsor Report, including administrative penalties and denial of future funding or assistance requests.

(3) Any Development for which the Fair Housing Sponsor Report Part A; the "Owner's Certification of Program Compliance" is not received, is received past due, or is incomplete, improperly completed or not signed by the development owner, will be considered not received, and is considered not in compliance with these rules. Housing Tax Credit Developments will be considered not in compliance with the Provisions of §42 of the Code and will be reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Fair Housing Sponsor Report Part A shall include at a minimum the following statements of the development owner:

(A) the Development met the minimum set-aside test which was applicable to the Development;

(B) there was no change in the Applicable Fraction or low income set aside of any building, or if there was such a change, the actual Applicable Fraction is reported to the Department; (LIHTC only);

(C) the development owner has received an annual income certification from each low income resident and documentation to support that certification, in the process and form designated by the Department's Compliance Manual, as may be modified from time to time;

(D) documentation is maintained to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 ("Section 8"), notwithstanding any rules to the contrary for the determination of gross income for federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the development owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;

(E) each low income unit in the Development was rent-restricted under the Land Use Restriction Agreement and applicable program regulations including Code §42(g)(2), 24 CFR Part 92 and documentation is maintained to support the utility allowance applicable to such unit;

(F) all low income units in the Development are and have been available for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iii)); (LIHTC and Bonds only);

(G) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court. In addition, a statement as to whether the Development has been notified of a violation of fair housing law that has been filed with the United States Department of Housing and Urban Development, the Texas Commission on Human Rights (or successor agency) or with the United States Department of Justice;

(H) each unit or building in the Development is and has been suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections has not issued a report of a violation for any building or low income unit in the Development. If a violation report or notice was issued by a governmental unit, the development owner must provide the Department with a copy of the violation report or notice. In addition, the development owner must state whether the violation has been corrected. Each unit meets conditions set by Housing Quality Standards and for Developments receiving HOME funding evidence of the required annual inspection has been maintained;

(I) there has been no change in the Eligible Basis (as defined in §42(d) of the Code) for any building in the Development since the last certification, or if changed, the nature of the change;

(J) all tenant facilities included in the original application, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis without charge to any tenants in the Development. For Housing Tax Credit Developments, certification that the character and use of the nonresidential portion of the building included in the building's Eligible Basis under §42(d) of the Code has not changed, (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Development);

(K) if a low income unit in the Development became vacant during the year, reasonable attempts were, or are being, made to rent that unit or the next available unit of comparable or smaller size to a qualifying low income household, before any other units in the Development were, or will be, rented to non low income households;

(L) if the income of tenants, of a low income unit, in the Development increased above the appropriate limit allowed, the next available unit of comparable or smaller size was, or will be, rented to residents having a qualifying income;

(M) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6), was in effect for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311, including the requirement under the Code, §42(h)(6)(B)(iv) that a development owner cannot refuse to lease a unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 1314c(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439); (LIHTC only);

(N) if the development owner received its Housing Credit Allocation from the portion of the state ceiling set aside for Developments involving Qualified Nonprofit Organizations under the Code, §42(h)(5), a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning of the Code, §46(h)(5); (LIHTC only);

(O) no low income units in the Development were occupied by ineligible full time student households; (LIHTC and BONDs only)

(P) no change in the ownership of a Development has occurred during the reporting period or changes and transfers were or are being reported;

(Q) the development owner has not been notified by the IRS that the Development is no longer "a qualified low income housing Development" within the meaning of the Code, §42;

(R) the Development met all representations of the development owner in the Application and complied with all terms and conditions in the LURA;

(S) the Development has made all required lender deposits including annual reserve deposits;

(T) the street address and municipality or county in which the Development is located;

(U) the telephone number of the property management or leasing agent;

(V) a statement as to whether the Development has any instances of material non-compliance with Bond indentures or deed restrictions including meeting occupancy requirements or rent restrictions imposed be deed restriction or financing agreements; and

(W) any additional information as required by the Department.

(4) Review. Department staff will review Part A of the Fair Housing Sponsor Report for compliance with the requirements of the appropriate program, including §42 of the Code.

(n) Record Retention Requirements. Each Development that received assistance from the Department including Housing Tax Credits is required to retain records as required by the specific funding program rules. Retention schedule requirements include, but are not limited to, the provisions of paragraphs (1) through (4) of this subsection:

(1) Housing Tax Credit records as described in subsection (i) of this section must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(2) Retention of records for HOME Assisted Rental Developments must comply with the provisions of 24 CFR 92.508(c), which generally requires retention of rental housing records for five years after the Affordability Period terminates.

(3) Records for Housing Trust Fund Rental Developments pertaining to tenant files must be retained for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including but not limited to, the application, project costs and documentation must be retained for at least five years after the Affordability Period terminates.

(4) Other rental Developments funded in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

(o) Inspections. The Department retains the right to perform an on site inspection of any low income Development, including all books and records pertaining thereto, through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later.

(1) The Department will perform on-site inspections and file reviews of each Housing Tax Credit Development. The Department will conduct a review of Housing Tax Credit Developments by the end of the second calendar year following the year the last building in the Development is placed in service. The Department will schedule a review of all other Developments as leasing commences. The Department will monitor at least 15% of the low income units in each Development, inspect the units and review the low income certification, the documentation the development owner has received to support the certifications, the rent records for each low income tenant in those units, and any additional information that the Department deems necessary.

(2) During the Affordability Period, at least once every three years, the Department will conduct on-site inspections and file reviews of each Development administered by the Department, and for at least 15% or more of the Development's low income units, review the low income certifications, the documentation supporting the certifications, the rent records for the tenants in those units and any additional information that the Department deems necessary. The on-site inspection will also include an inspection of the units.

(3) The Department may, at the time and in the form designated by the Department, require the development owners to submit for compliance review information on tenant income and rent for each low income unit, and may require a development owner to submit for compliance review copies of the tenant files, including copies of the income certification, the documentation the development owner has received to support that certification and the rent record for any low income tenant.

(4) The Department will randomly select which low income units and tenant records are to be inspected and reviewed. The review of the tenant records may be undertaken wherever the development owner maintains or stores the records if located within the State of Texas. Original records are required for review. Units and tenant

records to be inspected and reviewed will be selected in a manner that will not give development owners advance notice that a particular unit and tenant records for a particular year will or will not be inspected or reviewed. However, the Department will give reasonable notice to the development owner that an on-site inspection or a tenant record review will occur, so that the development owner may notify tenants of the inspection or assemble original tenant records for review.

(5) The Department will conduct a limited inspection to determine compliance with accessibility requirements under the Fair Housing Act or Section 504, Rehabilitation Act of 1973. If determined necessary the Department may order third party inspections and make referrals to appropriate Federal and State agencies.

(6) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TX-USDA-RHS under its Section 515 program. Owners of such buildings may be exempted from the inspection provisions, however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions are met, the development owner must provide the Department with additional information or the Department will inspect according to the provisions contained herein. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Developments if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

(p) Inspection Standards. For the on-site inspections of Developments and low income units, the Department shall review any local health, safety, or building code violations reported to, or notices of such violations retained by, the development owner under subsection (m)(3)(H) of this section, and determine whether the units satisfy local health, safety, and building codes or the uniform physical condition standards for public housing established by HUD (24 CFR 5.703) or Housing Quality Standards. The HUD physical condition standards do not supersede or preempt local health, safety and building codes. In the absence of local health, safety and building code violation reports or if deemed necessary by the Department, inspections by third party inspectors or local government entities will be requested. In addition to the review of any local health, safety or building code violation reports, the Department may conduct inspections of the units using the Housing Quality Standards. Developments must continue to satisfy these codes and maintain Development condition throughout the Affordability Period. Housing Tax Credit Developments that fail to comply with local codes or the uniform physical condition standards must be reported to the IRS.

(q) Notices to Owner. The Department will provide prompt written notice to the development owner if the Department does not receive the Fair Housing Sponsor Report or discovers through audit, inspection, review or any other manner, that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. The notice will specify a correction period, which will not exceed 90 days from the date of notice to the development owner, during which the development owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six months from the date of notice to the development owner if it determines there is good cause for granting an extension. If any communication to the development owner under this section is returned to the Department as unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the development owner. The development owner is responsible for providing the Department with current contact information including address and phone number.

(r) Notice to the IRS. (Housing Tax Credit Developments only).

(1) Regardless of whether noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed no later than 45 days after the end of the correction period specified in the Notice to the Owner (including any extensions permitted by the Department), but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the development owner has corrected the non-compliance.

(2) If a particular instance of non-compliance is not corrected within three years after the end of the permitted correction period, the Department is not required to report any subsequent correction to the IRS.

(3) The Department will retain records of noncompliance for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain reports for three years from the end of the calendar year the Department receives the reports.

(4) The Department will send the development owner of record copies of any 8823s submitted to the IRS. Copies of 8823s will be submitted to the Syndicator for Developments awarded housing tax credits after January 1, 2004.

(s) Notices to the Department. A development owner must provide written notice to the Department for the events listed in paragraphs (1) through (5) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Development or any portion of the Development. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development. Any transfers of ownership must follow procedures required by the Department (Section 2306.852, Texas Government Code);

(2) any change of address to which subsequent notices or communications shall be sent;

(3) within thirty days of the placement in service of each building, the Department must be provided the placed in service date of each building. (LIHTC only);

(4) the Development in whole or part, suffered a casualty loss and a date when the loss occured; or

(5) commencement of leasing activities within thirty days of commencement.

(t) Utility Allowances. The Department will monitor during the Affordability Period to determine whether rents comply with the published rent limits using the utility allowances established by the local housing authority or approved by the Department. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the utility allowance selected must be the one which most closely reflects the actual utility costs of that Development. In this case, documentation from the local utility provider supporting the selection must be provided.

(u) Material Non-Compliance. The Department will disqualify an Application for funding or other assistance of any kind, including Housing Tax Credits, if the Applicant, the development owner, the General Contractor, or any Affiliate of the General Contractor is active in the ownership or control of one or more Affordable Housing

Development, located in or outside the State of Texas, is determined by the Department to be in Material Non-Compliance on the date the Application Round closes. The Department will classify an in-state Development as being in Material Non-Compliance when such Development has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection. If a Development is located outside the State of Texas and non-compliance is reported to the Department that would equal to or exceed a non-compliance score of 30 points, if measured in accordance with the methodology and point system set forth in this subsection, to the extent the methodology and point system can reasonably be applied to the reported information, the Department will classify the Development as being in Material Non-Compliance.

(1) Each Development that has received funding or other assistance, including Housing Tax Credits, from the Department will be scored according to the type and number of non-compliance events as it relates to the Housing Tax Credit Program or other Department programs. All Developments funded or assisted by the Department, including Housing Tax Credit Developments, regardless of status, are scored, even if the project no longer actively participates in a the program. Under the Housing Tax Credit program, non-compliance events issued on form 8823 are assigned point values. For other programs monitored by the Department, non-compliance events identified during on-site monitoring reviews are assigned point values. For all Developments funded by the Department, including Housing Tax Credit Developments, events of non-compliance identified in paragraph (4)(A) of this subsection are assigned point values.

(2) Uncorrected non-compliance will carry the maximum number of points until the non-compliance event has been reported corrected by the Department. Once reported corrected by the Department the score will reduce to the "corrected value". Corrected non-compliance will no longer be included in the Development score three years after the date the non-compliance was reported as corrected.

(A) Under the Housing Tax Credit Program, non-compliance events that occurred and were identified by the Department through the issuance of the IRS form 8823 prior to January 1, 1998 are assigned corrected point values to each non-compliance event. The score for these events will no longer be included in the Development's score three years after the date the form 8823 was executed.

(B) For Applications submitted for funding or other assistance, including Housing Tax Credits, a compliance report will be run by the Department's Compliance Division on the date the Application Round closes, for any rental Developments disclosed on the Previous Participation Forms and any Developments determined to be associated with the Applicant, the development owner, the General Contractor or any affiliate of the General Contractor.

(C) Any corrective action documentation affecting the compliance status score must be received by the Department two weeks prior to the date the Application round closes.

(3) Events of non-compliance are categorized as either "Development events" or "unit/building events". Development events of non-compliance affect some or all of the buildings in the Development. However, the Development will receive only one score for the event rather than a score for each building. Other types of non-compliance are identified individually by unit. This type of non-compliance will receive the appropriate score for each unit cited with an event. The unit scores accumulate towards the total score of the Development. Violations on Housing Tax Credit Developments are identified by unit, however, the building is scored rather than the unit and the building will receive the non-compliance score if one or all the units are in non-compliance. Development and unit events affect applications of Development Team members participating in subsequent years' funding cycles.

(4) Each type of non-compliance is assigned a point value. The point value for non-compliance is reduced upon correction of the non-compliance. The scoring point system and values are described in subparagraphs (A), (B) and (C) of this paragraph. The point system weighs certain types of non-compliance more heavily than others. Certain non-compliance events carry a sufficient number of points to automatically place the Development in Material Non-Compliance. Other types of non-compliance by themselves do not warrant the classification of Material Non-Compliance. Multiple occurrences of these types of non-compliance events may produce enough points to cause the Development to be in Material Non-Compliance. For purposes of these scores, the terms "uncorrected" and "corrected" refers to appropriate actions taken by the development owner to cure the non-compliance.

(A) Non-Compliance items identified in clauses (i) through (viii) of this subparagraph are categorized as Development Events.

(i) Development is out of compliance and never expected to comply. Uncorrected is 30 points

(ii) Development is completed without a threshold amenity or an amenity for which points were received without seeking and receiving consent for an acceptable substitution from the Department. Uncorrected is 30 points. Acceptable substitution after violation is 10 points.

(iii) Development is not completed by the due date of the cost certification documentation. 25 points.

(iv) Development awarded housing tax credits after January 2004 that is foreclosed by a lender, or the General Partner is removed by a Syndicator due to reasons other than market conditions. 25 points.

(v) The LURA was not executed within the required time period. Uncorrected is 30 points. Corrected is 5 points.

(vi) Owner failed to pay fees. Uncorrected is 30 points. Corrected is 5 point.

(vii) Failure to submit part or all of the Fair Housing Sponsor Report or failure to submit any other annual, monthly, quarterly or other report required by the Department. Uncorrected is 10 points. Corrected is 3 points.

(viii) Default on payments of Department loans for a period exceeding 90 days. Uncorrected is 30 points. Corrected is 10 points.

(B) Non-compliance items identified in clauses (i) through (xvii) of this subparagraph may be identified during monitoring reviews or other means and are categorized as Development Events.

(i) Major property condition violations. As determined by the Department, the project displays major violations of health, safety, or building code or the Development does not satisfy the uniform physical condition standards. Uncorrected is 30 points. Corrected is 20 points.

(ii) Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected is 30 points. Corrected is 10 points.

(iii) Owner failed to allow on-site monitoring review. Uncorrected is 30 points. Corrected is 5 points.

(iv) Development not available to general public. Determination of a violation under the Fair Housing Act has occurred. Uncorrected is 30 points. Corrected is 10 points.

(v) Development failed to meet minimum low-income occupancy levels. Development failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of Area Median Gross Income) or 40/60. Uncorrected is 20 points. Corrected is 10 points. (LIHTC and BONDs only).

(vi) No evidence or failure to certify to non-profit material participation for Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

(vii) Development failed to meet any State required rent and occupancy restrictions. Development has failed to meet State restrictions, if any, that exist in addition to the Federal requirements. Uncorrected is 10 points. Corrected is 3 points.

(viii) The Development failed to provide required supportive services as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(ix) The Development failed to provide housing to the elderly as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(x) Failure to provide special needs housing. Development has failed to provide housing for or lease to tenants with special needs as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xi) The development owner failed to provide required annual notification to the local administering agency for the Section 8 program. Uncorrected is 5 points. Corrected is 2 points.

(xii) Changes in Eligible Basis. Changes occur when common areas become commercial; fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 point. (LIHTC only).

(xiii) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 3 points. Corrected is 1 point.

(xiv) Owner failed to make available or maintain a complete Management Plan as required under Section 1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xv) Owner failed to approve and distribute Affirmative Marketing Plan as required under Section 1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xvi) Development displays a pattern of minor property condition violations. Those violations do not impair essential services and safeguards for tenants. Uncorrected is 5 points. Corrected is 2 points.

(xvii) Development failed to comply with requirement limiting minimum income standards for Section 8 residents. Complaints, verified by the Department, regarding violations of the income standard which cause exclusion from admission of Section 8 resident(s) results in a violation. Uncorrected score 10 points. Corrected is 3 points.

(C) Non-Compliance items identified in clauses (i) through (x) of this subparagraph may be identified during monitoring reviews and are categorized as Unit/Building Events.

(i) Development has units that are leased to households whose income was above the income limit upon initial occupancy. Uncorrected is 3 points. Corrected is 1 point.

(ii) Low-income units occupied by nonqualified full-time students. Uncorrected is 3 points. Corrected is 1 point. (LIHTC and BONDs only).

(iii) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point. (LIHTC and BONDs only).

(iv) Household Income increased above the re-certification limit and an available unit was rented to a market tenant. Uncorrected is 3 points. Corrected is 1 point.

(v) Gross rent exceeds rent limits. Uncorrected is 3 points. Corrected is 1 point.

(vi) Utility allowance not calculated properly. Uncorrected is 3 points. Corrected is 1 point.

(vii) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(viii) Casualty loss. Units not available for occupancy caused by a natural disaster or hazard due to no fault of the Owner. This carries no point value. Casualty losses are reported to the IRS on LIHTC Developments.

(ix) When a low income unit became vacant, the Owner failed to lease or make reasonable efforts to lease to a low income household before any units were rented to tenants not having a qualifying income. Uncorrected 3 points. Corrected 1 point.

(x) Unit not available for rent. Unit is used for non-residential purposes excluding unavailable units due to casualty and manager-occupied units. Uncorrected is 3 points. Corrected is 1 point.

(v) Liability. Compliance with program requirements, including compliance with the Code §42, is the sole responsibility of the development owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the development owner, including the development owner's noncompliance with §42 of the Code.

(w) Board Waiver. The Board may waive the requirements of this rule to further the purposes or policy of Chapter 2306, Texas Government Code, or for other good cause.

(x) Applicability to All Programs. These provisions apply to all Developments for which the Department has provided funding or other assistance, including Housing Tax 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.

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

TRD-200305964
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 475-3726

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.1, 61.10, 61.20, 61.21, 61.30, 61.40 - 61.43, 61.46, 61.47, 61.80, 61.91, 61.105, 61.107, 61.109, 61.110, 61.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§61.1, 61.10, 61.20, 61.21, 61.30, 61.40, 61.41, 61.42, 61.43, 61.46, 61.80, 61.91, 61.105, 61.107, 61.109, and 61.110 and new rules §§61.47 and 61.120 regarding the Combative Sports program.

Rule 61.10(5) definitions is amended by deleting the phrase, "which may reasonably be expected to inflict injury" from the definition of Combative Sports to eliminate confusion. The amended rule will simply refer to a competition in which blows are struck.

Rule 61.10(17) old (18) is amended to expand the definition of ringside physician to include registration with the department. Other amendments are proposed to clarify the definitions.

Rule 61.20(i) is a new subsection requiring that all licensing requirements must be completed 72 hours before a contest.

Rule 61.21(c) is amended to require a parent or guardian's consent for a minor, age 17, to be a contestant to be notarized. It also is amended to require a person 36 years of age or older to submit a report showing appropriate physical condition.

Rule 61.40(b)(10) is amended to limit access to dressing rooms to certain persons.

Rule 61.40(b)(17), old (b)(18), detailing the time period for weigh-ins is replaced with language requiring a promoter to pay by check the licensing fee for any contestant who is not licensed at the time of weigh-in.

Rule 61.41(q) is a new subsection requiring referees to provide proof of required visual acuity.

Rule 61.42(g) is a new subsection requiring judges to, at all times, maintain focus on the contest.

Rule 61.43(i)(1) is amended by requiring coagulants to be in properly marked containers, and the rule states that use of unapproved substances will result in disciplinary action. Rule 61.47, (old 61.46) which is a new rule described below, is amended by adding new subsection (a) requiring contestants to have on file with the Department results from a blood test taken within 180 days of the contest.

Rule 61.80 is amended by adding a new (a)(9) to set a registration fee for ringside physicians.

Rule 61.105 is amended by adding subsections (a), (b), (c), and (f) which describe the weigh-in process. All the new sections contain requirements found in other sections in earlier versions that are now gathered into one location.

Rule 61.107(b) is amended to include requirements for boxers to have passed an opthalmological examination and an HIV test.

New rule 61.46 Ringside Physician is the language that was formerly 61.40(b)(12) which has been moved to this location.

New rule 61.120 Medical Advisory Committee provides for appointment of the committee, newly provided for by statute and establishes the committee's duties.

The rules are amended to correct references to statutes and rules and to make changes to reflect statutory changes made by Senate Bill 279, Acts of the 78th Legislature.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the sections.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rules are in effect, the public benefit will be rules that will accurately reflect and refer to statutes and language will be clarified.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments and new rules. For persons required to comply with the proposed amendments and new rules, there will be additional costs to promoters to meet new responsibilities and to medical doctors who wish to serve as ringside physicians.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, Chapter 2052, §2052.052 which authorizes the commissioner to adopt reasonable and necessary rules to administer this chapter and Texas Occupations Code, Chapter 51, §51.201 which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 2052 and Texas Occupations Code, Chapter. No other statutes, articles, or codes are affected by the proposal.

§61.1. Authority.

These rules are promulgated under the authority of the Texas Occupations Code, Chapter 2052, "Combative Sports" [~~(Vernon 1999)~~] and the Texas Occupations Code, Chapter 51, "Texas Department of Licensing and Regulation" [~~(Vernon 1999)~~].

§61.10. Definitions.

The following words and terms have the following meanings:

(1) Amateur--A person who engages in a contest or exhibition where no cash prize is awarded to participate and who has never received any purse or other article of value, other than the maximum amount established by an amateur organization recognized by the Department.

(2) Bout /or contest--A combative sporting event wherein contestants use their best effort to prevail through knockout, technical knockout, judges decision, pinning or any other manner authorized by the Executive Director [~~Commissioner~~].

(3) Chief second--The second designated by the contestant as the primary advisor or assistant to the contestant.

(4) Code--The Texas Occupations Code, Chapter 2052, "Combative Sports".

(5) Combative Sport--Boxing, wrestling, kick boxing, shoot wrestling, pancration fighting/wrestling, shoot fighting/wrestling or any form of competition in which a blow is struck [~~which may reasonably be expected to inflict injury~~].

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Contestant--Any [~~A boxer, wrestler, kickboxer, shoot wrestler/fighter, pancration wrestler/fighter or any other~~] participant who competes in a combative sport event regulated by the Texas Occupations Code, Chapter 2052 [~~contest, bout, exhibition or match for remuneration~~].

(8) Deadwood--The numerical difference between tickets printed and tickets used.

(9) Event--An organized series of individual contests or bouts.

[~~(10) Executive Director--Chief Executive Officer for the Department whose statutory title is Commissioner.~~]

(10) [~~(11)~~] License--A document issued by the Executive Director [~~Commissioner~~] permitting a person to participate at an event or in a particular profession or trade.

(11) [~~(12)~~] Manager--A person who, under contract, agreement, or other arrangement with a contestant undertakes to directly or indirectly, control, or administer the contestant's professional affairs.

(12) [~~(13)~~] Matchmaker--One who arranges matches for professional contestants.

(13) [~~(14)~~] Person--Any natural person, corporation, partnership, association or other similar entity.

(14) [~~(15)~~] Purse--The financial guarantee or any other remuneration promised to contestants for participating in a contest and includes guarantees for cable pay per view, radio, television or motion picture rights.

(15) [~~(16)~~] Promoter--Any person or entity that produces, stages, arranges, advertises or conducts a combative sport contest.

(16) [~~(17)~~] Ring Officials--Referees, judges, physicians and timekeepers.

(17) [~~(18)~~] Ringside Physician--An individual licensed to practice medicine by the Texas State Board of Medical Examiners , and registered with the Department.

(18) [~~(19)~~] Second--A person who provides assistance or advice to a contestant during a contest.

(19) [~~(20)~~] Shoot (or shooto) wrestling/fighting or Pancration (or Pankraton, Pankration) wrestling/fighting--A form of full contact martial arts in which opponents may, while standing strike with the open hand, kick, wrestle, throw, grapple and submit.

(20) Technical Zone--A barrier free area between the ringside and the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and first row of seats.

(21) Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

§61.20. General Licensing Requirements for Ring Officials and Contestants.

(a) Contestants, promoters, referees, judges, seconds, matchmakers, managers, [~~and~~] timekeepers , and ringside physicians who officiate or participate in an event authorized by the Combative Sports Code must be licensed or registered by the Executive Director [~~Commissioner~~].

(b) If a licensee or registrant changes his/her address of record, the licensee or registrant shall inform the Executive Director [~~Commissioner~~] in writing of the change within 30 days of the change.

(c) A corporate or non-individual license holder shall notify the Executive Director [~~Commissioner~~] of any change of ownership of 25% or greater and of new or additional officers [~~, stockholders,~~] or directors within 30 days of the change.

(d) Each applicant must submit a completed application or renewal form and the appropriate fees.

(e) All licensees under the Code and these rules shall behave in a professional manner and at all times pertinent to the event, exhibit the highest degree of sportsmanlike conduct.

(f) All licensees and registrants shall furnish all information required by the Department in a reasonable time period.

(g) All licensees and registrants [~~parties~~] shall carry out the terms and conditions of contracts to which they are parties.

(h) All contestants, managers, seconds, and referees must attend the referee's rules meeting prior to a bout.

(i) All licensing requirements should be completed at least 72 hours before a contest.

§61.21. General Prohibitions.

(a) Judges, Timekeepers, Matchmakers, Referees and Ringside Physicians may not have a direct or indirect financial interest in any contestant.

(b) Contestants and [~~Neither contestant nor~~] ring officials [~~official~~] licensed under the Code may not participate in an unauthorized event, unless such event is exempted from licensing requirements under the Code.

(c) Persons [~~Contestants~~] under the age of 17 will not be issued a license. Minors age 17 but not yet 18 may be issued [~~applying for~~] a boxer's license with a notarized [~~must submit~~] written consent from a parent or guardian. A person age 36 or older applying for a boxing license other than for an Elimination Tournament contest shall submit a report of favorable physical testing including but not limited to neurological examination, ophthalmologic examination, EEG (electroencephalography), EKG (electrocardiogram), negative HBV (hepatitis B), negative HCV (hepatitis C), negative HIV (human immunodeficiency virus), completed application and required fee. The Applicant may request an administrative hearing if the Executive Director determines the physical testing results are not favorable in any way and fails to issue a license for that reason.

(d) A matchmaker may not act as, and cannot be licensed as; a contestant, ring official or second.

(e) A promoter may not act as, and cannot be licensed as; a referee, timekeeper, or judge. A promoter may be licensed as a manager and act as a second. A promoter may be licensed as a contestant unless prohibited by Federal law.

(f) No person shall be allowed to participate in a contest, unless the person has proof of identification and a current license to participate in the event. Accepted proof of identification includes driver's license, passport, state issued identification cards, federal identification boxing cards, or any other identification authorized by the Executive Director [~~Commissioner~~].

(g) A combative sports contest as defined in these rules may not be held in the State of Texas unless it is approved by the Executive Director [~~Commissioner~~] or exempted from the Code.

(h) A Contestant may not act as, and cannot be licensed as a Judge.

(i) A Person who is affiliated with a Ranking Organization may not act as, and can not be licensed as a Judge.

§61.30. Responsibilities and Authority of the Department.

(a) The Executive Director [~~Commissioner~~] may designate another employee of the agency or contract employee to act in his/her stead in all matters under these rules and the Texas Occupations Code, Chapter 2052 [~~(Vernon 1999)~~].

(b) The representative for the Executive Director [~~Commissioner~~] in charge of a contest has complete authority over all phases of a contest, including, but not limited to the weigh-in, matching of contestants, entrance to the forum, passes to the technical zone, audit of ticket sales, and payment of purses.

(c) For all contests, the Executive Director [~~Commissioner~~] will assign the timekeepers, referees, ringside physicians and judges.

(d) In title and championship fights, the Executive Director [~~Commissioner~~] will consult with the sponsoring or sanctioning body on the assignment of judges and referees. The Executive Director [~~Commissioner~~] will make assignments for these fights.

(e) The Department may request of a contestant, medical tests to prove gender.

(f) The Executive Director [~~Commissioner~~] may recognize and enforce disciplinary sanctions, disqualification, or medical suspensions imposed by other combative sport authorities. If licensure is denied based on reciprocity with another jurisdiction, the applicant has a right to a hearing.

(g) Selection of Ring Officials

(1) The assignment of ring officials [~~timekeepers, judges and referees~~] will be made on a rotational basis from a list of licensees and registrants. Assignments are made to ensure the highest degree of safety for combative contestants. The Department will assist license holders and registrants in developing an expertise in the combative sport of their choice, to include training and shadow officiating.

(2) The key determining factors for assigning ring officials are:

(A) The ring officials' level of expertise in connection with the level of expertise required for a particular contest and a particular combative sport;

(B) the location of the fight;

(C) the location of the licensees residence; and

(D) any other factors as determined by the Executive Director [~~Commissioner~~].

(3) If a ring official declines to work an event, that official will miss his/her rotation.

(4) If a ring official declines to work an event five times in succession, he/she will be taken off of the rotational list.

(5) In order to be reinstated on the rotation list, an official may be required to complete additional training as determined by the Executive Director [~~Commissioner~~].

(6) If a ring official under this subsection substitutes for another who declined to work an event, the substituting official does not lose his/her place on the rotational list.

(h) The Department shall assign two timekeepers for each event, one to keep time and one to count for knockdowns.

(i) The Department representative may eject any person from an event who violates Department rules or the Code.

(j) The Department will not approve matches between contestants in different weight categories, except by weight tolerances as stated in §61.105 of this title (relating to Weight Categories and Weigh-in).

(k) The Department will not approve matches between [~~the~~] genders.

(l) The Executive Director [~~Commissioner~~] or his/her designee may waive a rule if circumstances justify a waiver. The waiver must be in writing or later confirmed in writing.

(m) Licensure or registration does not automatically authorize an individual to participate in an event.

(n) A decision rendered after a contest shall not be changed unless the Department determines that the compilation of the referee and judges' scorecard shows a clerical or mathematical error that caused the decision.

(o) The Department may approve championship or title contests if the Department has recognized the sponsoring sanctioning organization as a legitimate combative sport organization.

(p) Department representatives may check the number of gate ticket containers. They may also check the containers for seals or padlocks. Tickets shall be accounted for after the event and a Department representative may review that process.

(q) The Department may require of a contestant, neurological or other medical testing.

(r) The Department may order a drug screen at any time for good cause. If a drug screen is performed, the contestant is responsible for paying the costs of the drug screen.

(s) The Department shall have sole control over the Technical Zone including but not limited to who may be admitted and to assure that no alcoholic beverages are allowed.

§61.40. Responsibilities of the Promoter.

(a) Bond and Insurance Requirements for Promoters

(1) A Promoter applicant must submit to the Department proof of financial responsibility and insurance requirements. Financial responsibility may be shown by:

(A) submitting a current financial statement prepared by a certified public accountant, showing liquid working capital of $10,000 or more; or

(B) submitting a $10,000 performance bond guaranteeing payment of all obligations relating to the promotional activity; and

(C) submitting a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas, which shall remain in effect for four years after the effective cancellation date.

(2) The promoter shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a boxing contest and $50,000 to a contestant's estate if he

dies of injuries received while participating in a contest. The insurance premium and deductibles shall not be deducted from the contestant's purse. The promoter shall provide to the Department for each event sponsored, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim.

(b) A Promoter shall:

(1) Bear all financial responsibility for the event.

(2) Provide the Department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the Department to promote the event prior to advertising or selling tickets.

(3) Obtain written departmental approval for the fight card at least 10 working days before the event date. The request shall contain the full legal name, address, date-of-birth[~~, ring name,~~] Texas contestant license number, Federal Identification number, weight, previous fight record (by supplying current results from the contestant's registry recognized by the Professional Boxing Safety Act of 1996, 15 USC §§6301-6313), [~~name of the manager or the manager agent of each contestant,~~] and number of rounds to be fought for each contestant. In addition, the Department may require submission of certified birth certificates or other official evidence of identification.

(4) Provide written notice to the Department of any change in the card before the scheduled weigh-in. Notices announcing changes or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(5) Provide to the Department, written notice of any change in the announced or advertised location, time or card cancellations before the scheduled weigh-in.

(6) Provide two ringside physicians, registered [~~approved~~] by the Department, for each event.

(7) Provide at least one registered physician to conduct pre-fight physicals. The Department may require additional physicians depending on the event size. Provide a private area for the ringside physician to perform pre-fight examinations.

(8) Assure that beverages are only allowed in paper or plastic cups at the event.

(9) Immediately after the event, compensate the ringside physicians, timekeepers, judges, referees and contestants. Payment of percentage contracts shall be made when the amount can be determined. Payments that do not require additional accounting or auditing, shall be made in the presence of an authorized Department representative.

(10) Provide [~~a private room for ring officials,~~] no less than two private dressing rooms of adequate size for the contestants and their licensed managers,[~~trainers~~] and seconds, and separate dressing rooms for male and female contestants. Only working Commission employees, contract inspectors, media, physicians, licensed working ring officials, promoter, matchmaker, manager and seconds will be allowed in the dressing rooms.

(11) Assure that no alcoholic beverages or illegal drugs are in the dressing room.

~~[(12) Assure that the officiating physicians perform the following duties:]~~

~~[(A) perform medical examinations on contestants at the weigh-in to include a review of a contestant's answers to medical questions on the application. Only the contestant, his manager, the ringside physician, and Department representatives are allowed in the examination room during the physical;]~~

~~[(B) remain at ringside at all times during the scheduled bouts;]~~

~~[(C) immediately examine a contestant who suffers a knockout, concussion, or other head injury; and]~~

~~[(D) conduct a post contest examination that includes the physician's recommendations for rest periods, medical disqualification, and any other exam results. Results of the post contest examination shall be reported to the Department within 24 hours after an event. A contestant shall automatically receive medical suspensions/rest periods for the following:]~~

~~*[(i)* cut - Medical suspension time based on physician's recommendation.]~~

~~*[(ii)* technical knockout - Minimum of 30-day medical suspension.]~~

~~*[(iii)* knockout - 60-day minimum medical suspension for the first knockout. If a contestant has had two knockouts within 12 months, he shall be medically suspended for a minimum of 120-days. If he has had three knockouts within 12 months, or three consecutive knockouts, he will be medically disqualified from further competition;]~~

~~*[(iv)* mandatory rest - All contestants shall receive a mandatory rest period as recommended by the ringside physician.]~~

(12) [~~(13)~~] Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the Department of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(13) [~~(14)~~] Schedule no less than 24 or more than 60 rounds for each event. Contests between males shall have no more than three-minute rounds with one-minute rest periods between rounds. Contests between females shall have no more than two-minute rounds with one-minute rest periods between rounds. No event shall exceed 10 rounds, except a championship or title contest, which shall not exceed 12 rounds. A sparring or exhibition event shall not exceed three rounds.

(14) [~~(15)~~] Prior to advertising a championship or title contest, file with the Department the contestants' contracts.

(15) [~~(16)~~] Contestants [~~Require contestants~~] opposing one another must [~~to~~] wear [~~the same weight class of~~] gloves manufactured by the same company with the same brand name, model and weight.

(16) [~~(17)~~] Ensure that each event has the appropriate equipment to include:

(A) The ring shall be a square with sides not less than 16 feet or more than 24 feet inside the ropes. The ring floor shall extend at least 24 inches beyond the ropes on all sides. The ring floor shall be of at least 3/4-inch material, adequately supported, and padded with ensolite or similar closed-cell foam that is at least 1-inch thick.

(B) The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the Department.

(C) The covering shall be clean and be tightly stretched and laced to the ring platform and may not have tears, holes or overlapping seams.

(D) The ring platform shall have at least three sets of steps into the ring during a contest: one set for each contestant's corner and one set in the neutral corner to be used for the ringside physician and the Department.

(E) The ring corners shall be protected inside the ring with a urethane pad at least six inches wide. It shall be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints.

(F) Ring posts shall be made of a strong material, preferably steel, and shall be at least three inches in diameter. The posts shall be secured under the ring to prevent spreading. The ring shall be set up at least two hours before the contest is scheduled to begin.

(G) There shall be four ring ropes at least one inch in diameter [~~that is~~] evenly spaced, one foot apart. The lower rope shall be 18 inches above the ring floor. The ropes shall be attached to the ring posts with turnbuckles and shall be stretched taut during all contests. The bottom rope shall be padded with at least 2 [?] inch of soft material.

(H) A bell that makes a sound loud enough to be heard by the contestants, referee, and other officials.

(I) An appropriate receptacle for spitting for each contestant's corner, clean water buckets for the contestants' use, and at least three chairs or stools in each contestant's corner. The chairs shall be labeled "seconds" and shall be used only by the contestant's official seconds.

(J) New gloves for all main events. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the referee and Department representatives. Any gloves found unfit shall not be used and must be replaced with acceptable gloves. There shall be extra sets of gloves on hand to be used in case gloves are broken or in any way damaged during a contest.

(K) Contestants in all weight categories up to, and including welterweights, shall use eight-ounce gloves. In heavier classes, they may wear ten-ounce gloves. Female contestants may wear 10-ounce gloves.

(L) Gloves shall be kept in the possession of the boxing promoter and shall be made available for inspection by the Department for a minimum of seven days after a contest.

(M) The ring apron shall be kept clear at all times of objects including, but not limited to: cameras, microphones, and advertisements. A separate camera platform at a neutral corner of the ring for use by cameramen may be provided. Cameramen may be allowed on the ring apron during rest periods, between bouts, or at the discretion of the Executive Director [~~Commissioner~~]. No seats may be sold at the ring apron.

(N) The Technical Zone shall be set up for the Department [~~There shall be a barrier and free area between the ringside and the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and the first row of seats~~].

(O) All emergency medical personnel and portable medical equipment shall be located within the Technical Zone [~~ring barrier~~] during the event. There must be [~~is~~] a resuscitator, oxygen, stretcher, a certified ambulance, and an emergency medical technician on site for all contests. The Executive Director [~~Commissioner~~] may require additional medical personnel and equipment depending on the number of bouts scheduled.

(P) The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. Physician ringside seats shall be in the neutral corner(s).

(Q) There shall be at least one, but no more than three, authorized promoter representative(s) at ringside at all times. Only the promoter's representative(s), Department officials, the press, physicians, representatives of sanctioning bodies, and judges shall sit at the ringside tables.

[~~(R) Physician's scales to be used for weighing-in contestants. The Department may require that the scales be certified.~~]

(17) In the event that a person who is intended to be a Contestant is not licensed at the time of the weigh-in it is the promoter's responsibility to pay the licensing fee by check. No cash or other forms of payment will be accepted.

[~~(18) Assure that the weigh-in takes place at a specific time set by the promoter and approved by the Department, generally between the hours of 2 p.m. of the day before the contest and 12 noon the day of the contest.~~]

(c) Contract requirements between Promoter and Contestant.

(1) The promoter for an event shall have contracts with contestants executed in triplicate on Department forms showing the amount of guarantee or percentage promised, the number and time limit of rounds, when and where the contestants are scheduled to appear, weight category, and other pertinent details governing the event. If applicable, the compensation section must include the specifics of television, radio and cable rights. The contract must define and provide for agreement on compensation if the opponent fails to appear at the weigh-in or bout. All contracts must state the dollar amount or percentage withheld for expenses, taxes, advances, sanctions or any other items the promoter seeks to subtract from a contestant's purse.

(2) The promoter shall furnish one executed copy of the contract to the contestants or their managers, retain one, and submit one to the Department.

(3) All required information must be typed or legibly printed, and the contestant and promoter shall initial any changes or addenda.

(d) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee the promoter's license number, and event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) Tickets of different prices shall be printed on different colored ticket stock.

(4) The promoter shall submit a sworn inventory to the Department of tickets delivered to any outlet or event sponsor. The inventory shall account for any known overprints, changes, or extras.

(5) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(6) All tickets shall be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed container, where it is to remain until the Department's representative witnesses the opening of the container. No one shall pass through the gate without having their ticket torn or shall occupy a seat unless holding a ticket half or have a working pass or credential with a specific seat assignment indicated on them. Passes and or credentials may not be sold or bartered.

(7) If a main event or special added attraction is postponed or cancelled for any reason, the promoter shall promptly refund ticket sales. A special added attraction is the appearance of any person or persons at any boxing event whose reputation or ability is calculated to increase attendance. Tickets in the hands of ticket services shall be returned to the promoter not later than when the box office at the boxing event site has closed.

(8) Promoters shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(9) When computing gross receipts, the face value of tickets, except deadwood, shall be included whether the tickets were sold for cash, given away, or bartered for services provided.

(e) A promoter shall submit to the Department a tax report and a 3% gross receipts tax payment within 72 hours after an event.

§61.41. Responsibilities of the Referee.

(a) Referees are responsible for enforcing the rules of the contest and shall exercise immediate authority, direction and control over contests. The referee shall conduct a rules meeting before the first bout of the event.

(b) The referee may eject from an event any person who violates the Code or Department rules. If a second violates these rules or the Code, the referee may disqualify the seconds' contestant.

(c) If an assigned referee is unable to officiate, he shall notify the Department at least five hours before the contest.

(d) The referee may stop any contest:

(1) where there is reason to believe that continuing may result in serious injury to either contestant;

(2) if a contestant cannot defend himself;

(3) because of an injury or a contestant's poor physical condition; or

(4) if the referee feels that a contestant is not fighting in earnest.

(e) if a contestant is accidentally head butted in a contest but can continue, the referee may stop the contest, for a reasonable time, and inform the judges and the contestant's second of the head butt.

(f) If the contestant who is knocked down does not rise before the count of ten, the referee shall declare him the loser by a knockout. If the contestant appears to be seriously injured, the referee may summon the ringside physician into the ring, and declare the bout terminated by knockout.

(g) If a mouthpiece is knocked out, the referee shall call time during a break in the action, the contestant's second will clean and reinsert the mouthpiece. If the mouthpiece is spit out the same procedure will be followed and the referee can charge the contestant with a foul.

(h) The referee or Executive Director [~~Commissioner~~] may disqualify a contestant and declare the opponent the winner after one warning by the referee or Department representative for the use of profanity, obscene or threatening gestures by a contestant, his manager, or his second.

(i) When a foul occurs, the referee shall call time and advise the judges of the foul and the number of points they should deduct.

(j) Before each bout, the referee shall call the contestants and their chief seconds together for final instructions. The referee shall hold the chief second responsible for his contestant's conduct during the contest.

(k) When a low blow incapacitates a contestant, the referee shall give him reasonable time to recover. The referee may confer with the ringside physician. If a contestant shows an unwillingness to continue because of a low-blow claim, and the referee has resumed the fight, that contestant shall be declared the loser by a technical knockout.

(l) Knockdowns.

(1) When a punch knocks a contestant down, the referee shall order the opponent to go to the ring's farthest neutral corner, pointing to the corner, and immediately pick up the timekeeper's count.

(2) The referee shall audibly announce the passing of the seconds, accompanying the count with upward motions of his arm for each second and indicating the count with visual finger counts after each second.

(3) The referee shall stop counting if the opponent does not remain in the neutral corner until the count is complete.

(4) No contestant who is knocked down shall be allowed to resume boxing until the referee has finished counting to eight.

(5) If a contestant who is down rises before the count of ten and goes down again without being struck, the referee shall resume the count where he stopped.

(6) When a round ends before a contestant who was knocked down rises, the bell shall not ring, and the count shall continue. If the contestant rises before the count of ten, the bell shall ring ending the round.

(7) The referee's count is the official count.

(8) When a contestant is knocked down three times in any round, the referee shall stop the contest, and the contestant scoring the knockdowns shall be declared the winner by technical knockout.

(m) If a contestant does not answer the bell signifying the start of a round, the referee shall give a ten count and declare him the loser by a technical knockout.

(n) If a contestant who has been knocked out of the ring or has fallen out of the ring during the contest fails to return immediately, the referee shall give the contestant 20 seconds to return to the ring. After a 20 second count, if the contestant has not returned to the ring, the referee shall count the contestant out as if he were down. No one may help contestants back into the ring.

(o) If during the first four rounds a contestant is pushed, knocked or falls out of the ring, is injured by the fall and unable to return, the referee shall declare the bout a technical draw. If this occurs during later rounds, all completed and partial rounds in which the bout is terminated shall be scored and the contestant ahead on points shall be declared the winner by technical decision.

(p) A referee applicant must have at least three years active experience as a referee in the combative sport he/she wishes to be licensed. Active experience means officiating in at least ten combative

sporting events per year. The Executive Director [~~Commissioner~~] may approve licensure for persons with comparative experience in any combative sport. A licensed referee may act as a judge or a timekeeper.

(q) A referee must provide proof of testing by a licensed Optometrist or licensed Ophthalmologist of eye sight at least 20/40 uncorrected. The test must be no more than 180 days before the contest to be refereed.

§61.42. Responsibilities of Judges.

(a) A majority vote of the judging officials decides the outcome of the contest.

(b) If an assigned judge is unable to officiate, he shall notify the Department at least five hours before the contest.

(c) If a contest is stopped before the end of the fourth round because of an accidental foul [~~head butt~~], the contest shall be declared a no decision [~~technical draw~~]. If after the fourth round an accidental foul [~~head butt~~] injury occurs or worsens and the contest is stopped, all completed and partial rounds shall be scored. The contestant ahead on points shall be declared the winner by technical decision.

(d) Scoring shall be recorded only on the Department-approved form. Once the form is completed, checked and signed by the official it must be given directly to the Department supervisor for the event. Scoring forms are the property of the Department and will be maintained in the official records of the event.

(e) In all contests, the total points the referee and judges give each contestant may be announced.

(f) A judge applicant must have at least three years active experience as a judge and/or referee in the combative sport he/she wishes to be licensed. Active experience means officiating in at least ten combative sporting events per year. The Executive Director [~~Commissioner~~] may approve licensure for persons with comparative experience in any combative sport. A licensed judge may act as a timekeeper.

(g) A judge will at all times during a contest maintain focus on the contest even during rest periods. In order to maintain focus, judges will not engage in distractions including but not limited to: talking, taking photographs, or carrying materials not related to the contest.

§61.43. Responsibilities of Seconds.

(a) Each contestant must have two seconds unless the Department permits otherwise. Each contestant shall have one chief second.

(b) The seconds shall dress neatly.

(c) Seconds shall keep their corners clean, dry, and free from objects.

(d) Seconds may surrender for their contestants by standing on the apron and signaling to the referee.

(e) A second may not:

(1) excessively coach a contestant during a round and shall remain silent when instructed to do so by a Department representative or the referee;

(2) throw excessive amounts of water on his contestant;

(3) toss a towel or any other object into the ring in token surrender of his contestant;

(4) use any unapproved solution during the contest.

(f) A second shall remain seated in the chairs provided during the rounds.

(g) If a second deliberately worsens a cut by spreading or tearing it, the referee may disqualify the contestant.

(h) Only one second shall be allowed in the ring between rounds, and he shall leave the ring enclosure at the timekeeper's warning. Two seconds will be allowed on the ring apron. All seconds shall leave the ring platform promptly when the bell sounds for the beginning of the next round, removing all obstructions including stools, buckets and equipment.

(i) A second shall be responsible for a contestant's corner supplies.

(1) Approved supplies are ice (no loose ice) all ice must be in an ice bag or Department approved container, water, cotton swabs, gauze pads, clean towels, Adrenalin 1:10,000, Avitene, Thromblin, petroleum jelly or other surgical lubricant, medical diachylon tape, and Enswel. All coagulants shall be in a container with the proper manufacturer's label and not contaminated by any foreign substance. The use of unapproved substances will result in disciplinary action.

(2) All containers shall be properly labeled with the manufacturer's label and not contaminated by any foreign substance.

(3) The use of an unapproved substance shall result in disciplinary action. No loose ice may be used in the corner and all ice must be in an ice bag or other suitable container.

(4) Only water shall be permitted for dehydration of a contestant between rounds. Honey, glucose, or sugar, or any other substance may not be mixed with the water. Electrolyte solutions are prohibited.

(5) Excessive use of any lubricant on the contestant's body, arms or face is prohibited.

(j) When the ringside physician enters a contestant's corner, the second in the ring shall yield immediately to the physician's examination without interference. The referee will call time out until the physician completes the examination. This will permit the corner the full rest period to administer to their contestant. The Department may disqualify a contestant, manager and/or second for unprofessional conduct in failing to cooperate with the ringside physician.

§61.46. Responsibilities of Ringside Physicians [~~Responsibilities of Contestants~~].

Ringside physicians shall perform the following duties:

(1) perform medical examinations on contestants at the weigh-in to include a review of a contestant's answers to medical questions on the application. Only the contestant, his manager, the ringside physician, and Department representatives are allowed in the examination room during the physical;

(2) remain at ringside at all times during the scheduled bouts;

(3) immediately examine a contestant who suffers a knockout, concussion, or other head injury; and

(4) conduct a post contest examination that includes the physician's recommendations for rest periods, medical disqualification, and any other exam results. Results of the post contest examination shall be reported to the Department within 24 hours after an event. A contestant shall automatically receive medical suspensions/rest periods for the following:

(A) cut - Medical suspension time based on physician's recommendation.

(B) technical knockout - Minimum of 30-day medical suspension.

(C) knockout - 60-day minimum medical suspension for the first knockout. If a contestant has had two knockouts within 12

months, he shall be medically suspended for a minimum of 120-days. If he has had three knockouts within 12 months, or three consecutive knockouts, he will be medically disqualified from further competition;

(D) mandatory rest - All contestants shall receive a mandatory rest period as recommended by the ringside physician.

~~[(a) A contestant applicant must submit to the Department all information required by the Department's application.]~~

~~[(b) A contestant may not perform under any name that does not appear in departmental records.]~~

~~[(c) Contestants shall in good faith perform to the best of their abilities.]~~

~~[(d) A contestant who commits a foul under these rules is subject to administrative sanctions and or penalties in addition to losing points during a contest.]~~

~~[(e) Arguing with an official or refusing to obey the orders of an official is prohibited.]~~

~~[(f) Contestants shall compete in proper ring attire. Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring. The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a contest. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Female contestants must wear garments that cover their breast.]~~

~~[(g) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.]~~

~~[(h) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.]~~

~~[(i) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.]~~

~~[(j) For female contestants, a pregnancy test shall be obtained and submitted to the Department before the weigh-in, but not earlier than 48 hours prior to the contest.]~~

~~[(k) Female contestants may wear breast protection plates.]~~

~~[(l) Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager or contestant shall make an immediate report of the facts to the promoter and the Department.]~~

~~[(m) If a contestant becomes ill or injured and cannot take part in a contest for which he is under contract, he or his manager shall immediately report the facts to the promoter and the Department. The contestant must submit to the Department medical proof of the injury or illness.]~~

~~[(n) A positive pregnancy or Hepatitis B or C test will result in disqualification.]~~

~~[(o) The administration or use of any drugs or alcohol 24 hours before or during a contest is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the Commissioner authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the Commissioner of such usage at least 24 hours prior to the contest.]~~

~~[(p) As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a contest. All medical records submitted to the Department are confidential, and shall be used only by the Commissioner or his/her representative for the purpose of ascertaining the contestant's ability to be licensed or participate in a contest.]~~

~~[(q) Contestants may not compete against a member of the opposite sex.]~~

~~[(r) If, in an attempt to make weight, a contestant shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the Department shall disqualify him on the advice of the examining physician.]~~

~~[(s) Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the Department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the Department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the Department receives a written request from the contestant or his manager.]~~

~~[(t) Any licensee who competes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the Department within 72 hours after the event.]~~

§61.47. Responsibilities of Contestants.

(a) A contestant must have on file with the Department a blood test that was taken no more than 180 days before the contest.

(b) A contestant applicant must submit to the Department all information required by the Department's application.

(c) A contestant may not perform under any name that does not appear in departmental records.

(d) Contestants shall in good faith perform to the best of their abilities.

(e) A contestant who commits a foul under these rules is subject to administrative sanctions and or penalties in addition to losing points during a contest.

(f) Arguing with an official or refusing to obey the orders of an official is prohibited.

(g) Contestants shall compete in proper ring attire. Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring. The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a contest. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Female contestants must wear garments that cover their breasts.

(h) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.

(i) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.

(j) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.

(k) For female contestants, a pregnancy test shall be obtained and submitted to the Department before the weigh-in, but not earlier than 48 hours prior to the contest.

(l) Female contestants may wear breast protection plates.

(m) Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager or contestant shall make an immediate report of the facts to the promoter and the Department.

(n) If a contestant becomes ill or injured and cannot take part in a contest for which he is under contract, he or his manager shall immediately report the facts to the promoter and the Department. The contestant must submit to the Department medical proof of the injury or illness.

(o) A positive pregnancy, Hepatitis B or C, or human immunodeficiency virus (HIV) test will result in disqualification.

(p) The administration or use of any drugs or alcohol 24 hours before or during a contest is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the Executive Director authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the Executive Director of such usage at least 24 hours prior to the contest.

(q) As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a contest. All medical records submitted to the Department are confidential, and shall be used only by the Executive Director or his/her representative for the purpose of ascertaining the contestant's ability to be licensed or participate in a contest.

(r) Contestants may not compete against a member of the opposite sex.

(s) Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the Department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the Department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the Department receives a written request from the contestant or his manager.

(t) Any licensee who competes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the Department within 72 hours after the event.

§61.80. Fees.

(a) The annual fees shall accompany each license or registration application or renewal as follows.

(1) Promoter - $1,000

(2) Contestant - $40

(3) Manager - $200

(4) Second - $30

(5) Matchmaker - $175

(6) Referee - $250

(7) Judge - $200

(8) Timekeeper - $40

(9) Ringside Physician - $25

(10) [~~(9)~~] Each additional endorsement for Promoters - $50 (boxing, kickboxing, shoot wrestling, or elimination tournaments).

(b) Two year Federal Identification card - $20.

(c) Permit Fee - $500 per live event and the simultaneous telecast of a live contest on a closed circuit telecast in which fees are charged for admission.

§61.91. Sanctions and Penalties.

If a person violates Texas Occupations Code, Chapter 2052 [~~(Vernon 1999)~~], or a rule, or order of the Executive Director [~~Commissioner~~] or Commission relating to the Code, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Code or the Texas Occupations Code, Chapter 51 [~~(Vernon 1999)~~] and 16 Texas Administrative Code, Chapter 60 [~~(1999)~~] of this title (relating to the Texas Department of Licensing and Regulation).

§61.105. Weight Categories and Weigh-in.

(a) A Promoter shall assure that the weigh-in takes place at a specific time set by the promoter and approved by the Department, generally between the hours of 2 p.m. of the day before the contest and 12 noon the day of the contest. The Department must be notified ten days before the event.

(b) Physician's scales must be used for weighing-in contestants. The Department may require that the scales be certified.

(c) Contestants failing to meet contract weight shall have two hours to meet the allowances and be reweighed.

(d) [~~(a)~~] No contestant may engage in a contest where the weigh-in weight difference between contestants exceeds the allowance shown in the following "WEIGHT ALLOWANCE" schedule:

(1) 112 lbs. or under 3 lbs.

(2) 112-118 lbs. 4 lbs.

(3) 119-126 lbs. 5 lbs.

(4) 127-135 lbs. 6 lbs.

(5) 136-147 lbs. 8 lbs.

(6) 148-160 lbs. 10 lbs.

(7) 161-175 lbs. 12 lbs.

(8) 176-190 lbs. 15 lbs.

(9) 190 lbs. or over - No limit

(e) [~~(b)~~] If a contestant's body weight at the time of weigh-in is 5% or more over his contracted weight, he shall be disqualified for the contest.

(f) If in an attempt to make weight, a contestant shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the Department shall disqualify the contestant on the advice of the examining physician.

§61.107. Boxing.

(a) All rules stated herein apply to the combative sport of boxing, with the exception of §§61.108 - 61.111, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) All [~~boxing~~] contestants applying for a license shall pass an annual comprehensive medical examination before they can be licensed. The exam must include an Ophthalmologist medical [~~eye~~] examination completed by an Ophthalmologist only and tests for Hepatitis B & C and human immunodeficiency virus (HIV) [~~tests~~]. A physician shall report the examination results on a Department-approved form.

(c) In scoring a contest the elements of offense, defense, clean hitting, ring generalship, and sportsmanship shall be carefully considered by the judges. Scoring shall be by the ten-point must system. The winner of any round is marked ten and the loser is marked nine or less. When a round is even, each contestant shall receive ten points. A clean knockdown shall be scored heavily. Judges shall deduct points for fouls when directed to do so by the referee. Referees and judges shall clearly write their decision and sign them individually. A draw shall be called if each official votes differently or any two vote a draw.

(d) A contestant shall be deemed down when:

(1) any part of his body other than his feet is on the ring floor; or

(2) he is hanging over the ropes in a defenseless manner.

(e) The following tactics are fouls and are forbidden. Using these tactics may result in a warning, loss of points as determined by the referee, disqualification, forfeiture, and an administrative penalty and/or sanction.

(1) Hitting below the belt.

(2) Holding an opponent with one hand and hitting him with the other.

(3) Hitting an opponent who is down or is getting up after being down.

(4) Holding an opponent or deliberately maintaining a clinch.

(5) Butting with the head or shoulder or using the knee.

(6) Hitting with the inside or butt of the hand, the wrist or the elbow.

(7) Hitting or "flicking" with open gloves.

(8) Wrestling, kicking or roughing at the ropes.

(9) Purposely going down without being hit.

(10) Striking deliberately at the area of the body around the kidneys.

(11) Jabbing an opponent's eyes with the thumb of a glove.

(12) Using abusive or profane language.

(13) Hitting at the back of the head or neck (rabbit punches).

(14) Failing to obey the referee.

(15) Engaging in any physical action or contact other than sportsmanlike boxing, which may injure another contestant.

(16) Spitting out a mouthpiece.

(17) Hitting an opponent after the bell has sounded ending a round.

§61.109. Elimination Tournaments/Toughman Competitions.

(a) All rules stated herein apply to Elimination Tournaments or Toughman competitions with the exception of §§61.107, 61.108 and 61.110- 61.111 unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Elimination tournament promoters who charge admission to an event, or offer an award to contestants must provide to the Department for each event:

(1) a $50,000 surety bond conditioned on the applicant's payment of the 3% tax under;

(2) a claim against the applicant as described by §2052.109(a)(3)(a) of the Code; and

(3) insurance coverage for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a contest and $50,000 to a contestant's estate if he dies of injuries received while participating in a contest. The insurance premium and deductibles shall not be deducted from the contestant's purse. The promoter shall provide to the Department for each event sponsored, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event with the proper information for filing a medical claim.

(c) The Executive Director [~~Commissioner~~] and promoter will jointly hold a drawing for all matches in each weight category.

(d) The promoter must notify the Department in writing before the commencement of the event of their decision to not use headgear.

(e) Elimination tournaments consist of a minimum of 24 and a maximum of 60 scheduled rounds on each night.

(f) Elimination Tournament contestant's shall wear 16 ounce gloves.

(g) If a contestant is disqualified during a pre-tournament physical examination, the promoter shall immediately notify the Department.

[~~(h) If otherwise still qualified, contestants who do not win the first evening may compete on the second evening.~~]

(h) [~~(i)~~] Fouls are as stated in §61.107 of this chapter.

§61.110. Martial Arts.

(a) All full-contact martial arts are forms of a combative sport.

(b) All rules stated herein apply to martial art competitions with the exception of §§61.107 - 61.109 and 61.111, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(c) A contest or exhibition of a martial art must be conducted pursuant to the official rules for the particular art. The sponsoring organization or promoter must file with and obtain permission of the Executive Director [~~Commissioner~~] prior to holding the contest.

§61.120. Medical Advisory Committee.

(a) The Executive Director shall appoint a medical advisory committee to advise the Department concerning health issues for contestants.

(b) The Committee shall be composed of five members:

(1) one member shall be a trauma specialists;

(2) one member shall be an ophthalmologist;

(3) one member shall be a sports doctor;

(4) one member shall be a neurologist; and

(5) one member shall be an emergency medical technician.

(c) The Committee shall make recommendations to the Department concerning:

(1) physical tests for contestants; and

(2) registration requirements for ringside physicians.

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

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

TRD-200305997
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 67. AUCTIONEERS

16 TAC §§67.1, 67.20, 67.21, 67.42, 67.65, 67.90

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§67.1, 67.20, 67.21, 67.42, 67.65, and 67.90 regarding the Auctioneers program.

Rule 67.20(a) is new language setting out licensure requirements including pre-licensure training of 80 classroom hours for applications filed after January 1, 2004, and new experience requirements for applicants seeking licensure without taking the examination.

The amendments are made to give effect to statutory changes made by the 78th Legislature.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be that the rules will more clearly set out the requirements for licensure and statutory references will be accurate.

The effect on large, small, or micro-businesses as a result of the proposed amendments is that licensees applying after January 1, 2004 may be impacted in that 80 hours of pre-licensure training will be required. The cost to obtain such training is not known to the department.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 1802 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed amendments are those set forth in Texas Occupations Code, Chapter 1802 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§67.1. Authority

These rules are promulgated under the authority of the Texas Occupations Code, Chapter 1802, Auctioneers and the Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation. [~~These rules are promulgated under the authority of Texas Civil Statues, Article 8700, and Texas Civil Statutes, Article 9100.~~]

§67.20. License Requirements--General

(a) An applicant for licensure as an auctioneer must submit a completed application on a form provided by the department along with required fees.

(b) An applicant for licensure as an auctioneer must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a legal alien;

(3) either

(A) pass written or oral examination provided by the department; or

(B) have been employed by a licensed auctioneer for at least two years and have participated in ten auctions;

(4) hold a high school diploma or a high school equivalency certificate;

(5) not have been convicted of a felony involving moral turpitude within five years of the application date; and

(6) for applications filed after January 1, 2004, show proof of successful completion of at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department.

[~~(a) Each license must be renewed within 30 days after expiration. A license not renewed within 30 days of the expiration date will not be issued without the applicant first taking and passing the written examination administered by the department. Any person who acts as an auctioneer within that 30-day period after expiration of the license is subject to the penalties under the Auctioneers Act, Section 11(a).~~]

(c) [~~(b)~~] All licensees must report any change of address to the department within 30 days.

§67.21. License Requirements - Associate Auctioneers

(a) Associate auctioneers must be employed by, and under the direct on-premises supervision of a licensed Texas auctioneer. An associate auctioneer shall offer his services only to a Texas licensed auctioneer. There must be a legitimate employee-employer relationship between the associate and the licensed auctioneer.

(b) An associate auctioneer must participate in all aspects of the auction business involving the laws of this state. He must be licensed for two years as an associate auctioneer and bid-call in at least 10 [~~five~~] auctions, and he must participate in, but not have sole responsibility for, each of the following tasks at least once: appraising, inventorying, advertising, property make ready, site selection and preparation, lotting, registration, clerking, cashiering, bid-calling, ring working, property check out, security, accounting, managing an escrow account.

(c) Any change of employment by a licensed associate auctioneer must be submitted to the department's Austin office prior to

such action, and a letter must be submitted by the former employer stating the areas in which the associate auctioneer participated and the number of auction sales at which the associate participated as bid-caller.

§67.42. Education and Recovery Fund - Claims

(a) If the department determines, either with the agreement of the auctioneer or at a hearing held on a disputed amount, that the auctioneer owes to the aggrieved person damages greater than the maximum of $10,000 allowed under the Act, the auctioneer must pay the amount not paid by the department to the aggrieved party. If the department determines that the auctioneer owes damages to more than one aggrieved person arising out of one auction at one location, and the sum of all damages owed exceeds $20,000, the department shall prorate $20,000 from the recovery fund among the aggrieved persons, and the auctioneer must pay the amount not paid to each of the aggrieved persons.

(b) The total payment from the recovery fund of claims against an auctioneer may not exceed $20,000. If additional claims are filed before the auctioneer has reimbursed the fund and repaid any amounts due an aggrieved party, the department shall hold a hearing to determine if the additional claims must be satisfied by the auctioneer before the commissioner issues a new license, whether probated or not.

(c) If a claim is paid against an auctioneer, and the auctioneer cannot immediately reimburse the recovery fund, the Executive Director [~~commissioner~~] may allow the auctioneer to sign an agreement to reimburse the fund at the rate of 10% of the principal each month plus the interest accrued during the prior month.

(d) If an amount is due an aggrieved party, and the auctioneer cannot immediately pay the aggrieved party, the Executive Director [~~commissioner~~] may allow the auctioneer to sign an agreement to pay the aggrieved party at the rate of ten percent of the principal each month plus interest accrued during the prior month.

§67.65. Advisory Board.

(a) The purpose of the Auctioneer Education Advisory Board is to advise the Commission [~~commissioner~~] on educational matters relating to use of the educational trust fund established with fees collected for the auctioneer recovery fund.

(b) Recommendations of the board will be transmitted to the Commission [~~commissioner through the director of policies and standards.~~]

(c) Board meetings are called by the Presiding Officer [~~chair~~]. Meetings in excess of one each calendar quarter shall be authorized by the Commission [~~commissioner~~] or the Commission's [~~commissioner's~~] designee.

(d) The Board shall consist of the auctioneer members specified in the Act, the commissioner of the Texas Department of Commerce and the commissioner of education or their designees, and three consumers of services provided by licensed auctioneers.

(e) The consumers of services should include at least one person who consigns property to auctioneers for sale and at least one person who regularly buys at auction. Consumer members serve for terms of two years and expire September 1 of the year of expiration.

§67.90. Sanctions - Administrative Sanctions/Penalties

If a person violates the Act, or a rule or order adopted or issued by the Commission or Executive Director [~~commissioner~~] relating to the Act, the Commission or Executive Director [~~commissioner~~] may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Occupations Code, Chapter 1802 and Chapter 51 [~~Texas Civil Statutes, Article 9100~~], and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

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

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

TRD-200305996
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-7348

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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.1, 74.10, 74.20, 74.25, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85, 74.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§74.1, 74.10, 74.20, 74.50, 74.55, 74.65, 74.70, 74.75, 74.80 and 74.100, and new §§74.25, 74.60, and 74.85, regarding the Elevators, Escalators, and Related Equipment program.

Section 74.10 is amended to include a new definition of existing, altered and new equipment, to detail codes that will apply to equipment and to add new codes.

Section 74.50 is amended to require inspection reports for each unit of equipment and new paragraph (6) details the procedures for delay applications.

Section 74.55(d) is amended to change the due date for inspection reports from 10 working days to 10 calendar days.

Section 74.70(b) is amended to require an inspection every twelve months as opposed to yearly. Section 74.70(c) is amended to delete existing language regarding follow-up inspections and is replaced with a requirement for building owners to maintain maintenance and inspection records for the life of the equipment. Section 74.70(d) is amended to extend from 48 hours to 72 hours the time period for owners to report accidents. Section 74.70(k) and (l) are added to require display of current Certificate of Compliance, or the inspection report pending issuance of the Certificate. Section 74.70(m) is added to require reinspection and certification if equipment is altered or if a granted delay is exceeded.

Section 74.80 is amended to increase fees and to establish a fee for a department sponsored continuing education program, for approval of continuing education programs, for charges for department personnel to disconnect power to equipment and for late renewals.

Section 74.100 is amended to refer to newer or more current versions of applicable codes.

New §74.25, Contractor Registration Requirements is added to establish procedures for contractors to register and file required reports.

New §74.60, Standards for Inspector or Contractor Registrants is added to establish conduct requirements for contractors and to apply the same conduct standards to inspectors.

New §74.85, Responsibilities of the Department is added to set out requirements for certificates, to establish procedures for issuance of certificates, for approval of continuing education programs and to require the department to notify stakeholders of new requirements for inspections every 12 months.

The amendments are proposed to affect statutory changes made by the 78th Legislature.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed sections.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and new rules are in effect, the public benefit will be enhanced safety for the public that uses elevators, escalators, etc., as the Department may order unsafe equipment to be shut down. New rules defining "within public view" and requiring display of elevator Certificates of Compliance in such areas will assist the elevator riding public to ascertain the condition of elevators. Further, the rules will specify which version of applicable codes will apply to given circumstances and the rules will accurately refer to statutes and rules.

There will be costs to businesses and individuals as elevator contractors, now required to register will be required to pay as $300 registration fee and $300 each year there after to renew the registration. For department approved inspectors there will be a cost to comply with continuing education requirements of seven hours per year. The amount will depend on the continuing education providers selected. There is also a fee for continuing education providers seeking department approval of their programs of $200. Building owners who do not maintain their elevators appropriately may be ordered to shut them down and there will be costs associated with such procedures though the department cannot predict those costs.

The costs of an emergency shut down may have a disparate impact on large and small businesses, but such procedures may only be ordered upon a finding of imminent and significant danger to passenger safety, or when no annual inspection has been performed in more than two years. The department cannot quantify the disparate impact as it has no information concerning financial status of building owners and as it does not know the costs that a given owner will incur in connection with a shut down.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§74.1. Authority.

The sections in this chapter are promulgated under the authority of the Health and Safety Code, Chapter 754, Subchapter B, and Texas Occupations Code, Chapter 51.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code Annotated, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Altered Equipment--Existing equipment altered on or after September 1, 1995.

(3) ASCE Code 21--The Automated People Mover Standards--Parts 1, 2 and 3.

~~[(2) Acceptance Inspection--The initial inspection and tests of new or altered equipment per ASME A17.1-1994, Part X, performed at the completion of the initial installation or alteration and before the equipment is placed in service for public use.]~~

~~[(3) Accident--An event or incident involving equipment that results in serious bodily injury or death to a person and/or damage to the equipment; or, an event or incident involving a malfunction of equipment that may indicate that the equipment is dangerous.]~~

~~[(4) Annual Inspection - Routine inspection and tests plus additional detailed examination of the operation of equipment per ASME A17.1-1994, Part X, at yearly intervals, and witnessed by an inspector to check for compliance with applicable ASME Code requirements.]~~

(4) [~~(5)~~] ASME--American Society of Mechanical Engineers, a nationally recognized professional engineering society.

(5) [~~(6)~~] ASME A17.1-2000 [~~1994~~]--The ASME A17.1-2000 [~~1993~~] "Safety Code for Elevators and Escalators" and A17.1a-2002 and A17.1b-2003 [~~1994~~] Addenda.

(6) [~~(7)~~] ASME A17.2- 2001 [~~1994~~]--The Guide for Inspection of Elevators, Escalators, and Moving Walks [~~ASME A17.2.1-1993 and A17.2.1a-1994 Addenda, ASME A17.2.2-1994, and ASME A17.2.3-1994, Inspectors' Manuals~~].

(7) [~~(8)~~] ASME A17.3[~~-1994~~]--The ASME A17.3-2002 [~~1993~~], "Safety Code for Existing Elevators and Escalators" [~~and A17.3a-1994 Addenda~~].

(8) ASME A18.1-1999--The Safety Standards for Platforms Lifts and Stairway Chairlifts.

(9) Automated People Mover (APM)--A guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(10) [~~(9)~~] Building Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(11) [~~(10)~~] Delay--Postponement of compliance with a requirement of the applicable ASME Safety Codes, for a specific period of time.

(12) Existing Equipment--Equipment installed before September 1, 1995.

~~[(11) Equipment--An elevator, escalator, moving walk, wheelchair or platform lift, stairway chairlift, or related equipment as defined in the Act.]~~

[(12) Industrial Facility--For purposes of this chapter, a facility used for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair, processing, or power generation operations, or similar functions, in which use of the equipment is limited to employees and other authorized personnel and their tools and equipment only, and which is not open to the public.]

(13) Inspection report--A Department approved form used by the inspector to report the inspection results of one unit of [all] equipment [in one building. The "inspection date" on this form is the date of completion of the last inspection in one building.]

(14) New Equipment--Equipment installed on or after September 1, 1995.

(15) Publicly visible area of building--A location visible to the public on the main floor elevator lobby and within fifty (50) feet of the entrance to the elevator.

[(14) Serious bodily injury--Impairment to bodily functions or serious dysfunction of any bodily organ or part, requiring medical attention.]

(16) [(15)] Unsafe elevator or escalator--A condition which exists due to a design, mechanical, structural, or electrical defect which presents a risk of serious bodily injury.

(17) [(16)] Waiver--Permanent deferral of compliance with a requirement of the applicable ASME Safety Codes.

§74.20. Inspector Registration Requirements.

(a) An individual registering with the Department as an inspector for the first time shall submit a completed application for registration on the forms provided by the Department.

(1) A completed application shall include:

(A) the registration form with all blanks completed;

(B) the applicable fee referenced in §74.80 [of this title (relating to Fees)]; and

(C) a copy of both sides of the ASME QEI-1 elevator safety inspector certification card.

(2) Inspectors must attend an orientation session conducted by the Department regarding Department forms and inspection procedures.

(3) Inspectors must attend an annual Department sponsored or Department approved seven (7) hour continuing education program in order to register or renew registration.

(b) The renewal registration shall be on the first anniversary of the date of issuance of the inspector's registration. Inspectors shall submit a completed application for renewal on forms provided by the Department.

(1) (1) A completed application shall include:

(A) the renewal form with all blanks completed;

(B) the applicable fee referenced in §74.80 [of this title (relating to Fees)]; and

(C) a copy of both sides of the ASME QEI-1 elevator safety inspector certification card.

(2) Inspectors shall attend an annual seminar conducted by the Department as part of the requirements to renew their registration.

(3) Inspectors have a 15-day grace period to renew their registration after the expiration date of the previous registration. An inspector may conduct inspections during the grace period.

(c) The inspector shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

§74.25. Contractor Registration Requirements.

(a) An individual registering with the Department as an contractor for the first time shall submit a completed application for registration on the forms provided by the Department. A completed application shall include:

(1) The registration form with all blanks completed;

(2) The applicable fee referenced in §74.80; and

(3) Information regarding the background and experience of the applicant.

(b) The renewal registration shall be on the anniversary date of the contractor's registration. Contractors shall submit a completed application for renewal on forms provided by the Department.

(c) The contractor shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

(d) Contractors must submit to the Department reports regarding installation, repair, alteration or maintenance jobs on a format approved by the Department:

(1) A initial report is due no later than 60 days of the application date and must include jobs performed by contractor the two years prior to the application date.

(2) Quarterly reports are due each calendar year in accordance with the following schedule:

(A) 1st quarter--April 30

(B) 2nd quarter--July 31

(C) 3rd quarter--October 31

(D) 4th quarter--January 31th of the next year.

(3) Quarterly reports must include all jobs contracted in the quarter which have not been previously reported to the Department.

(4) The initial quarterly report must include all jobs contracted from the application date until the end of the quarter containing the application date which have not been previously reported to the Department.

§74.30. Exemptions.

This chapter does not apply to buildings owned or operated by the federal government or to equipment regulated by a municipal inspection and certification program approved under §74.65(b) [of this title (relating to Advisory Board)].

§74.50. Reporting Requirements--Building Owner.

(a) To obtain a Certificate of Compliance, the building owner must submit to the Department within 60 days of the equipment inspection date, [completing all inspections,] the following items:

(1) the application for Certificate of Compliance;

(2) a copy of the inspection reports for a unit of [all] equipment in a [one] building;

(3) written documentation to verify that all violations of the applicable ASME code, cited on the inspection report, have been corrected or are under contract to be corrected;

(4) any application(s) for Delay or Waiver, if applicable; and,

(5) all applicable fees.

(6) all delay applications, received after September 1, 2003 to install door restrictor and fire service by September 1, 2010, must include the following on the delay application form or attach a statement to the delay application form:

(A) verification that the building owner has notified all tenants in the building that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3-2002 Code and has made available to tenants upon request the building owner plan of compliance before 2010;

(B) the building owner plan of compliance before 2010; and

(C) compliance completion date.

(b) The building owner must submit the status of all delays to the Department, in writing, on or before the expiration of each delay granted.

(c) The Owner shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1-2000 [~~1994~~], "*installation placed out of service*."

(d) The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with A17.1-2000 [~~1994~~], Section XIV.

(e) The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1-2000 [~~1994~~].

§74.55. Reporting Requirements--Inspector.

(a) For new installations or alterations, the inspector shall provide a copy of the Elevator Equipment Form to the Department within ten working days after completing all inspections in one building.

(b) For annual inspections, the inspector shall notify the Department of the completion of the inspection by a method approved by the Department, within ten working days of the inspection date [~~after completing all inspections in one building~~].

(c) The inspector shall clearly note on the inspection report any equipment found to be unsafe, and shall report it immediately by submitting a copy of the report to the building owner and to the Department.

(d) Inspectors shall submit a copy of the inspection report to the building owner not later than the 10th calendar day after the date of inspection [~~within ten working days from the inspection date~~].

§74.60. Standards of Conduct for Inspector or Contractor Registrants.

(a) *Competency*. The registrant shall be knowledgeable of and adhere to the Act, the rules, the ASME and ASCE Code, and all procedures established by the department for equipment inspections or an equipment contract. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or an equipment contract.

(b) *Integrity*. A registrant shall be honest and trustworthy in the performance of equipment inspections or an equipment contract, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited. The registrant shall accurately and truthfully represent to any prospective client his/her capabilities and qualifications to perform the services to be rendered. The registrant shall, when providing estimates for costs or completion times of a proposed equipment inspection or equipment contract, represent to a prospective client as accurately and truthfully as is reasonably possible the costs and completion time of the proposed equipment inspection or an equipment contract.

(c) *Interest*. The primary interest of the registrant is to ensure compliance with the Act, the rules, and the ASME or ASCE Code. The registrant's position, in this respect, should be clear to all parties concerned while conducting equipment inspections or completing an equipment contract.

(d) *Conflict of Interest*. A registrant is obliged to avoid conflicts of interest and the appearance of a conflict of interest. A conflict of interest exists when a registrant performs or agrees to perform equipment inspections or an equipment contract for a building in which he has a financial interest, whether direct or indirect. A conflict of interest also exists when a registrant's professional judgment and independence are affected by his/her family, business, property, or other personal interests or relationships. The registrant shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owned the client, but then only upon reasonable notice to the client.

(e) *Specific Rules of Conduct*. A registrant shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the Standards adopted by the Commission.

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in equipment inspections or equipment contracts.

(3) state or imply to a building owner that the department will grant a delay or waiver.

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing equipment inspections or completing an equipment contract.

(5) perform equipment inspections or complete an equipment contract in a negligent or incompetent manner.

(6) perform equipment inspections or complete an equipment contract in a building or facility in which the registrant is an owner, either in whole or in part, or an employee of a full or partial owner.

(7) perform equipment inspections in a building or facility wherein the registrant, for compensation, participated in the obtaining an equipment contract of the building.

(8) perform an equipment contract in a building or facility wherein the registrant, for compensation, participated in the installation and inspection of the building equipment.

(9) accept remuneration from any person other than the client for a particular project, nor have any other financial interest in other service or phase of service to be provided for the project, unless the client has full knowledge and so approves.

(10) offer to perform, nor perform, technical services for which he/she is not qualified by education or experience, without retaining the services of another who is so qualified.

(11) evade responsibility to a client.

(12) indulge in advertising that is false, misleading, or deceptive.

(13) misrepresent the amount or extent or prior education or experience to any client.

(14) hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

§74.65. Advisory Board.

(a) The board is comprised of 13 members and shall consist of those regulated industry members and consumers of services members specified in the Act and Government Code, Chapter 2110. Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first, second, and third years and one consumer position expiring in the third year. Terms shall expire November 1 of the third year of the member's term.

(b) If with the advice of the Elevator Advisory Board, the Executive Director determines that the standards of inspection and certification of a municipal inspection and certification program are at least equivalent to [~~no less stringent than~~] those contained in the Act, the municipal ordinance shall apply.

(c) Board meetings may be called by the Executive Director or the presiding officer.

§74.70. Responsibilities of the Building Owner.

(a) The building owner must contract with, or employ an inspector to perform inspections in accordance with §74.75 [~~of this title (relating to Responsibilities of the Inspector)~~] and §74.100 [~~of this title (relating to Technical Requirements)~~].

(b) The owner of the building in which equipment is located shall have such equipment inspected every twelve (12) months [~~yearly~~].

(c) The owner of the building in which equipment is located must keep a copy of all maintenance and inspection records of the equipment in the machine room during the life of the equipment.

~~[(c) The building owner shall have all inspections of equipment in each building completed within 60 days of the initial inspection. If a building owner is unable through reasonable and diligent effort to complete inspections within the required 60-day period, a written request for an extension must be received and granted by the Department to allow the building owner a later inspection completion date.]~~

(d) The building owner or their representative must report all accidents involving equipment to the Department, using a Department approved form, within 72 [~~48~~] hours of the accident.

(e) The building owner shall ensure that all of the tests required by ASME A17.1-2000 [~~1994~~], Part 8 [~~X~~], are made by a person qualified to perform such services. Such tests must be performed in the presence of the inspector. The person performing the test must be familiar with the operation of the equipment and available to accompany and assist during an inspection.

(f) If any equipment is determined to be unsafe, by inspection or other means, the building owner shall notify the Department in writing within 48 hours, and shall place the unsafe equipment out of operation until repairs to correct the unsafe condition(s) are completed. After repairs have been completed, the building owner shall submit written verification to the Department that the unsafe condition has been corrected.

(g) New equipment installations must be inspected and tested to determine their safety and compliance with the requirements of ASME A17.1-2000 [~~1994~~], before being placed in service.

(h) Altered equipment must be inspected and tested to determine its safety and compliance with the requirements of ASME A17.1-2000 [~~1994~~], and ASME A17.3-2002 [~~1994~~] before being placed back in service.

(i) Existing equipment must be inspected and tested annually to determine its safety and compliance with the requirements of ASME A17.3-2002 [~~1994~~].

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that each unit of [~~all~~] equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

(k) The building owner must display the current Certificate of Compliance:

(1) in a public visible area of the building if the certificate relates to an elevator,

(A) inside the elevator car; or

(B) outside the elevator car in the main floor elevator lobby

(2) in the escalator box if the certificate relates to an escalator,

(3) in the machine room, if the certificate relates to a chairlift, platform lift, automated people mover operated by cables, moving sidewalk, or related equipment.

(l) The building owner must display an inspection report at the locations designations in Subdivision.

(m) until a certificate of compliance is issued by the Executive Director.

(n) The building owner must reinspect and recertify equipment:

(1) if the equipment has been altered and determined to be unsafe; or

(2) if an inspection report shows an existing violation has continued longer than permitted in a delay granted by the executive director.

§74.75. Responsibilities of the Inspector.

(a) Inspection procedures.

(1) The inspector must inspect all equipment for compliance with the applicable standards as adopted in §74.100 [~~of this title (relating to Technical Requirements)~~].

(2) Inspectors must use the ASME A17.2-2001 [~~1994~~], "Inspectors' Manuals" to conduct inspections and witness tests for compliance with the standards adopted by the Department.

(3) The inspector shall report to the building owner or agent before beginning any inspections.

(4) The qualified person performing the safety tests and the inspector must sign and date the inspection report.

(5) The inspector shall not perform any of the safety tests.

(6) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the Department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(b) Department forms.

(1) The inspector must use current Department approved forms for reporting inspections.

(2) The Department forms shall be filled out completely, and shall be used to report the all inspections of existing equipment and final inspections of new or altered equipment.

(3) The inspector must list all ASME Code violations by code rule number for each unit inspected, and include a written description of the violation on the Department Form. If the ASME Code refers to another code, the inspector must list both code rule numbers and include a written description of the violation.

(4) The inspector must provide his/her own inspection report form to report the results of an inspection to the owner of equipment located in a single-family dwelling.

(c) Inspector's Equipment.

(1) Test Tags

(A) The inspector must purchase test tags from the Department and shall be the person who attaches these tags to the inspection equipment.

(B) The inspector shall inscribe all required information on each test tag.

(C) Upon completion of the initial Acceptance test, Department test tags shall be attached to the equipment with wire rope and lead seal.

(D) The lead seal shall be crimped onto the wire rope using a crimping tool bearing the Department's seal and the crimping tool number assigned to the inspector.

(E) Inspector's equipment may be purchased from the Department for:

(i) $200 [~~$100~~] per 100 test tags (sold in multiples of 100); and

(ii) $10 per 100 wire ropes and lead seals (sold in multiples of 100). [~~; and,~~]

~~*[(iii)* $90 for seal crimping tool.]~~

(F) Test tags shall be attached to equipment in accordance with the following schedule:

(i) Electric Elevators, Acceptance and Five Year Tests--to the overspeed governor(s), safety releasing carrier, and each buffer or set of buffers. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

(ii) Hydraulic Elevators, Acceptance Tests--to the relief valve. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

(iii) Escalators, Acceptance Tests--to the overspeed governor and/or emergency brake. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

(2) Decals

(A) Each unit of equipment shall be identified with a unique identification number decal issued by the Department, which the inspector must affix to the upper right hand corner of the control panel. The decal shall remain on the control panel for the life of the equipment.

(B) An additional Department decal shall not be affixed to equipment that has a current Department decal displayed.

(C) All correspondence and inspection reports shall reference the decal number and Department building ID number, as reflected on the Certificate of Compliance.

(D) If an inspector places a new decal on a unit of equipment to replace a lost or destroyed decal, the inspector must report the equipment's location and new decal number to the Department within ten days.

§74.80. Fees.

(a) Inspector registration fees:

(1) original--$100 [~~$15~~];

(2) renewal--$100 [~~$15~~]; [~~and~~]

(3) Revised/Duplicate registration card--$25, and [~~$15.~~]

(4) Department sponsored education program for inspectors--$50 .

(b) Certificate of Compliance filing fees:

(1) submitted by building owner with application and copy of inspection report within 60 days of the equipment inspection date [~~completion of all inspections within a building~~]--$30 [~~$20~~] per unit of equipment [~~building~~]; [~~plus~~]

~~[(2) $5 per unit of equipment;]~~

(2) [~~(3)~~] $10 [~~$100~~] late filing fee every thirty (30) day period if the inspection report, [~~and~~] filing fees, and verification about correcting deficiencies in the inspection report are filed after the 90th [~~60th~~] day from the equipment inspection date [~~completion of all inspections within a building~~], and

(3) [~~(4)~~] $25 per Revised/Duplicate Certificate.

(c) Waiver/delay application fee: $50 for each ASME Code violation, per unit of equipment, requested to be waived or delayed.

(d) Fees shall be charged and collected by the Department for a waiver or delay application for an institution of higher education.

(e) Contractor Registration fees:

(1) original--$300;

(2) renewal--$300; and

(3) Revised/Duplicate registration card--$25.

(f) Approval or certification of an education program not sponsored by the Department--$200.

(g) The fee for department personnel to disconnect power or lockout equipment in a building shall be $200 per hour. Travel and per diem costs shall be reimbursed by the building owner in accordance with the current rate as established in the current Appropriations Act. The department shall present a billing statement to the building owner or representative after disconnecting the power or lockout that is payable upon receipt unless the Department receives in writing verification that the expenses would be paid no later that the 10th day after the date power is reconnected or equipment is unlocked. The fee for department personnel to reconnect power or unlock equipment is the same to disconnect or lockout equipment.

(h) Late renewal fees for Inspector and Contractor registrations issued under this Chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§74.85. Responsibilities of the Department.

(a) Issue Certificates of Compliance.

(1) Each certificate must include the decal number, inspection date, building name and physical address, owner name and mailing address, inspector name and QEI #, current inspection date, the date of the last inspection, the due date of the next inspection, contact information at the department to report a violation, indicate status of correcting code violations and the Executive Director's signature and date.

(2) The Department shall use the following procedures to issue a Certificate of Compliance:

(A) review inspection report and fees submitted by building owner;

(B) review verification submitted by building owner indicating which code violations have been remedied and which code violations are under contract to be corrected;

(C) review delay/waiver application and fees submitted by building owner;

(D) notify building owner with a Notice of Incomplete Submittal asking for any missing inspection documents and fees; and

(E) notify building owner of any denied waiver or delay requests and ask for verification that violations have been remedied or under contract to be corrected.

(F) After a determination is made that the building owner submitted an inspection report with the correct amount of filing fees and all deficiencies in the inspection report have been corrected, or under contract to be corrected, or delay or waiver granted, then a certificate of compliance is issued for each unit of equipment.

(b) The Department shall provide notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment through the Department's website, press releases, and group presentations.

(c) The Department shall approve continuing education programs for registered QEI-1 certified Inspectors.

(1) Applicant must submit application form, copy of the course outline, resume of instructor who will teach, payment of all applicable fees, and any other information or data that is necessary to adequately describe or explain the course.

(2) The Department will issue a letter of approval or disapproval for the continuing education program.

(3) The Department will compile a list of approved continuing education programs for inspectors.

§74.100. Technical Requirements.

(a) The Department adopts ASME A17.1-2000 [~~1994~~] and ASME A17.3-2002 [~~1994~~] for new equipment installed on or after September 1, 1995.

(b) The Department adopts ASME A17.1-2000, ASME Code A18.1 [~~1994~~] and ASME A17.3-2002 [~~1994~~] for altered equipment regardless of the installation date.

(c) The Department adopts ASME 17.3-2002 [~~1994,~~] for existing equipment installed before September 1, 1995.

(d) The Department adopts ASCE Code 21, Parts 1, 2 and 3 for new, altered or existing equipment.

(e) The Department adopts A18.1-1999 for new equipment or altered equipment installed on or after September 1, 2003.

(f) The Department adopts A18.1-1999 for existing equipment installed before September 1, 2003.

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

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

TRD-200305995
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-7348

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CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §§76.1, 76.10, 76.200 - 76.202, 76.204 - 76.206, 76.220, 76.300, 76.600, 76.650, 76.700 - 76.707, 76.900, 76.1000, 76.1001, 76.1004, 76.1005, 76.1009, 76.1011

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§76.1, 76.10, 76.200-76.202, 76.204-76.206, 76.220, 76.300, 76.600, 76.650, 76.700-76.707, 76.900, 76.1000, 76.1001, 76.1004, 76.1005, and 76.1009 and new rules §76.1011 regarding the water well drillers and water well pump installers program.

Rule 76.10 is amended by changing the definitions of completed monitoring wells and completed water wells to make it clear that when undesirable water is encountered that positive displacement or pressure tremie tube grouting or cementing must be used. The rule is also amended to change the continuing education requirements from 8 hours every two years to 4 hours every year. A new definition of geothermal closed heat loop wells is added, as are new definitions of injection wells, and potable water.

Rule 76.202 is amended to require that applicants for licensure must provide names and addresses of 10 customers who have been provided service by the applicant. Water well driller applicants must provide Texas Water Well Reports for 10 wells drilled by the applicant.

Rule 76.205 is amended to require applicants for the apprentice program to include specific information about the training program.

Rule 76.206 is amended to require two years in the apprentice program - up from one year - before application for a license.

Rule 76.600 is amended to remove the requirement that the Water Well Drillers Advisory Council advise the Commission on the qualifications of applicants. The rule is also amended to delete the reference to review of letters of reference submitted by customers as that requirement in rule 76.202 has been dropped.

Rule 76.650 is amended to reflect that the presiding officer of the Council is appointed by the presiding officer of the Commission.

Rule 76.1000 is amended to require that test wells shall not be open to the surface or allow commingling of water zones.

Rule 76.1004 is amended to make it clear that undesirable water shall be isolated from fresh water by proper plugging as defined in the rule.

Rule 76.1005 is amended to specify some conditions that are considered to constitute a threat to public health and safety or to groundwater quality.

Many of the amendments are made to change references from the Water Code to the Texas Occupations Code and to reflect changes made to statutes by the 78th Legislature. Those changes will not be specifically described.

New rule 76.1011 is proposed to provide notice to interested parties that statutory changes require groundwater conservation districts to enforce plugging of abandoned or deteriorated wells within their boundaries.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the amendments and new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be increased protection against contamination of fresh water zones from contact with undesirable water. Amendments make it clear the nature of completion or plugging procedures in such cases. Further, the rules have been clarified and will be easier for interested persons to understand and statutory references are corrected.

There may be some economic impact due to rule amendments that make it clear that completion or plugging requirements include positive displacement or tremie tube grouting or cementing and for licensees who may not have been using these techniques, though required, will incur increased costs. The department cannot quantify such probable costs as many variables, not identifiable by the department, may affect costs. Likewise, the department cannot determine if the costs will have a disparate effect on large and small businesses. In all cases, the increased costs, if experienced, will be incurred to protect groundwater quality.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, Chapters 1901 and 1902 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 1901 and 1902 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§76.1. Purpose of Rules.

To provide procedural and substantive requirements for the licensing, complaint procedures, continuing education, and technical standards for well drillers and pump installers, and to ensure the quality of the State's ground water for the safety and welfare of the public under the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33~~].

§76.10. Definitions.

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

(1) - (10) (No Change.)

(11) Commissioner--means the commissioner of licensing and regulation. [~~as used in Texas Water Code, Chapters 32 and 33 and in these rules, has the same meaning as Executive Director.~~]

(12) (No Change.)

(13) Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering undesirable water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(14) (No Change.)

(15) Completed water well--A water well, which has sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods. [~~proper casing and/or cementing procedures.~~]

(16) (No Change.)

(17) Continuing Education--Four (4) [~~Eight~~] hours of education per year [~~in a two-year period~~] required , including one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course as a condition of [~~licensure~~] license or registration renewal [~~certification~~] under the Code and/or Rules.

(18) Continuing Education Program--A formal offering of instruction or information to licensees , registrants, or certificate holders for the purpose of maintaining skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps or pumping equipment or water well monitoring. A school, clinic, forum, lecture, course of study, educational seminar, workshop, conference, convention, or short course approved by the Department, may offer such programs.

(19) - (20) (No Change.)

(21) Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, [~~and~~] Williamson , and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) (No Change.)

(23) Executive Director-- means the executive director of the Department [~~as used in Texas Water Code, Chapter 32 and 33 and in these rules, has the same meaning as Commissioner~~].

(24) - (26) (No Change.)

(27) Geothermal closed heat loop well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(28) [~~(27)~~] Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(29) [~~(28)~~] Groundwater conservation district--Any district or authority to which Chapter 36, Water Code, applies and [~~created under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution or under the provisions of Chapters 35 and 36 of the Texas Water Code~~] that has the authority to regulate the spacing or production of water wells.

(30) Injection well includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(31) [~~(29)~~] Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(32) [~~(30)~~] Monitoring well--An artificial excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.

(33) [~~(31)~~] Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(34) [~~(32)~~] Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(35) [~~(33)~~] Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(36) [~~(34)~~]Plugging--An absolute sealing of the well bore.

(37) [~~(35)~~] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(38) Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

(39) [~~(36)~~] Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas [~~Natural Resource Conservation~~]Commission on Environmental Quality, 30 TAC Chapter 290.

(40) [~~(37)~~] Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(41) [~~(38)~~] Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(42) [~~(39)~~] Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(43) [~~(40)~~] Test well--A well drilled to explore for groundwater.

(44) [~~(41)~~] Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(45) [~~(42)~~] Water or waters 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.

(46) [~~(43)~~] Well--A water well, test well, injection well, dewatering well, monitoring well, geothermal closed heat loop well, piezometer well, observation well, or recovery well.

(47) [~~(44)~~] State of Texas Well Report [~~well report~~] (Well Log)--A log recorded on forms prescribed by the Department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the Executive Director.

§76.200. Licensing Requirements-General.

A person may not act or offer to act as a driller or pump installer unless the person holds a license issued by the Executive Director pursuant to the Texas Occupations Code, Chapters 1901 and 1902. [~~It shall be unlawful for any person to act as, or to offer to perform services as a~~

~~driller or pump installer without first obtaining a license pursuant to the Texas Water Code, Chapters 32 and 33 and this chapter.~~]

§76.201. Requirements for Issuance of a License.

(a) A completed [~~An~~] application, accompanied by the required examination fee, must be submitted by each person desiring to obtain a well driller's and/ or pump installer's license.

(b) Within 90 days after approval, each applicant desiring a well driller's and/or pump installer's license must pass an examination.

(c) Upon passing the examination, an applicant must submit the required license fee to the Department.

(d) A licensee, not licensed to perform all types of well drilling and pump installation, may apply for designation for additional types of well drilling or pump installation. Applications for additional designations shall be accompanied by the appropriate application fee, and shall contain all information required by these rules for an initial license. Upon examination of the applicant's qualifications, the Executive Director [~~, with advice of the Water Well Driller Advisory Council,~~] shall deny or grant additional grades of licensure.

(1) An applicant who has demonstrated competency in the specific well drilling field shall be deemed qualified for licensing for either Water Well drilling, Dewatering Well drilling, Injection Well drilling, [~~and~~] Monitoring Well drilling, or Geothermal closed heat loop drilling or a combination thereof, [~~drilling~~] which are regulated under these Rules [~~rules~~].

(2) An applicant who has demonstrated competency in all types of pump installation shall be deemed qualified for a master pump installer's license.

§76.202. Applications for Licenses and Renewals.

(a) Application shall be made on forms provided by the Department.

(b) Application shall include:

(1) a letter of reference from a licensed well driller or pump installer with the same type of designation, as applicable, who has at least two years licensed experience in well drilling/pump installing;

(2) names, addresses, and telephone numbers of ten (10) [~~letters of reference from two~~] well drilling or pump installer customers, as applicable, who are not related within the second degree of consanguinity to the applicant (i.e., may not be the applicant's spouse, or related to the applicant or applicant's spouse, as a child, grandchild, parent, sister, brother, or grandparent) . For well driller applicants, ten (10) corresponding State of Texas Well Reports shall be submitted for the wells drilled in compliance with Texas Occupations Code, Chapters 1901 and 1902 and these Rules by the applicant as an apprentice or employee under the supervision of a driller licensed under the Texas Occupations Code, Chapters 1901 and 1902 and these Rules. [~~;~~]

(3) the applicant's statement that he has drilled wells or installed pumps under the supervision of a driller or pump installer licensed under the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33~~] for two years or that he has other well drilling or pump installing experience as defined by this chapter; and

(4) the applicant's sworn statement that he has read and will adhere to the requirements of the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33~~] and this chapter.

(c) For consideration and review of qualifications, a completed [~~The~~] application must be received by the Department at least 45 days prior to a [~~before a Council meeting in order to be~~] scheduled examination [~~for consideration at the next meeting~~].

(1) The Department will send written notice to the applicant informing the applicant that the application is administratively complete and accepted for filing, or that the application is deficient in specific areas and the applicant has 30 days to submit additional information to correct the deficiency or deficiencies.

(2) If the required information is not forthcoming from the applicant within 30 days of the date of mailing of the deficiency notice, the applicant will not be eligible for Department review and possible examination [~~considered at the next Council meeting~~].

(3) If the applicant disagrees that the application is deficient, the applicant may file a motion for reconsideration of the Department's action.

(d) A license issued by the Department will expire annually from the date of issuance.

(e) Intentionally misstating or misrepresenting a fact on an application, renewal application, state well report, plugging report, or with any other information or evidence furnished to the Department in connection with official Departmental matters shall be grounds for assessing penalties and/or sanctions.

§76.204. License and Apprentice Registration Renewal.

(a) On or before the expiration date of the license or registration, the licensee or registrant shall pay an annual renewal fee to the Department and submit an application for renewal.

(b) To renew a license, the licensee is required to show proof of four (4) hours of continuing education with one (1)[**-**]hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course [~~Rules and Regulation~~].

(c) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) A person's registration will not be renewed unless their supervisor's well driller and/ or pump installer license is current.

(e) Requests to waive the Continuing Education requirements because the license holder does not supervise, contract with the public, or has retired from the drilling or pump service industry shall:

(1) be submitted in writing to the Department;

(2) contain a detailed explanation of the conditions under which the waiver is requested , [~~; and~~]

(3) [~~must~~] be accompanied by the renewal fee , and [~~.~~]

(4) be inactive for a minimum of one (1) year.

(f) To re-instate a driller license to supervise and/or contract with the public, the driller must submit four (4) hours of continuing education with one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course.

§76.205. Registration for Driller and/ or Pump Installer Apprenticeship.

(a) A person who wishes to undertake a Department approved apprentice program under the supervision of a licensed well driller and/ or a licensed pump installer who has been licensed for a minimum of two (2) years, must submit a registration form to the Department and provide proof that the licensed well driller and/ or pump installer has agreed to accept the responsibility of supervising the training. A driller or pump installer may not supervise more than three apprentices at any one time. Person's with both a well driller and a pump installer license may register a maximum of six apprentices (three of each type) at any one time.

(b) A registered pump installer apprentice shall represent his supervising pump installer during operations at the well site.

(c) The Department shall [~~, with advice of the Council, may~~] review driller and /or pump installer apprentice registration forms.

(d) A registered pump installer apprentice may not perform, or offer to perform, any services associated with procedures employed in the placement and preparation for operation of equipment and material used to obtain water from a water well except under the direct supervision of a licensed pump installer and according to the supervising pump installer's express directions. A pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(e) Registration forms shall include:

(1) the name, business address, and permanent mailing address of the apprentice in training;

(2) the name, business address, and license number of the licensed driller and/ or pump installer who will supervise the training;

(3) a detailed [~~brief~~] description of the training program ,including the types of wells to be drilled and/or the classifications of pumps to be installed, equipment used, safety training and procedures, and experience, knowledge, and qualification benchmarks while under the apprenticeship ;

(4) the effective commencement and termination date of the training program;

(5) a statement by the licensed driller and/ or pump installer accepting financial responsibility for the activities of the apprentice associated with the training program or undertaken on behalf of the licensed driller or pump installer; [~~and~~]

(6) the signatures of the apprentice and the licensed driller and/ or pump installer and the sworn statement of both that the information provided is true and correct ; and [~~.~~]

(7) an attached one (1) hour Certificate of Completion of the Water Well Driller/Pump Installer Statutes and Rules course.

(f) If the application conforms to the rules and the apprentice program meets Department requirements, the Department will notify the apprentice and the supervising driller and/ or pump installer that the applicant [~~apprentice~~] has been accepted as a registered driller and/ or pump installer apprentice and that the registration form shall remain in the Department's files for the stated duration of the apprentice period.

(g) If the application and apprentice program do not conform to the rules or is not approved, the Department shall notify the apprentice and the apprentice's supervising driller and / or pump installer of the disapproval.

§76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer .

(a) A registered driller/pump installer apprentice shall:

(1) represent his supervising driller/pump installer during operations at the well site;

(2) driller apprentice shall co-sign state well reports with the supervising driller; and

(3) perform services associated with drilling, deepening, or altering a well under the direct supervision of the supervising driller.

(b) A registered driller/pump installer apprentice may not perform, or offer to perform, any services associated with drilling, deepening, installing a pump or altering a well except under the direct supervision of a licensed driller/pump installer and/or according to the supervising driller's express directions. A driller/pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(c) Upon completion of a training program of at least two (2) years [~~one year~~], an apprentice may apply to obtain a well driller's and/ or pump installer's license or renew the status as an apprentice. The supervising driller, pump installer, or apprentice may terminate the training program by written notice to the Department. A reason for termination is not required. Upon receipt of the notice, the Department shall terminate the apprentice's status as a registered apprentice.

(d) Upon renewal of an apprentice registration, the supervising driller and/or pump installer shall provide the Department a written progress report on the aforementioned training segments in §76.205(f)(3) pertaining to the apprentice's stated training program.

(e) A one (1) hour Certificate of Completion of the Water Well Driller/Pump Installer Statutes and Rules course shall accompany each apprentice registration renewal.

(f) [~~(d)~~] The licensed driller and/ or licensed pump installer shall be present at the well site at all times during all operations or may be represented by a registered apprentice capable of immediate communication with the licensed driller or licensed pump installer at all times, provided that the licensed driller and /or licensed pump installer is less than one hour arrival [~~travel~~] time from the well site. The licensed driller shall visit the well site at least once each day of operation to direct the manner in which the operations are conducted.

(g) [~~(e)~~] The supervising licensed driller and/ or licensed pump installer is responsible for compliance with the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33 of this title (relating to Water Well Drillers, and Water Well Pump Installers)~~] and Department Rules [~~rules~~].

(h) [~~(f)~~] If the supervising driller or pump installer is unavailable, he may be represented by any other licensed driller or licensed pump installer employed by the same company who can be at the well site within one (1) hour.

§76.220. Continuing Education.

(a) A licensed driller or pump installer is required to show proof of four (4) [~~eight (8)~~] hours of continuing education per year [~~every two (2) years~~] with one (1) hour [~~two (2) hours~~] dedicated to the Water Well Driller/Pump Installer Statutes and Rules [~~rules and regulations related to the Well Driller/Pump Installer industry~~]. Only courses approved by the Department can be used to satisfy this requirement.

(b) Competence in the performance of services requires that the licensee's knowledge and skills encompass current knowledge of the rules and regulations, drilling and completion, pump installation, plugging techniques, areas of health and safety, and of the occurrence and availability of groundwater to the extent that the performance of services by the driller or pump installer does not create a risk of water pollution. Therefore, licensees must maintain proficiency in the field of well drilling and pump installation.

(c) Each licensee must submit with the renewal request a copy of the certificates of completion as proof of meeting the continuing education requirements.

(d) Only courses or programs designated or approved by the Department shall be acceptable for license renewal.

(e) General requirements for approval of continuing education programs. The Department shall review [~~approve~~] applications from

providers for continuing education programs. Approval will be granted for a specific number of hours. To be approved, all continuing education programs must meet the following general requirements.

(1) Course content must relate directly to the Department regulated well industry and shall include (but not limited to) well and water well pump standards, geologic characteristics of the state, state groundwater laws and related regulations, well construction and pump installation practices and techniques, areas of health and safety, environmental protection, technological advances, and business management.

(2) Approval of courses or programs shall be issued by the Department before the course or program is offered. A written request by the provider's entity shall provide a detailed narrative describing the courses or programs offered and the qualification of the instructors.

(3) Program presenters must be a graduate from an accredited four-year college or university with a degree in the field they are teaching or related experience may be substituted on a year for year basis.

(4) The program provider will give each attendee a certificate of completion and submit a complete attendance roster to the Department no later than thirty (30) days after the occurrence of each program and shall include the following information:

(A) name and address of individuals attending,

(B) program title,

(C) date(s) attended, and

(D) number of hours credited to attendees.

(5) Each program, course offering, or seminar shall be individually reviewed [~~and approved~~].

(6) Courses or programs conducted by manufacturers specifically to promote their products will not be considered for continuing education.

(7) A provider may not train his or her own employees.

(f) To obtain approval of a continuing education program, a provider shall submit an application that includes the following information:

(1) business name, address and telephone number,

(2) business representative's name,

(3) name, location and date(s) of the program,

(4) number of continuing education hours credited, and

(5) description of the instructors' qualifications.

(g) The course application shall be accompanied by the following.

(1) A sample of the Certificate of Completion. The Certificate of Completion must include:

(A) name and brief description of course,

(B) name of provider,

(C) name and signature of the provider representative,

(D) course completion date,

(E) name of the person who attended,

(F) number of continuing education hours credited, and

(G) the Department's course number.

(2) A copy of the course outline. This outline should include a description of each segment of course and the time allotted. All segments must directly relate to the training course.

(3) Copies of videos, tapes, handouts, study materials and any additional documentation. These course materials will become property of the Department and will not be returned.

(4) A resume of qualifications for each instructor who will teach. Providers must explain an instructor's qualifications to teach the course including educational and well drilling or pump installer experience. (Note: An updated instructor's resume must be submitted when instructors are added or removed from the staff).

(5) Any other information or data that is necessary to adequately describe or explain the course.

(h) Responsibilities of the Recognized Private Provider.

(1) After the Department has approved an application, the provider is entitled to state upon its publication: "This course has been approved by the Texas Department of Licensing and Regulation for continuing education credit under the Well Drilling and Pump Installation Rules [~~Regulation~~]."

(2) Providers shall retain student attendance records for a period of two years, make copies available to former students, and provide copies to the Department upon request.

(3) A participant roster shall be provided to the Department and shall include actual hours attended.

(4) Providers or instructors shall fully assist any employee of the Department in the performance of an audit or investigation of a complaint, and shall provide requested information within the time frame set by the Department.

(5) Providers shall notify the Department of the intent to provide an approved course at least 30 days before the date of the course.

(i) The approval of a program may be withdrawn or suspended by the Department if it is determined that:

(1) the program teaching method or program content has been changed without notice to the Department,

(2) a certificate of completion has been issued to an individual who did not attend or complete the approved program,

(3) certificates of completion are not given to all individuals who have satisfactorily completed the approved activity,

(4) fraud or misrepresentation occurred in the application process for program approval, maintenance or records, teaching method program content, or issuance of certificates for a particular course or program, or

(5) failure to notify the Department of the intent to provide a course at least 30 days prior to the course.

§76.300. Exemptions.

The following are not required to obtain a license under Chapters 1901 and 1902 [~~32 and 33~~] of the Texas Occupations [~~Water~~] Code, however, must comply with standards set forth in §§76.701, 76.702, 76.1000, 76.1001, 76.1003 and 76.1004 of this chapter:

(1) any person who drills, bores, cores, or constructs a water well on his property for his own use.

(2) any person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operation;

(3) any person who, pursuant to 30 TAC, Chapter 334, Subchapter I: Underground Storage Tank Contractor Registration and Installer Licensing, possesses a Class A or Class B Underground Storage Tank (UST) Installers' license who drills observation wells within the backfill of the original excavation for UST's, including associated piping and pipe trenches (tank plumbing and piping), to a depth of no more than two feet below the tank bottom. However, if the total depth exceeds 20 feet below ground surface, a licensed driller is required to drill the well;

(4) any person who drills environmental hand auger soil borings no more than 10 feet in depth;

(5) any person who installs or repairs water well pumps and equipment on his own property, or on property that he has leased or rented, for his own use;

(6) any person who assists in the procedure of pump installation under the direct supervision of a licensed installer and who is not primarily responsible for the installation;

(7) any person who is a ranch or farm employee whose general duties include installing or repairing a water well pump or equipment on his employer's property for his employer's use, but who is not employed or in the business of installation or repair of water pumps or equipment; or,

(8) any registered well driller apprentice or pump installer apprentice.

(9) pump manufacturers and sellers of new and used pumps and/or pump equipment including pump distributors and pump dealers who do not install pumps and/or pump equipment.

§76.600. Responsibilities of the Department -- Certification by the Executive Director.

(a) The Department [~~, with advice of the Council,~~] shall evaluate the qualifications of license applicants [~~review and pass upon each applicant's qualifications~~].

(b) In assessing an applicant's qualifications, the Department [~~and the Council~~] shall examine [~~the letters of reference submitted,~~] the applicant's experience and competence in well drilling and/ or pump installing [~~, and any other relevant information which may be presented including, but not limited to, compliance history~~].

(c) An applicant, at the discretion of the Department, may not be certified for up to one-year following the revocation of the applicant's license or a finding that the applicant operated without a license.

(d) After assessing the qualifications of an applicant, the Department [~~, with advice of the Council,~~] shall determine the type(s) of well drilling or pump installation, the applicant is competent to perform. Types of drilling include water well, monitoring well, geothermal heat loop well, injection well, and dewatering well. Types of pump installation , with designations, include: (L)- windmills, hand pumps, and pump jacks; (P)- fractional to five horsepower; (K)- submersible five horsepower and over; (T)- [~~and~~] line-shaft turbine pumps ; and (I)-master water well pump installer which includes all designations previously listed.

(e) The Executive Director shall issue licenses to applicants who qualify [~~may waive any applicant requirements stated herein~~].

§76.650. Advisory Council.

(a) The presiding officer of the Commission, with the Commission's approval, shall appoint a member of the Council to serve as presiding officer of the Council for two years [~~Officers of the Council shall be elected at the first meeting of each fiscal year~~].

(b) Every two years, the presiding officer of the Council, with the Council's approval, shall appoint the vice chairman.

(c) [~~(b)~~] All notices of regular or special meetings of the Council shall be directed to the residence of the members of the Council as they are recorded on the official records of the Council and Department.

(1) The chairman shall preside at all Council meetings and shall not vote except to break a tie vote.

(2) In the absence of the chairman or vice chairman of the Council, the members present shall choose one member to act as chairman.

(3) The permanent or temporary chairman may appoint any member of the Council present to act for any other officer of the Council who is not present.

(d) [~~(c)~~] The presiding officer of the Commission, with the Commission's approval, [~~Executive Director~~] appoints Council members.

(e) The Department, with the advice of the Council, shall prepare licensing examinations.

(f) The Council shall assist the Commission in evaluating continuing education programs.

(g) The Council may propose rules for adoption by the Commission relating to the regulation of well drillers and water well pump installers licensed under Chapters 1901 and 1902 of the Texas Occupations Code.

§76.700. Responsibilities of the Licensee -- State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a form [~~forms~~] prescribed by the Executive Director [~~Department~~]. Each copy of a State of Texas Well Report, other than a Department copy, shall include the name, mailing address, and telephone number of the Department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Well Report to the Department. Every well driller shall deliver or send by first-class mail a photocopy to the local groundwater conservation district, if applicable, and a copy to the owner or person for whom the well was drilled, within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) The person that plugs a well described in subsection (a)(3), (b), (c), or (e) [~~(a), (b), or (d)~~] of §76.702 [~~of this title (relating to Responsibilities of the Licensee and Landowner - Well Drilling, Completion, Capping and Plugging)~~] shall, within 30 days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Plugging Report to the Department. The person that plugs the well shall deliver or send by first-class mail a copy of the State of Texas Plugging Report to the local groundwater district , if applicable, and the owner or person for whom the well was plugged.

(3) The Department or the local groundwater district, if applicable, shall furnish State of Texas Plugging Reports on request.

(4) The Executive Director shall prescribe the contents of the State of Texas Plugging Reports.

§76.701. Responsibilities of the Licensee -- Reporting Undesirable Water or Constituents.

Each well driller shall inform, within 24 hours, the landowner or person having a well drilled, deepened, or otherwise altered or their agent when undesirable water or constituents have been knowingly encountered. The well driller shall [~~submit~~], within 30 days of encountering undesirable water or constituents transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the Undesirable Water or Constituents Report to the Department. The well driller shall deliver or send by first-class mail a copy of the Undesirable Water or Constituents Report to the local groundwater conservation district, if applicable, and the landowner or person [~~personal~~] having the well drilled, deepened, or altered.

§76.702. Responsibilities of the Licensee and Landowner -- Well Drilling, Completion, Capping and Plugging.

(a) All well drillers and persons having a well drilled, deepened, or altered shall adhere to the provisions of this chapter prescribing the location of wells and proper drilling, completion, capping, and plugging.

(1) Where a landowner, or person having the well drilled, deepened, or altered, denies a licensed well driller access to the well to complete the well to established standards and thereby precludes the driller from performing his or her duties under the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33~~] and this title, the well driller shall file with the Department a statement to that effect within five days of the denial. The landowner or person authorizing the well work must complete the well to established standards within ten days of notification by the Department.

(2) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered, to cap or have capped, under standards set forth in §76.1004 [~~of this title (relating to Technical Requirements - Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones),~~] any well which is open at the surface.

(3) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered to plug or have plugged a well which is abandoned under standards set forth in §76.1004 of this title.

(b) It shall be the responsibility of each licensed well driller to inform a landowner or person having a well drilled, deepened, or altered that the well must be plugged by the landowner, a licensed driller, or a licensed pump installer if it is abandoned.

(c) It is the responsibility of the licensed well driller or landowner to see that when undesirable water or constituents is [~~knowingly~~] encountered, the well is plugged or is converted into a properly completed monitoring well under the standards defined in §76.10(13) and set forth in §76.1004 of this title. For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality rules under 30 TAC, Chapter 331.

(d) It shall be the responsibility of the driller of a newly drilled well to place a cover or cap over the boring or casing, that is not easily removable, if the well is to be left unattended without a pump installed. It shall be the responsibility of the pump installer to place a cap over the casing which [~~that~~] is not easily removable if the well is to be left unattended with the pump removed.

(e) A licensed well driller is responsible for assuring that when undesirable water or constituents is knowingly encountered, the well is plugged or completed forthwith pursuant to the following:

(1) Where a person or landowner having the well drilled, deepened, or altered denies a licensed driller access to a well which requires plugging or completion or otherwise precludes the driller from plugging or completing a well which has encountered undesirable water or constituents, the driller shall, within 48 hours, file a signed statement to that effect with the Department and provide a copy of the statement to the local groundwater conservation district. The statement shall indicate that:

(A) The driller, or person under his or her supervision, encountered undesirable water or constituents while drilling the well;

(B) The driller has informed the person having the well drilled, deepened, or otherwise altered that undesirable water or constituents were encountered and that the well must be plugged or completed pursuant to the Texas Occupations [~~Water~~] Code §1901.255 [~~§32.017 of this title (relating to Plugging of Water Wells)~~];

(C) The person or landowner having the well drilled, deepened, or altered has denied the driller access to the well;

(D) The reason, if known, for which access has been denied and,

(E) if known, whether the person having the well drilled, deepened, or otherwise altered intends to have the well plugged or completed.

(2) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality rules under 30 TAC, Chapter 331.

(f) Each licensed well driller shall ensure that all wells are plugged, repaired, or properly completed pursuant to this Chapter and Texas Occupations [~~Water~~] Code §1901.255 [~~§32.017~~] of this title. Each pump installer shall install or repair pumps pursuant to this title and Texas Occupations [~~Water~~] Code §§1902.251, 252, and 253 of this title [~~§33.014 relating to Completion, Repair, and Plugging of Water Wells.~~].

(g) A licensed driller or licensed pump installer shall notify the Department, the local groundwater conservation district , if applicable, [~~required by the local authority,~~] and the landowner or person having a well drilled or pump installed when he encounters water injurious to vegetation, land, or other water, and inform the landowner that the well must be plugged, repaired, or properly completed in order to avoid injury or pollution.

(h) A licensed driller or licensed pump installer who knows of an abandoned or deteriorated well, as defined by Texas Occupations [~~Water~~] Code §§1901.255 and 1902.253, [~~§§32.017 and 33.014~~] and §76.1005(a) [~~of this title (relating to Technical Requirements- Standards for Water Wells drilled before June 1, 1983)~~], shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution.

§76.703. Responsibilities of the Licensee -- Standards of Completion for Public Water System Wells.

A licensed well driller shall complete a well supplying a public water system in accordance with plans approved by the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality under 30 TAC, Chapter 290 relating to Water Hygiene.

(1) The licensed well driller shall, to the best of his or her abilities, ascertain whether a well which is to be drilled, deepened, or altered is intended for use as part of a public water system and shall comply with all applicable rules and specifications [~~regulations~~] of the

Texas [~~National Resource Conservation~~] Commission on Environmental Quality under 30 TAC, Chapter 290 and any other local or regional regulations.

(2) The licensed well driller shall inform the Department of the well's intended use, by submitting a State of Texas Well Report.

(3) The person or landowner having the well drilled, deepened, or altered is responsible for ensuring that a well intended for use as a part of a public water system meets the current rules and specifications [~~regulations~~] of the Texas [~~National Resource Conservation~~] Commission on Environmental Quality under 30 TAC, Chapter 290 and any other local or regional regulations.

§76.704. Responsibilities of the Licensee -- Marking Vehicles and Equipment.

Licensee's shall mark their well rigs and pump installer vehicles used by them or their employees in the well drilling or pump installer business with legible and plainly visible identification numbers.

(1) The identification number to be used on rigs and vehicles shall be the licensee's license number.

(2) License numbers shall be printed, upon each side of every well rig or pump installer vehicle, not less than two inches high and in a color sufficiently different from the color of the vehicle or equipment so that the license number shall be plainly visible [~~visual~~].

(3) A licensee shall have 30 days from the date a license is issued to see that all well rigs or pump installer vehicles used by him or his employees are marked as provided in paragraphs (1) and (2) of this section.

§76.705. Responsibilities of the Licensee -- Representations.

(a) No licensee shall offer to perform services unless such services can be competently performed.

(b) A licensee shall accurately and truthfully represent to a prospective client the licensee's [~~his~~] qualifications and the capabilities of the [~~his~~] equipment to perform the services to be rendered.

(c) A licensee shall neither perform nor offer to perform services for which the licensee [~~he~~] is not qualified by experience or knowledge in any of the technical fields involved.

(d) A licensee shall not enter into a partnership or any agreement with a person, not legally qualified to perform the services to be rendered, and who has control over the licensee's equipment and/or independent judgment as related to construction, alteration, or plugging of a well or installation of pumps or equipment in a well.

(e) A licensee shall not make false, misleading, or deceptive representations.

(f) A licensee shall make known to prospective clients, all adverse, or suspicions of adverse conditions concerning the quantity or quality of groundwater in the area. If there is any uncertainty regarding the quality of water in any well, the licensee shall recommend that the client have the suspected water analyzed.

§76.706. Responsibilities of the Licensee -- Unauthorized Practice.

(a) A licensee shall inform the Department of any unauthorized well drilling or pump installation practice of which the licensee has knowledge.

(b) A licensee shall not aid or abet an unlicensed person to unlawfully drill or offer to drill wells or install pump equipment.

(c) A licensee shall, upon request of the Department, furnish any information the licensee possesses concerning any alleged violation of the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~32 and 33 of this title (relating to Water Well Drillers or Water Well Pump Installers)~~] or this chapter.

(d) A licensee shall have the following information on all proposals and invoices given to consumers: Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin Texas 78711, 1-800-803-9202, 512-463-7880.

§76.707. Responsibilities of the Licensee -- Adherence to Statutes and Codes.

A licensee shall comply with Texas Occupations Code, Chapter 51, and Chapters 1901 and 1902, and 16 TAC, Chapter 60, [~~the Texas Water Code, Chapters 32 and 33~~], and this chapter in connection with all well drilling or pump installation services rendered.

§76.900. Disciplinary Actions.

~~(a) The Executive Director may assess an administrative penalty, reprimand a licensee, suspend or revoke a license, and the Texas Commission of Licensing and Regulation may assess administrative penalties or take any appropriate action described in Chapter 60 of this title, Texas Occupations Code, Chapter 51, or the Texas Water Code, Chapters 32 and 33 for violations of the statutes or Department rules.~~

[~~(b)~~] If a person violates the Texas Occupations [~~Water~~] Code, Chapters 1901 and 1902 [~~Chapters 32 and 33~~], or a rule or order, of the Executive Director or Commission relating to the Code, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Code or Texas Occupations Code, Chapter 51, and Chapter 60 of this title (relating to the Texas Commission of Licensing and Regulation).

§76.1000. Technical Requirements -- Locations and Standards of Completion for Wells.

(a) Wells shall be completed in accordance with the following specifications and in compliance with the local groundwater conservation district rules or incorporated city ordinances:

(1) The annular space to a minimum of ten (10) feet shall be three (3) inches larger in diameter than the casing and filled from ground level to a depth of not less than ten (10) feet below the land surface or well head with cement slurry, bentonite grout, or eight (8) feet solid column of granular sodium bentonite topped with a two (2) foot cement atmospheric barrier, except in the case of monitoring, dewatering, piezometer, and recovery wells when the water to be monitored, recovered, or dewatered is located at a more shallow depth. In that situation, the cement slurry or bentonite column shall only extend down to the level immediately above the monitoring, recovery, or dewatering level. Unless the well is drilled within the Edwards Aquifer, the distances given for separation of wells from sources of potential contamination in subsection (a)[~~(b)~~](2) of this section may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata. Wells that are subject to completion standards of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality under 30 TAC, Chapter 331 for class V injection wells, are exempt from this section.

(2) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressure [~~pressured~~] filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing may encroach up to five feet of the property line. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(3) A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage and liquid-waste collection facility, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates.

(4) Except as noted in paragraph (1) and (2) of this subsection, a well shall be located a minimum horizontal distance of one hundred fifty (150) feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates. A well shall be located a minimum horizontal distance of one hundred (100) feet from an existing or proposed septic system absorption field, septic systems spray area, a dry litter poultry facility and fifty (50) feet from any property line provided the well is located at the minimum horizontal distance from the sources of potential contamination.

(5) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty six (36) inches above ground level and twenty four (24) inches below the ground surface.

(6) The following are exceptions to the property line distance requirement where:

(A) groundwater conservation district rules are in place regulating the spacing of wells;

(B) platted or deed restricted [~~restriction~~] subdivision regulated spacing of wells and on-site sewage systems are part of planning; or

(C) public wastewater treatment is provided and utilized by the landowner.

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter, as described in paragraph (3) of this subsection, is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four (4) inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) The surface of the slab shall be sloped to drain away from the well.

(3) The top of the casing shall extend a minimum of twelve (12) inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground. Monitoring wells shall be placed in a waterproof vault the rim of which extends two (2) inches above the ground surface and a sloping cement slurry shall be placed a minimum twelve (12) inches from the edge of the vault and two (2) feet below the base of the vault between the casing and the wall of the borehole so as to prevent surface pollutants from entering the monitoring well. The well casing shall have a locking cap that will prevent pollutants from entering the well. The annular space of the monitoring well shall be sealed with an impervious bentonite or similar material from the top of the interval to be tested to the cement slurry below the vault of the monitoring well.

(4) The well casing of a temporary monitoring well shall have a locking cap and the annular space shall be sealed from zero (0) to one (1) foot below ground level with an impervious bentonite or similar material; after 48 hours, the well must be completed in accordance with this section or plugged in accordance with [~~this section and~~] §76.1004 [~~of this title (relating to Technical Requirements - Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones)~~].

(5) The annular space of a geothermal closed heat loop well [~~closed loop injection well~~] used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite or similar material, closed loop injection well where there is no water or only one zone of water is encountered you may use sand, gravel or drill cuttings to back fill up to thirty (30) feet from the surface. The top thirty (30) feet shall be filled with impervious bentonite or similar materials and meets the standards pursuant to Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality 30 TAC, Chapter 331.

(c) In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 in the 6" and 8" inch sun resistant and be twenty four (24) inches in length, and shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) of this subsection is used. The casing shall extend a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve shall be two (2) inches larger in diameter than the plastic casing being used and filled entirely with cement; or

(2) A slab or block as described in paragraph (1) and (2) of this subsection is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal;

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than twenty (20) feet below the adapter connection; and

(C) in lieu of cement, the annular space may be filled with a solid column of granular sodium bentonite to a depth of not less than twenty (20) feet below the adapter connection.

(d) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that differ in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(e) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(f) Each licensee shall use potable water in drilling fluids.

(g) [~~(f)~~] Each licensed well driller drilling, deepening, or altering a well shall keep any drilling fluids, tailings, cuttings, or spoils

contained in such a manner so as to prevent spillage onto adjacent property not under the jurisdiction or control of the well owner without the adjacent property owners' written consent.

(h) [~~(g)~~] Each licensed well driller drilling, deepening, or altering a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(i) [~~(h)~~] Unless waived by written request from the landowner, a new, repaired, or reconditioned well or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The well shall be properly disinfected with chlorine or other appropriate disinfecting agent under the circumstances. A disinfecting solution with a minimum concentration of fifty (50) milligrams per liter (mg/l) (same as parts per million), shall be placed in the well as required by the American Water Works Association (AWWA), pursuant to ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(j) [~~(i)~~] A [~~Unless waived in writing by the landowner, after performing an installation or repair, the~~] licensed installer shall disinfect the well by:

(1) treating the water in the well casing to provide an average disinfectant residual to the entire volume of water in the well casing of fifty (50) mg/l. This may be accomplished by the addition of calcium hypochlorite tablets or sodium hypochlorite solution in the prescribed amounts;

(2) circulating, to the extent possible, the disinfected water in the well casing and pump column; and

(3) pumping the well to remove disinfected water for a minimum of fifteen (15) minutes.

(4) If calcium hypochlorite (granules or tablets) is used, it is suggested that the installer dribble the tablets of approximately five-gram (g) size down the casing vent and wait at least thirty (30) minutes for the tablets to fall through the water and dissolve. If sodium hypochlorite (liquid solution) is used, care should be taken that the solution reaches all parts of the well. It is suggested that a tube be used to pipe the solution through the well-casing vent so that it reaches the bottom of the well. The tube may then be withdrawn as the sodium hypochlorite solution is pumped through the tube. After the disinfectant has been applied, the installer should surge the well at least three times to improve the mixing and to induce contact of disinfected water with the adjacent aquifer. The installer should then allow the disinfected water to rest in the casing for at least twelve hours, but for not more than twenty-four hours. Where possible, the installer should pump the well for a minimum of fifteen (15) minutes after completing the disinfection procedures set forth above until a zero disinfectant residual is obtained. In wells where bacteriological contamination is suspected, the installer shall inform the well or property owner that bacteriological testing may be necessary or desirable.

(k) [~~(j)~~] A test well that is drilled for exploring for groundwater shall not be open at the surface or allowing water zones of different chemical quality to commingle and must be completed or plugged within six (6) months of drilling [~~unless such site is located within a groundwater conservation district where district rules shall prevail if applicable~~].

(l) [~~(k)~~] Water wells located within public water supply system sanitary easements must be constructed to public well standards pursuant to 30 TAC, Chapter 290.

§76.1001. Technical Requirements -- Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

If a well driller [~~knowingly~~] encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well as defined in §76.10(13), the licensed well driller shall see that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremie pressured filled provided the annular space is three inches larger than the casing with cement or bentonite grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(5) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality [~~under~~] 30 TAC, Chapter 331.

§76.1004. Technical Requirements -- Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.

(a) All wells which are required to be plugged or capped under Texas Occupations Code Chapters 1901 and 1902 or this Chapter shall be plugged and capped in accordance with the following specifications:

(1) [~~(a) If a well is abandoned or deteriorating,~~] all removable casing shall be removed from the well ; [~~and~~]

(2) any existing surface completion shall be removed;

(3) the entire well pressure filled via a tremie pipe with cement from bottom up to the land surface ; [~~.~~]

(4) [~~(b)~~] In lieu of the procedure in paragraph (3) [~~(a)~~] of this section, the well shall be pressure filled via a tremie tube with clean bentonite grout of a minimum 9.1 pounds per gallon weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet, or if the well to be plugged has one hundred 100 feet or less of standing water the entire well may be filled with a solid column of 3/8 inch or larger granular sodium bentonite hydrated at frequent intervals while strictly adhering to the manufacturers' recommended rate and method of application. If a bentonite grout is used, the entire well from not less than two (2) feet below land surface may be filled with the bentonite grout. The top two (2) feet above any bentonite grout or granular sodium bentonite shall be filled with cement as an atmospheric barrier.

(5) [~~(c)~~] Undesirable water or constituents shall be isolated from [~~, or~~] the fresh water zone(s) [~~shall be isolated~~] with cement plugs

and the remainder of the wellbore filled with neat cement or clean bentonite grout of a minimum 9.1 weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet.

(b) [~~(d)~~] Large [~~diameter~~] hand dug and bored wells 36-inches or greater in diameter to one hundred (100) feet in depth may be plugged by back filling with compacted clay or caliche to surface. All removable debris shall be removed from the well. If the well contains standing water, it shall be chlorinated by adding chlorine bleach at a rate of one (1) gallon of bleach for every five hundred (500) gallons of standing water. Leave mounded to compensate for settling.

(c) Wells which do not encounter groundwater (dry holes) may be plugged by backfilling with drill cuttings from total depth to within two (2) feet of the surface; where a two (2) feet cement plug shall be poured.

(d) [~~(e)~~] Drillers may petition the Department, in writing, for a variance from the methods stated in subsection (a) of this section. The variance should state in detail, an alternative method proposed and all conditions applicable to the well that would make the alternative method preferable to those methods stated in subsection [~~subsections~~] (a) [~~and (b)~~] of this section.

(e) [~~(f)~~] A non-deteriorated well which contains casing in good condition and is beneficial to the landowner can be capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.

§76.1005. Technical Requirements -- Standards for Water Wells Drilled before June 1, 1983.

(a) Wells drilled prior to June 1, 1983, unless abandoned, shall be grandfathered from this chapter without further modification unless the well is found to be a threat to public health and safety or to groundwater [~~water~~] quality. A threat to public health and safety or to groundwater quality shall include, but is not limited to the following [~~The following will be considered a threat to public health and safety or to groundwater quality~~]:

(1) annular space around the well casing is open at or near the land surface;

(2) an unprotected opening into the well casing that is above ground level;

(3) top of well casing below known flood level and not appropriately sealed;

(4) deteriorated well casing allowing commingling of aquifers or zones of water of different quality [~~.~~] ; [~~and~~]

(5) water wells with the well head below ground level unless the Department grants a variance ; and [~~.~~]

(6) water wells located within close proximity to a potential source of contamination which could negatively affect groundwater quality.

(b) If the annular space around the well casing is not adequately sealed as set forth in this section, it shall be the responsibility of each licensed driller or licensed pump installer to inform the landowner that the well is considered to be a deteriorated well and must be recompleted when repairs are made to the pump or well in accordance with this chapter, and the following specifications.

(1) The well casing shall be excavated to a minimum depth of four (4) feet and the annular space shall be filled from ground level to a depth of not less than four (4) feet below the land surface with cement. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water bearing strata.

(2) A cement slab or sealing block shall be placed above the cement around the well at the ground surface except when a pitless adapter as described in §76.1000 (c)(2) [~~(d) of this title (relating to Technical Requirements - Locations and Standards of Completion for Wells)~~] or a steel or plastic sleeve as described in §76.1000 (c)(1) [~~(d) of this title~~] is used.

(A) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four inches.

(B) The surface of the slab shall be sloped to drain away from the well.

(C) The top of the casing shall extend a minimum of twelve 12 inches above ground level or thirty six 36 inches above known flood prone areas and unprotected openings into the well casing that is above ground shall be sealed water tight.

(3) If deteriorated well casing is allowing commingling of aquifers or zones of water of different quality and causing degradation of any water including groundwater, the well shall be plugged according to §76.1004 [~~of this title (relating to Technical Requirements - Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones)~~] or repaired. Procedures for repairs shall be submitted to the Department for approval prior to implementation.

(c) If a licensed well driller or pump installer finds any of the procedures described by this section to be inapplicable, unworkable, or inadequate, alternative procedures may be employed provided that the proposed alternative procedures will prevent injury and pollution and that the procedures shall be submitted to the Department for approval prior to their implementation, except for class V injection wells pursuant to 30 TAC, Chapter 331.

(d) Well covers shall be capable of supporting a minimum of four hundred 400 pounds and constructed in such a way that they cannot be easily removed by hand.

(e) This section shall not apply to a public water supply system well.

§76.1009. Technical Requirements -- Variances -- Alternative Procedures.

(a) If the party having the well drilled, deepened or altered, the licensed well driller, or the party, landowner or person drilling or plugging the well, finds any of the procedures prescribed by § §76.1000 [~~of this title (relating to Technical Requirements - Locations and Standards of Completion for Wells)~~], [§]76.1001 [~~of this title (relating to Technical Requirements - Standards of Completion for Water Wells Encountering Undesirable Water or Constituents)~~], [§] 76.1002 [~~of this title (relating to Technical Requirements - Standards for Wells Producing Undesirable Water or Constituents)~~], [§]76.1003 [~~of this title (relating to Technical Requirements - Re-completions)~~], [§]76.1004 [~~of this title (relating to Technical Requirements - Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones)~~] and [§]76.1005 [~~of this title (relating to Technical Requirements - Standards for Water Wells drilled before June 1, 1983)~~] inapplicable, unworkable, or inadequate, combinations of the prescribed procedures or alternative procedures may be employed, provided that the proposed alternative procedures will prevent injury and pollution.

(b) Written proposals [~~Proposals~~] to use combinations of prescribed procedures or alternative procedures shall be considered application for a variance and must be submitted to the Department for review prior to their implementation, and also provide a copy of the variance to the local groundwater conservation district [~~for approval prior to their implementation~~].

(c) If a written variance request is not submitted prior to construction and the licensee or landowner or the designated agent believes a request is justified, such written request shall be submitted to the Department and a copy of the variance provided to the local groundwater conservation district as soon as possible following completion of the well.

(d) This section shall not apply to a public water system well.

§76.1011. Enforcement by Groundwater Conservation Districts.

Pursuant to Texas Occupations Code, §1901.256, groundwater conservation districts are required to enforce compliance with §1901.255 and standards prescribed by this chapter related to an abandoned or deteriorated well located in the boundaries of the groundwater conservation district.

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

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

TRD-200305994
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 222. ADVANCED PRACTICE NURSES WITH LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.10

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

The Board of Nurse Examiners proposes the repeal of 22 Texas Administrative Code §§222.1 - 222.10, concerning Advanced Practice Nurses with Limited Prescriptive Authority. The Board met July 24, 2003 and July 25, 2003, and approved the proposed repeal. The repeal is necessary as a result of the implementation of House Bill (HB) 1095 that expanded prescriptive authority for advanced practice nurses and became effective immediately upon signature by the Governor on May 20, 2003. A new Chapter 222 is being proposed concomitant with this repeal. Chapter 222 was repealed on an emergency basis on August 4, 2003, and was published in the August 15, 2003, issue of the *Texas Register* (28 TexReg 6412).

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed repeal is adopted there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Thomas has determined that for each year of the first five years the proposed repeal is adopted, the public benefit will be that patients will be able to obtain more prescriptions through their advanced practice nurses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repealed sections.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The repeal is proposed under the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The proposal affects the Texas Occupations Code §§157.0511, 157.052 - 157.054, 157.0541, 551.003(34), 301.152, Texas Health and Safety Code §481.002(39), §483.001, and Texas Insurance Code Article 21.58D as they pertain to advanced practice nurses.

§222.1. Definitions.
§222.2. Approval for Limited Prescriptive Authority.
§222.3. Renewal of Limited Prescriptive Authority.
§222.4. Minimum Standards for Carrying Out or Signing Prescriptions.
§222.5. Prescribing at Sites Serving Certain Medically Underserved Populations.
§222.6. Prescribing at Physicians' Primary Practice Sites.
§222.7. Prescribing at Alternate Sites.
§222.8. Prescribing at Facility-based Practice Sites.
§222.9. Conditions for Obtaining and Distributing Drug Samples.
§222.10. Enforcement.

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

Filed with the Office of the Secretary of State on September 12, 2003.

TRD-200305950
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-6823

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CHAPTER 222. ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.12

The Board of Nurse Examiners proposes new Chapter 222, §§222.1 - 222.12, concerning Advanced Practice Nurses with

Prescriptive Authority. The Board met July 24, 2003 and July 25, 2003, and approved the proposed new chapter. The new chapter was also adopted on an emergency basis because of the implementation of House Bill (HB) 1095 that expanded prescriptive authority for advanced practice nurses and became effective immediately upon signature by the Governor on May 20, 2003. This chapter was adopted on an emergency basis on August 4, 2003, and was published in the August 15, 2003, issue of the *Texas Register* (28 TexReg 6413). The repeal of the current Chapter 222 is being proposed concomitant with the proposed new chapter.

Prior to the passage of HB 1095, advanced practice nurses had been limited to prescribing dangerous drugs only. Dangerous drugs were defined in §222.1(5) as: Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in schedules I-V or penalty groups I-IV of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: 'Caution: federal law prohibits dispensing without prescription.' The authority to authorize or issue prescription drug orders for controlled substances was prohibited.

House Bill 1095 amended the Medical Practice Act to permit physicians to delegate authority to prescribe controlled substances listed in schedules III through V to advanced practice nurses provided certain criteria are met. These criteria include:

(1) Limiting prescriptions for controlled substances to those listed in Schedules III, IV, or V as established by the commissioner of public health under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(2) Prescriptions are issued for a period not to exceed 30 days;

(3) The advanced practice nurse shall not authorize the refill of a prescription for a controlled substance prior to consultation with the delegating physician and notation of the consultation in the patient's chart; and

(4) The advanced practice nurse shall not authorize the prescription of a controlled substance for a child less than two years of age prior to consultation with the delegating physician and notation of the consultation in the patient's chart.

Staff has been in communication with individuals from the Texas Department of Public Safety (DPS) and the Drug Enforcement Administration (DEA) to gain information regarding the regulatory requirements imposed on individuals who prescribe controlled substances by the state and federal entities with regulatory authority over these substances. Based on statutory changes to the Medical Practice Act and information provided by DPS representatives, the Board proposes new Chapter 222 and adopted a new Chapter 222 on an emergency basis.

The Board's proposed new Chapter 222 includes limiting the authority to prescribe medications listed in schedules III through V to only those advanced practice nurses who hold full authorization to practice and prescriptive authority. Under the proposed revisions, graduate advanced practice nurses who hold provisional authorization to practice pending successful national certification would be limited to prescribing categories of dangerous drugs only. This limitation is imposed due to concerns regarding graduates whose provisional authorization to practice is rescinded based on failure to pass the national certification examination on the first attempt. Should a graduate advanced practice nurse continue to practice after he/she is notified that he/she failed the national certification examination, he/she is in violation of §221.5 and is subject to disciplinary action against the RN license. If the same graduate authorized or issued a prescription for controlled substances while practicing after the provisional authorization expired or was rescinded, he/she would also be in violation of state and federal laws relating to the prescribing of controlled substances. The DPS enforcement personnel indicate that, depending on the substance prescribed, the penalty could be either a third-degree or state jail felony conviction.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed sections are adopted there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Thomas has determined that for each year of the first five years the proposed sections are adopted, the public benefit will be that patients will be able to obtain more prescriptions through their advanced practice nurses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections except the costs associated with obtaining the necessary approvals from the appropriate agencies.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The new sections are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The proposal affects the Texas Occupations Code §§157.0511, 157.052 - 157.054, 157.0541, 551.003(34), and 301.152, Texas Health and Safety Code §481.002(39) and §483.001, and Texas Insurance Code Article 21.58D as they pertain to advanced practice nurses.

§222.1. Definitions.

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

(1) Advanced practice nurse--A registered nurse approved by the board to practice as an advanced practice nurse based on completing an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services.

(2) Alternate site--A practice site:

(A) Where services similar to the services provided at the delegating physician's primary practice site are provided; and

(B) Located within 60 miles of the delegating physician's primary practice site.

(3) Board--The Board of Nurse Examiners for the State of Texas.

(4) Carrying out or signing a prescription drug order--Completing a prescription drug order presigned by the delegating

physician or signing (writing) a prescription by an advanced practice nurse after that person has been designated to the Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription.

(5) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 of Chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(6) Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in schedules I-V or penalty groups I-IV of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(7) Diagnosis and management course--A course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and problems considered within the scope of practice of the advanced practice nurse's specialty and role.

(8) Eligible sites--Sites serving medically underserved populations; a physician's primary practice site; or a facility-based practice site.

(9) Facility-based practice site--A licensed hospital or licensed long term care facility that serves as the practice location for the advanced practice nurse.

(10) Health Manpower Shortage Area--An urban or rural area, population group, or public or nonprofit private medical facility or other facility that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a health manpower shortage, as described by 42 USC §254e(a)(1) or a successor federal statute or regulation.

(11) Medically Underserved Area (MUA)--

(A) An urban or rural area or population group that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a shortage of those services as described by 42 USC §300e-1(7) or a successor federal statute or regulation; or

(B) an area defined as medically underserved by rules adopted by the Texas Board of Health (Texas Department of Health) based on demographics specific to this State, geographic factors that affect access to health care, and environmental health factors.

(12) Pharmacotherapeutics course--A course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(13) Physician's primary practice site--

(A) the practice location at which the physician spends the majority of the physician's time;

(B) a licensed hospital, a licensed long-term care facility, or a licensed adult care center where both the physician and the APN are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district to provide care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with Chapter 32, Family Code;

(D) the residence of an established patient; or

(E) another location at which the physician is physically present with the advanced practice nurse.

(14) Protocols or other written authorization--Written authorization to provide medical aspects of patient care that are agreed upon and signed by the APN and the physician, reviewed and signed at least annually, and maintained in the practice setting of the APN. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APN commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the APN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs that may be prescribed rather than just list specific drugs.

(15) Shall and must--Mandatory requirements.

(16) Should--A recommendation.

(17) Site serving a medically underserved population--

(A) a site located in a medically underserved area;

(B) a site located in a health manpower shortage area;

(C) a clinic designated as a rural health clinic under 42 USC §1395x(aa);

(D) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;

(E) a site located in an area in which the Texas Department of Health determines there is an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(F) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

§222.2. Approval for Prescriptive Authority.

(a) Credentials: To be approved by the board to carry out or sign prescription drug orders and issued a prescription authorization number, a Registered Nurse (RN) shall:

(1) have full or provisional authorization by the board to practice as an advanced practice nurse.

(A) RNs with provisional authorization to practice as graduate advanced practice nurses who are eligible for prescription authorization numbers shall be limited to prescribing for categories of dangerous drugs only.

(B) RNs with Interim Authorization to practice as advanced practice nurses are not eligible for a prescription authorization number;

(2) file a complete application for Prescriptive Authority and submit such evidence as required by the board to verify the following educational qualifications:

(A) To be eligible for Prescriptive Authority, advanced practice nurses must have successfully completed courses in pharmacotherapeutics, pathophysiology, advanced assessment, and diagnosis and management of problems within the clinical specialty.

(i) Nurse Practitioners, Nurse-Midwives and Nurse Anesthetists will be considered to have met the course requirements

of this section on the basis of courses completed in the advanced educational program.

(ii) Clinical Nurse Specialists shall submit documentation of successful completion of separate courses in the content areas described in this subparagraph. These courses shall be academic courses from a regionally accredited institution with a minimum of 45 clock hours per course.

(iii) The board, by policy, may determine that certain specialties of Clinical Nurse Specialists meet one or more of the course requirements on the basis of the advanced educational program.

(B) Clinical Nurse Specialists who have been approved by the board as advanced practice nurses by petition on the basis of completion of a non-nursing master's degree shall not be eligible for prescriptive authority.

(b) Sites: Prescribing privileges are limited to eligible sites to include sites serving certain medically underserved populations, physician's primary practice sites, alternate sites, and facility-based practice sites.

(c) Exceptions Granted by the Texas State Board of Medical Examiners: Requirements for utilizing limited prescriptive authority may be modified or waived if a delegating physician has received a modification or waiver from the Texas State Board of Medical Examiners of any site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to the advanced practice nurse.

§222.3. Renewal of Prescriptive Authority.

(a) The advanced practice nurse shall renew the privilege to carry out or sign prescription drug orders in conjunction with the RN license renewal application.

(b) The advanced practice nurse seeking to maintain prescriptive authority shall attest, on forms provided by the board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium.

(c) The continuing education requirement in subsection (b) of this section, shall be in addition to continuing education required under Chapter 216 of this title (relating to Continuing Education).

§222.4. Minimum Standards for Carrying Out or Signing Prescriptions.

(a) The advanced practice nurse with a valid prescription authorization number:

(1) shall carry out or sign prescription drug orders for only those drugs that are:

(A) authorized by Protocols or other written authorization for medical aspects of patient care; and

(B) prescribed for patient populations within the accepted scope of professional practice for the advanced practice nurse's specialty area; and

(2) shall comply with the requirements for adequate physician supervision published in the rules of the Board of Medical Examiners relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses as well as other applicable laws,

(b) Protocols or other written authorization shall be defined in a manner that promotes the exercise of professional judgement by the advanced practice nurse commensurate with the education and experience of that person.

(1) A protocol or other written authorization:

(A) is not required to describe the exact steps that the advanced practice nurse must take with respect to each specific condition, disease, or symptom; and

(B) may state types or categories of medications that may be prescribed or contain the types or categories of medications that may not be prescribed.

(2) Protocols or other written authorization:

(A) shall be written, agreed upon and signed by the advanced practice nurse and the physician

(B) reviewed and signed at least annually; and

(C) maintained in the practice setting of the advanced practice nurse.

(c) Prescription Information: The format and essential elements of the prescription shall comply with the requirements of the Texas Board of Pharmacy. The following information must be provided on each prescription:

(1) the patient's name and address;

(2) the name, strength, and quantity of the drug to be dispensed;

(3) directions to the patient regarding taking of the drug and the dosage;

(4) the intended use of the drug, if appropriate;

(5) the name, address, and telephone number of the delegating physician;

(6) address and telephone number of the site at which the prescription drug order was carried out or signed;

(7) the date of issuance;

(8) the number of refills permitted; and

(9) the name, prescription authorization number, and original signature of the advanced practice nurse signing or co-signing the prescription drug order.

(d) Generic Substitution. The advanced practice nurse shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to Generic Substitution.

§222.5. Prescriptions for Dangerous Drugs.

Advanced practice nurses with full or provisional authorization to practice and valid prescription authorization numbers are eligible to carry out or sign prescription drugs orders for dangerous drugs in accordance with the standards and requirements set forth in this chapter.

§222.6. Prescriptions for Controlled Substances.

(a) Advanced practice nurses with full authorization to practice and valid prescription authorization numbers are eligible to prescribe certain categories of controlled substances. Graduate advanced practice nurses who hold provisional authorization to practice shall not authorize or issue prescriptions for controlled substances until they have been issued full authorization to practice by the board.

(b) Advanced practice nurses with full authorization to practice and valid prescription authorization numbers who authorize or issue prescriptions for controlled substances shall:

(1) Limit prescriptions for controlled substances to those listed in Schedules III, IV, or V as established by the commissioner of public health under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(2) Issue prescriptions for a period not to exceed 30 days;

(3) Not authorize the refill of a prescription for a controlled substance prior to consultation with the delegating physician and notation of the consultation in the patient's chart; and

(4) Not authorize the prescription of a controlled substance for a child less than two years of age prior to consultation with the delegating physician and notation of the consultation in the patient's chart.

(c) All other standards and requirements as set forth in this chapter relating to carrying out or signing prescription drug orders by advanced practice nurses must be met. In addition, advanced practice nurses with full authorization to practice and valid prescription authorization numbers must comply with all federal, state and local laws and regulations relating to the prescribing of controlled substances, including but not limited to, requirements set forth by the Texas Department of Public Safety and the Drug Enforcement Administration.

§222.7. Prescribing at Sites Serving Certain Medically Underserved Populations.

When carrying out or signing prescription drug orders at a site serving a medically underserved population, the advanced practice nurse shall:

(1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice nurse and the delegating physician at least annually;

(2) have access to the delegating physician or alternate delegating physician for consultation, assistance with medical emergencies, or patient referral;

(3) provide a daily status report to the physician on any problems or complications encountered that are not covered by protocol; and

(4) shall be available during on-site visits by the physician which shall occur at least every 10 business days that the advanced practice nurse is on site providing care.

§222.8. Prescribing at Physicians' Primary Practice Sites.

When carrying out or signing prescription drug orders at a physician's primary practice site, the advanced practice nurse shall:

(1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice nurse and the delegating physician at least annually;

(2) sign or co-sign prescription drug orders only for those patients with whom the physician has established or will establish a physician-patient relationship although the physician is not required to see the patient within a specified time period.

§222.9. Prescribing at Alternate Sites.

When carrying out or signing prescription drug orders at an alternate site, the advanced practice nurse shall:

(1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice nurse and the delegating physician at least annually;

(2) be on-site with the physician at least twenty percent of the time; and

(3) have access to the physician through direct telecommunication for consultation, patient referral, or assistance with a medical emergency;

§222.10. Prescribing at Facility-based Practice Sites.

When carrying out or signing prescription drug orders at a facility-based practice site, the advanced practice nurse shall:

(1) maintain Protocols or other written authorization developed in accordance with facility medical staff policies and reviewing the authorizing documents with the appropriate medical staff at least annually;

(2) sign or co-sign prescription drug orders in the facility in which the delegating physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair; or a physician who consents to the request of the medical director or chief of the medical staff to delegate; and

(3) sign or co-sign prescription drug orders for the care or treatment of only those patients for whom physicians have given their prior consent.

§222.11. Conditions for Obtaining and Distributing Drug Samples.

The advanced practice nurse with a valid prescription authorization number may request, receive, possess and distribute prescription drug samples provided:

(1) all requirements for the advanced practice nurse to sign prescription drug orders are met;

(2) Protocols or other physician orders authorize the advanced practice nurse to sign the prescription drug orders;

(3) the samples are for only those drugs that the advanced practice nurse is eligible to prescribe in accordance with the standards and requirements set forth in this chapter; and

(4) a record of the sample is maintained and samples are labeled as specified in the Dangerous Drug Act (Health and Safety Code, Chapter 483).

§222.12. Enforcement.

(a) Any nurse who violates these rules shall be subject to removal of the authority to prescribe under this rule and disciplinary action by the board under Texas Occupations Code §301.452.

(b) The board shall report to the Texas Department of Public Safety and the Drug Enforcement Administration any of the following:

(1) Any significant changes in the status of the RN license/advanced practice authorization, or

(2) Disciplinary action impacting an advanced practice nurse's ability to authorize or issue prescription drug orders

(c) The practice of the advanced practice nurse approved by the board to carry out or sign prescription drug orders is subject to monitoring by the board on a periodic basis.

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

Filed with the Office of the Secretary of State on September 12, 2003.

TRD-200305951
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-6823

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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.4

The Board of Vocational Nurse Examiners proposes an amendment to §235.4, relating to Applicants for Relicensure by Examination. The proposed amendment to this rule will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.4. Applicants for Relicensure by Examination.

(a) (No change.)

(b) Applicants for re-licensure shall be allowed four years to pass the national licensing examination.[~~Applicants will be allowed three opportunities for the licensing examination; one initial and two reexaminations within one year of first time scheduled.~~]

(c) (No change.)

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

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

TRD-200305966
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.5

The Board of Vocational Nurse Examiners proposes an amendment to §235.5, relating to Qualifications for Licensure by Examination on Basis of Professional Nursing Education. The proposed amendment to this rule will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.5. Qualifications for Licensure by Examination on Basis of Professional Nursing Education.

An undergraduate shall:

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

(3) be allowed four years to pass the national licensing examination.[~~be allowed three opportunities for the licensing examination; one initial and two reexaminations within one year of first time eligible.~~]

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

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

TRD-200305967
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.7

The Board of Vocational Nurse Examiners proposes an amendment to §235.7, relating to Graduates of Vocational Nursing Programs. The proposed amendment to this rule will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.7. Graduates of Vocational Nursing Programs.

Applicants who do not successfully pass the national licensing examination within four years of completion of graduation requirements must repeat the entire curricula in order to take or retake the examination.[~~Applicants who fail the national examination must submit re-examination and testing service applications and fees. Applicants who fail the national examination will be allowed to retake the examination within one year of graduation, allowing three opportunities. Applicants who do not successfully pass the national examination within one year of graduation must repeat the entire curricula.~~]

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

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

TRD-200305968
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.11

The Board of Vocational Nurse Examiners proposes an amendment to §235.11, relating to Policies Concerning Professional Graduates. The proposed amendment to this rule will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.11. Policies Concerning Professional Graduates.

Applicants who are graduates of a professional nursing program shall be allowed four years from the date of first failure of the national licensing examination approved by the Board of Nurse Examiners to pass the national licensing examination for vocational nursing.[~~Graduates of a professional nursing program will be eligible to take the examination for vocational nurse licensure once the graduate has unsuccessfully taken the registered nurse licensure examination approved by the Board of Nurse Examiners. The professional nurse graduate will be allowed three opportunities for the licensing examination within one year of the applicant's first failure of the registered nurse licensure examination.~~]

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

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

TRD-200305969
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.13

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

The Board of Vocational Nurse Examiners proposes the repeal of §235.13, relating to Military Graduates Assigned to Overseas Duty Prior to Examination. This rule is repealed because it is redundant.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make

such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this repeal.

§235.13. Military Graduates Assigned to Overseas Duty Prior to Examination.

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

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

TRD-200305970
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.14

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

The Board of Vocational Nurse Examiners proposes the repeal of §235.14, relating to Failure To Make Application for the Licensing Examination within One Year of Eligibility. This rule is repealed because it is redundant.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this repeal.

§235.14. Failure To Make Application for the Licensing Examination within One Year of 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.

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

TRD-200305971
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.15

The Board of Vocational Nurse Examiners proposes an amendment to §235.15, relating to Out-of-State Practical/Vocational Nurse Graduate. The proposed amendment includes statutory language requirements for an applicant to pass an examination to be licensed. State Board Test Pool Exams (SBTPE) were licensing examinations.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The proposed amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.15. Out-of-State Practical/Vocational Nurse Graduate.

An out-of-state graduate shall:

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

(3) be allowed four years from date of completion of requirements to pass the national licensing examination;[be ~~allowed~~ ~~to take the examination three times within one year of graduation;~~]

[~~(4) if licensed by a board constructed examination, be allowed three opportunities for the licensing examination within one year of eligibility;~~]

(4) [~~(5)~~] file another application if original application is not completed within six months.

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

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

TRD-200305972
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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22 TAC §235.16

The Board of Vocational Nurse Examiners proposes an amendment to §235.16, relating to Request To Extend One-Year Limit Regarding Taking the Examination. The proposed amendment includes statutory language requirements for an applicant to pass an examination to be licensed. State Board Test Pool Exams (SBTPE) were licensing examinations.

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

Mrs. Hairston has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The proposed amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal.

§235.16. Request To Extend Eligibility Period[~~One-Year Limit~~] Regarding Taking [~~the~~] Examination.

The following specified criteria for legitimate excuse shall apply only to persons failing to appear for the last opportunity for examination and must be provided to the board within four weeks following the last opportunity for the licensing examination in order to establish eligibility for an extension of the four[~~one~~] year limit:

(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.

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

TRD-200305973
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.52

The Board of Vocational Nurse Examiners proposes new §235.52, concerning Fees. These fee increases are necessary in order to meet the funding goals necessary for appropriations required to support legislative requisites. The most substantial fee increases are due to two bills passed by the 78th Regular Session. The two bills are House Bill 3126 (Workforce Data Center), and House Bill 2985 (Office of Patient Protection).

House Bill 3126 was passed for the purpose of addressing the nursing shortage and encouraging individuals to enter the nursing field by authorizing larger Texas Grants to nursing students. This grant money is to come from the Tobacco Lawsuit Fund. The Board is required to increase the LVN's renewal fees by $2.00 to fund a nursing resource section of a workforce data center which will be managed by the Statewide Health Coordinating Council. The fee specifically will fund a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state. The Board is to receive an analysis of these funds in an annual accounting.

House Bill 2985 establishes an Office of Patient Protection (OPP) within the Health Professions Council for the purpose of providing public information about the complaint process at each health occupational licensing agency, increasing public awareness of a telephone complaint system and the sanction processes of each agency, and adopting a standard complaint form for each licensing agency to use. Each of the health professional agencies involved are to add a $5 fee increase to initial licensure fees and to add $1.00 each year to the renewal fee to each licensee to pay for this service. Since the Board requires renewal biannually, the renewal fee would increase by $2.00. The funds for this bill were not appropriated during the 78th Regular Legislative Session. If the appropriations are not approved in a 78th Special Session the OPP funds will go into the general fund.

Terrie L. Hairston, Executive Director, has determined the proposed new rule is necessary to cover legislative requirements and to offset agency costs. Other than the increase in fees for licensed vocational nurses and applicants, there will be no fiscal implications for state or local government for the first five-year period as a result of enforcing or administering the new rule. Any associated costs the agency may incur as a result of implementing the fees will be absorbed by the agency.

Mrs. Hairston has determined that the public benefit for the first five-year period of the proposed new rule is that the Board will be better able to fulfill its mission of protecting the public (Office of Patient Protection), facilitating a viable nurse force for the future (workforce data center). There will be no cost to small businesses but the new rule will affect all applicants applying for initial licensure or endorsement, and all currently licensed vocational nurses upon renewal of their licenses.

Written comments on the proposal may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Ste. 3-400, Austin, Texas 78701.

The new rule is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b) of the Texas Occupations Code which provides the Board of Vocational Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

No other rules, codes, or statues will be affected by this new rule.

§235.52. Licensure Status Fee Schedule.
Required fees for license categories:

(1) Inactive license status--$20.00

(2) Emeritus license--$48.00

(3) Active license--renewal fee of two-year license--$48.00

(4) Initial license

(A) Examination--$93.00

(B) Endorsement--$95.00

(5) Change from Inactive status to Active license--reactivation and current renewal fee are prorated to birth month and year.

(6) Change from Delinquent to Active license--penalty fee and back renewal fees are probated to birth month and year.

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

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

TRD-200305965
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-7653

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning Internship Training Schedule. The section is being amended to revise paragraph (15) to include language stating that Board members or Polygraph Board Staff may not act as sponsors because of the apparent conflict of interest in processing the applicant for final licensure.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendment will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification in the rule regarding Board Members and Polygraph Board Staff not acting as sponsors. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. The Board next meets on November 17-20, 2003. Please have any written public comments about these changes to the Board Office no later than November 14, 2003.

The amendment is proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendment implements the Polygraph Examiners Act, Article 4413 (29cc).

§391.3. Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) History and development of polygraph--four hours.

(2) Legal and ethical aspects of polygraph.

(A) Texas Polygraph Examiners Act--10 hours.

(B) Statements and reports, civil rights, examiner and professional ethics--10 hours.

(3) Physiology--24 hours.

(A) Nervous system, autonomic nervous system.

(i) Sympathetic system.

(ii) Parasympathetic system.

(B) Circulatory system and the heart.

(C) Respiratory system.

(D) Effects of drugs, alcohol, and illness.

(4) Psychology--24 hours.

(A) General.

(B) Abnormal.

(C) As applied to polygraphy.

(5) Interrogation and interviews--100 hours.

(A) Receiving case briefing.

(B) Pre-test interview.

(C) Post-test interview.

(6) Chart interpretation--120 hours.

(A) All types of tests and responses.

(B) Chart marking.

(C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.

(7) Question formulation and test construction--120 hours.

(A) All types of tests.

(B) All types of questions.

(C) Semantics.

(8) Instrumentation--10 hours.

(A) Construction and maintenance.

(B) Trouble shooting.

(C) Nomenclature.

(9) Summary and general review--10 hours.

(10) Supervised testing and interviewing--minimum of 30 tests.

(11) Counseling and critique as required in opinion of sponsor.

(12) A list of approved polygraph schools be maintained in the Board office and will be made available upon request. Board approval of a polygraph school will be based on current American Polygraph Association (A.P.A.) accreditation.

(13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application and completed a minimum of 40 hours of continuing education in the two years immediately proceeding the sponsorship. Documentation of this continuing education must be on file with the Board office prior to approval of the examiner as a sponsor.

(15) No licensed examiner shall have more than two (2) interns under his/her sponsorship at any one time. Board Members or Polygraph Board Staff may not act as sponsors because of the apparent conflict of interest in processing the applicant for final licensure.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the date of the first class day, of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

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

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

TRD-200305956

Frank DiTucci
Executive Director
Polygraph Examiners Board
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 424-2058

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22 TAC §391.5

The Polygraph Examiners Board proposes an amendment to §391.5, concerning Supervision and Internship Review. The section is being amended to include the requirement that Interns will be responsible in providing to the Sponsor a weekly submission of all work conducted or a written statement indicating that no test(s) have been conducted during that week.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendment will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of an intern's responsibilities to the Sponsor regarding work conducted during a given week. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. The Board next meets on November 17-20, 2003. Please have any written public comments about these changes to the Board Office no later than November 14, 2003.

The amendment is proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendment implements the Polygraph Examiners Act, Article 4413 (29cc).

§391.5. Supervision and Internship Review.

(a) The intern sponsor, or a licensed examiner meeting the requirements to be a sponsor, is required to review all examinations conducted by an intern examiner under his/her supervision on a weekly basis. It is the Intern's responsibility to provide to the Sponsor a weekly submission of all work conducted or a written statement indicating that no test(s) have been conducted during that week. The sponsor or other licensed examiner shall carefully review each test the intern conducts for compliance with the Polygraph Examiners Act, accurate chart interpretation and the principles of quality test administration. The sponsor need NOT be present at the time of the examination. The sponsor is not required to review the charts before an opinion is rendered, but the Intern is required to inform the Examinee that the Intern's opinion of the polygraph examination is preliminary until that examination is reviewed by his sponsor.

(1) It is the policy of the Texas Polygraph Examiner's Board to provide assistance to Interns and Sponsors.

(2) At the request of an Intern or Sponsor, the Board's Executive Officer will review the Intern's work product. This review is intended to correct any problems that may exist in the Internship. Therefore Interns are encouraged to take advantage of this assistance as early in the Internship as practical.

(b) The review is not an investigation and will not be treated as such. On the other hand, the fact that an Intern's work product was made available for review by the Executive Officer will not be considered a defense to any action by the Board should the Board receive a complaint concerning the Intern on any test reviewed under this policy.

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

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

TRD-200305957
Frank DiTucci
Executive Director
Polygraph Examiners Board
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 424-2058

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22 TAC §391.10

The Polygraph Examiners Board proposes an amendment to §391.10, concerning Procedures and Qualifications of Current and Former Governmental Polygraph Examiners. The section is being amended to include a requirement for applicants during an internship program to conduct fifty (50) polygraph examinations for a period of at least six months or longer.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendment will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the added requirement for applicants during an internship program to conduct fifty (50) polygraph examinations for a period of at least six months or longer. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. The Board next meets on November 17-20, 2003. Please have any written public comments about these changes to the Board Office no later than November 14, 2003.

The amendment is proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendment implements the Polygraph Examiners Act, Article 4413 (29cc).

§391.10. Procedures and Qualifications of Current and Former Governmental Polygraph Examiners.

(a) All provisions of the Polygraph Examiners Act and Chapters 391, 393, 395 and 397 of that Act apply to applicants that are current or former governmental polygraph examiners except as follows:

(1) In lieu of a six month or twelve month internship program as defined in §8(a)(3) of the Act, an applicant who is serving, or within two years prior to the date the applicant's application was received in the Board's office has served, as a polygraph examiner in a governmental agency, may qualify to sit for a licensing examination by providing to the Board appropriate documentation showing that the applicant satisfies each of the following conditions:

(A) That the applicant graduated from a polygraph course that is approved by the Board; and

(B) That the applicant is, or was, authorized by his/her[~~their~~] governmental agency to conduct polygraph examinations for that agency for a period of at least six months or longer; and that he/she completed his/her internship and or certification requirements of his/her governmental agency; and has conducted a minimum of fifty (50) polygraph examinations; and

(C) That the applicant participated in a quality control program administered by his/her governmental agency which quality control program reviewed 100% of the applicant's polygraph examinations; and

(D) That the applicant was not the subject of any action on the part of his/her [~~their~~] governmental agency that removed the applicant's polygraph authorization during the course of the applicant's employment; and

(E) That the Board obtains in writing from the applicant's polygraph program manager that the applicant qualifies under subparagraphs (A)-(D) of this paragraph.

(2) All other provisions for a current or former governmental polygraph examiner applying for a Texas Polygraph Examiners License shall remain the same as currently stated in the Polygraph Examiners Act and only the definition of the "internship" is hereby modified.

(b) The provisions of §391.10 are intended to cover the issuance of a Texas Polygraph Examiner's License to a current and/or former governmental polygraph examiner, regardless of their residency, for polygraph testing in the State of Texas only.

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

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

TRD-200305958
Frank DiTucci
Executive Director
Polygraph Examiners Board
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 424-2058

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER E. CONTESTED CASES

22 TAC §661.62

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.62, concerning Filing of Documents. This section establishes the requirements and procedures for the filing of complaints, investigation of complaints, Board action regarding complaints, and settlement procedures to be followed in response to complaints filed against Registered Professional Land Surveyors, Licensed State Land Surveyors and non-registered/licensed individuals. This section also provides for the assessment of penalties in order to recover costs spent by the State for administrative hearings.

The proposed amendment adds language to broaden and clarify the procedures to be followed in response to a complaint.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because of the new procedures for the filing of complaints and investigation of complaints as well the new procedures regarding recovery of costs for hearings before the State Office of Administrative Hearings expended by the State.

There will be no effect on small or micro businesses. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at 512/452-7711 or may be sent electronically to sandy.smith@mail.capnet.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.62. Filing of Documents.

(a) All complaints, motions, replies, answers, notices, requests for hearings by applicants whose applications the board has rejected, and other pleadings relating to any proceeding pending or to be instituted before the Board shall be filed with the executive director. They shall be deemed filed only when actually received in the Board's office.

(b) Filing of Complaints.

(1) Complaints shall be submitted on complaint forms provided by the board or in a written format that includes the following information:

(A) name, address and phone number of complainant and surveyor;

(B) nature and description of the complaint;

(C) copies of factual evidence and other information that supports the complaint;

(D) names and addresses of witnesses;

(E) a statement of adequate relief; and

(F) signature of complainant recognizing the serious nature of the complaint process and consequences of falsifying a government document.

(2) All signed complaints filed will be investigated. Anonymous complaints will be investigated if witnesses or other evidence clearly supports a credible or factual foundation.

(3) Withdrawal of a complaint may not impact an on-going investigation.

(c) Investigations.

(1) The Board will hire an investigator or contract with an investigator to investigate complaints.

(2) If investigation fails to substantiate violations of the Act or Board Rules the complaint will be dismissed by the investigator and the board notified at the next scheduled meeting after dismissal.

(3) The investigator may make initial determination of violations.

(4) The investigator may recommend sanctions to the Board.

(5) The executive director may recommend an administrative penalty.

(6) The board will not consider a previously dismissed complaint.

(d) Board Action. When violations are found, the Board will receive recommendations from the investigator and executive director and make determinations regarding the disposition of a complaint.

(e) Informal Settlement Conferences.

(1) After the finding of violations and before proceeding with the formal hearing process, the respondent may have an opportunity to resolve the complaint informally with an informal settlement conference to present additional evidence and discuss particulars of the complaint.

(2) Members of the informal settlement conference shall include one public board member, the executive director, the investigator, and other members as deemed necessary.

(3) At the conclusion of the informal settlement conference the complaint may be dismissed or an agreement may be reached regarding a recommendation to be made to the board at the next scheduled meeting or a formal hearing may be scheduled.

(4) The board may order the respondent to pay restitution to a consumer, the amount may not exceed the amount the consumer paid for the service. The board may not require payment of other damages or estimate harm in the restitution order.

(f) If the complaint cannot be settled by an agreed order or informal settlement conference, the complaint will be remanded to the State Office of Administrative Hearings for resolution as authorized by Texas Government Code, Chapter 2001.

(g) Appeals shall be in accordance with the Administrative Procedures Act.

(h) Cost of Administrative Hearings.

(1) Default Judgments. In administrative penalty cases brought before the State Office of Administrative Hearings (SOAH), in the event that the Respondent/Licensee is adjudged guilty of an administrative violation by default, the Board has the authority to assess, in addition to the penalty imposed, cost of the administrative hearing in an amount not to exceed Two Hundred ($200) Dollars.

(2) Trial on the Merits. In administrative penalty cases brought before SOAH, in the event that the Respondent/Licensee is adjudged guilty of an administrative violation after a contested case trial on the merits, the Board has the authority to assess, in addition to the penalty imposed, the actual costs of the administrative hearing. Such may include the costs of witnesses, costs of adjudication before SOAH, and any other costs that are necessary for the preparation of the Board's case, including the cost of any transcriptions of testimony.

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

Filed with the Office of the Secretary of State on September 10, 2003.

TRD-200305889
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 452-9427

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.20

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.20, concerning Criminal Convictions. This section relates to procedures to be taken against Registered Professional Land Surveyors, Licensed State Land Surveyors and applicants who are found to have been convicted of a felony, community supervision revocation, revocation of parole or revocation of mandatory supervision. This proposed section adds language clarifying the adjudication of guilt, the imposition of deferred adjudication and changes language from "incarceration" to "incarceration or jailed".

The proposed amendment adds language to clarify the meaning of a conviction as it relates to this rule.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule by further defining the types of conviction for which a Registered Professional Land Surveyor or Licensed State Land Surveyor could have his/her license revoked and for which an applicant could have his/her application to become a Registered Professional Land Surveyor or Licensed State Land Surveyor denied. There will be no effect on small or micro businesses. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at 512/452-7711 or may be sent electronically to sandy.smith@mail.capnet.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.20. Criminal Convictions.

(a) Pursuant to Title 2, Occupations Code, Chapter 53[~~Texas Civil Statutes, Articles 6252-13c and 13d~~], the following apply for registered professional land surveyors and applicants.

(1) The registrant shall notify the Board in writing within 90 days of any conviction of any crime under the laws of the "United States, or any state, territory or country thereof, which is a felony or a misdemeanor, whether related to the practice of surveying or not.

(2) The applicant will be required to state, in a sworn affidavit, whether he or she has ever been convicted of a felony or a misdemeanor.

(3) Registrants or applicants are required to provide a summary of the conviction in sufficient detail to allow the Board to determine if it is applicable to the practice of professional land surveying or application for registration.

(4) If the Board determines the conviction is applicable, the Board staff will obtain sufficient details of the conviction to allow the Board to determine the effect of the conviction on the registrant's practice of surveying or the applicant's eligibility for registration.

(b) In determining whether a criminal conviction is applicable to a registrant's surveying practice or an applicant's application, the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for practicing surveying;

(3) the extent to which a registrant might offer an opportunity to engage in further criminal activity of the same type as that which the individual had been previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a professional land surveyor.

(c) In addition to the factors that may be considered under subsection (b) of this section, the Board shall consider the following:

(1) extent and nature of the individual's past criminal activity;

(2) the age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;

(3) the conduct and work activity of the individual prior to the following the criminal activity;

(4) evidence of rehabilitation; and

(5) other evidence of fitness to practice as a professional land surveyor.

(d) Crimes relating to the practice of surveying include, but are not limited to the following:

(1) criminal negligence in the practice of surveying;

(2) soliciting, offering, giving or receiving any form of bribe in the practice of surveying;

(3) the unauthorized use of property, funds or proprietary information belonging to another in the practice of surveying;

(4) acts relating to the acquisition, use or dissemination of confidential information related to surveying; and

(5) any violation as an individual or as a consenting party of any provision of the Professional Land Surveying Practices Act (Title 6, Occupations Code, Subtitle C)[(~~Article 5282c~~)].

(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:

(1) the reason for rejecting the application;

(2) notice of the administrative procedure used to conduct an informal conference and contested case hearing to show compliance with all requirements of the law for registration as a professional surveyor; and

(3) notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.

(f) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.

(g) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony [~~without incarceration~~] if the crime directly relates to the duties and responsibilities as a professional surveyor.

(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.

(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.

(h) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from probation or community supervision; or

(2) the accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.

(i) Imposition of deferred adjudication community supervision is not a conviction.

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

Filed with the Office of the Secretary of State on September 10, 2003.

TRD-200305890
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 452-9427

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER G. CONSUMER-RELATED SOURCES

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, and 115.619; the repeal of §115.614; and corresponding revisions to the state implementation plan (SIP).

The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, in order to delete requirements which are duplicated by a federal consumer products rule and to update and correct a variety of references in the commission consumer products rule. These amended and repealed sections and corresponding revisions to the SIP will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission adopted the existing Chapter 115 consumer products rule on May 4, 1994 in response to the 1990 Amendments to the Federal Clean Air Act and EPA requirements for states to develop and adopt rules relating to the rate-of-progress requirement. The Rate-of-Progress SIP revision and associated rules were required to achieve and maintain volatile organic compound (VOC) emissions levels by 1996 that are 15% below the

1990 base year levels in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The existing Chapter 115 consumer products rule established VOC content standards for various consumer products, and established compliance dates for the requirements in order to allow manufacturers time to develop new product formulations. The final compliance date was January 1, 1995, except for two product categories which had a January 1, 1996 compliance date. The Chapter 115 consumer products rule applies in all counties in the state to maximize the effectiveness of these rules and the subsequent reduction in VOC emissions, and was based in large part upon the California Air Resources Board (CARB) statewide consumer products rule and the standards of the CARB rule that had a January 1, 1996 compliance date.

In the September 11, 1998 issue of the *Federal Register* (63 FR 48819), the EPA published national VOC emission standards as 40 Code of Federal Regulations 59, Subpart C, for certain categories of consumer products under the Federal Clean Air Act, §183(e), as codified in 42 United States Code, §7511b(e). Through this provision, Congress required the EPA to conduct a study of VOC emissions from consumer and commercial products and to list for regulation, based on the study, categories of products that have the potential to contribute to ozone nonattainment. The final federal rule was based on the EPA's determination that VOC emissions from the use of consumer products can cause or contribute to ozone levels that violate the national ambient air quality standards for ozone.

The federal consumer products rule established a compliance date of December 10, 1998 for all products that are not registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §§135 - 136y) (FIFRA). Because of the time needed for registration of new or reformulated products under FIFRA, the compliance date for FIFRA-regulated products was one year later than that for non-FIFRA-regulated products (i.e., December 10, 1999).

The federal consumer products rule was modeled heavily on the Chapter 115 and CARB consumer products rules. Consequently, the emission standards for nearly all products categories in the federal rule are identical to the Chapter 115 consumer products rule. The five product categories for which the Chapter 115 consumer products rule is different from the federal rule are as follows:

Figure: 30 TAC Chapter 115--Preamble

Elimination of duplicative requirements will allow regulators and consumer product manufacturers to focus on one set of rules for compliance in Texas. Slight inconsistencies in language will be eliminated and manufacturers will only have to submit requests for innovative product exemptions to EPA in lieu of the current process which requires action by both the EPA and Texas. Fewer requirements with equivalent environmental protection are expected to be easier to enforce and easier to comply with, thus enhancing protection of the environment.

In the Dallas/Fort Worth 9% Rate-of-Progress SIP revision adopted on October 27, 1999, the commission took VOC emission reduction credit for the difference of windshield washer fluid standards between federal consumer products rule and Texas consumer products rule (35% vs 23.5% by weight) because windshield washer fluid represents a large percentage of the estimated emissions from consumer products, and emission reductions were needed to make up a shortfall in Dallas/Fort Worth in order to ensure the approval of the SIP. The VOC credit is 0.2944 tons per day. The commission has not taken any credit for the difference between the state and federal consumer products rule for non-aerosol glass cleaners, nail polish removers, and nonaerosol antiperspirant/deodorant because these three categories represent a minor component of the estimated emissions from consumer products. Therefore, the commission is proposing to revise the Chapter 115 consumer products rule to include only the automotive windshield washer fluid category.

SECTION BY SECTION DISCUSSION

The amendment to §115.600, Definitions, deletes the definitions of terms which will no longer be necessary if the Chapter 115 consumer products rule is revised to include only automotive windshield washer fluid. These terms are: aerosol product; agricultural use; air freshener; all other forms; antiperspirant; American Society for Testing and Materials; bait station insecticide; bathroom and tile cleaner; carburetor-choke cleaner; charcoal lighter material; construction and panel adhesive; contact adhesive; cooking spray aerosols; crawling bug insecticide; deodorant; disinfectant; double-phase aerosol air freshener; dusting aid; engine degreaser; fabric protectant; flea and tick insecticide; flexible flooring material; floor polish or wax; flying bug insecticide; furniture maintenance product; gel; general purpose adhesive; general purpose cleaner; glass cleaner; hairspray; hair mousse; hair styling gel; high volatility organic compound; household adhesive; household product; insect repellent; insecticide; insecticide fogger; institutional product; laundry prewash; laundry starch product; lawn and garden insecticide; liquid; medium volatility organic compound; nail polish; nail polish remover; nonaerosol product; nonresilient flooring; oven cleaner; pesticide; product category; product form; propellant; pump spray; restricted materials; single-phase aerosol air freshener; shaving cream; solid; spray buff product; wasp and hornet insecticide; wax; and wood floor wax.

The amendment to §115.600 also revises the definition of automotive windshield washer fluid by deleting an exemption for automotive windshield washer fluid in the washer fluid system of a motor vehicle before the initial sale because this situation is already addressed by existing §115.612(g). In addition, the amendment to §115.600 deletes the definition of executive director because this term is already defined in 30 TAC §3.2(16), concerning Definitions. The amendment to §115.600 also revises the definition of fragrance by replacing the term "Centigrade" with the more commonly used term "Celsius." In addition, the amendment to §115.600 revises the definition of percent by weight by correcting a reference to §115.617.

The amendment to §115.600 also replaces the term "subchapter" with the more specific term "division" and revises a reference to "Texas Natural Resource Conservation Commission" to "commission" for consistency with the commission's style guidelines. Finally, for the convenience of the reader the amendment to §115.600 also adds a reference to other sections where definitions of the terms used in the Chapter 115 consumer products rule may be found, and changes the title of §115.600 from "Definitions" to "Consumer Products Definitions."

The amendment to §115.610, Applicability, replaces the term "subchapter" with the more specific term "division" and replaces the term "consumer products" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule.

The amendment to §115.612, Control Requirements, deletes 39 consumer product categories which have limits identical to those in the federal rule. The amendment to §115.612 also deletes three consumer product categories (non-aerosol glass cleaners; nail polish removers; and nonaerosol antiperspirant/deodorant) for which the limits in §115.612 are more stringent than the federal consumer products rule, but which represent a minor component of the estimated emissions from consumer products. The amendment to §115.612 further deletes a reference to §115.614, concerning Innovative Products, because this section is proposed for repeal as described further in this preamble.

In addition, the amendment to §115.612 deletes rule language which is specifically associated with one or more of the 42 product categories that this amendment will delete. Therefore, Tables III and IV, which specify the VOC content limits of the various consumer product categories, are proposed to be deleted from §115.612(a) and replaced by the automotive windshield washer fluid VOC content limit of 23.5% by weight. In addition, §115.612(b) is proposed to be revised to refer specifically to automotive windshield washer fluid rather than more broadly to consumer products. The commission also proposes that an example that illustrates use of a concentrated product in §115.612(b) be changed to a reference applicable to windshield washer fluid. Therefore, a reference to "hard-to-remove soils or stains" is proposed to be changed to a reference to extremely cold weather because an automotive windshield washer fluid containing 23.5% by weight of methanol (the most common VOC in windshield washer fluid) provides freeze protection to zero degrees Fahrenheit. In addition, §115.612(d) - (f) are proposed for deletion because these subsections will no longer be needed after the deletion of the consumer product categories in §115.612(a) other than automotive windshield washer fluid.

The amendment to §115.612 also deletes §115.612(c) because automotive windshield washer fluid manufactured in 1994 or earlier is no longer expected to be in the product distribution system over eight years after the final compliance date. Finally, existing §115.612(g) is proposed to be relettered as §115.612(c) due to the proposed deletion of existing §115.612(c) - (f).

The amendment to §115.613, Alternate Control Requirements, revises existing §115.613(a) by replacing the term "section" (which should have been "undesignated head") with the correct term "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289), deleting superfluous language, and updating a reference to §115.910 and reflecting a section title change.

The amendment to §115.613 also deletes §115.613(b) because this subsection was developed for product categories other than automotive windshield washer fluid and therefore will no longer be necessary after the deletion of the other 42 consumer product categories. For example, §115.613(b) refers to CARB variances, but no CARB variance for automotive windshield washer fluid would be valid in Texas because the CARB limit is less stringent than the Texas standard.

In addition, the amendment to §115.613 revises §115.613(c)(2) and deletes paragraph (7) in order to remove references to §§103.11, 103.31, and 103.33 to reflect the repeal of Chapter 103, concerning Procedural Rules. The amendment to §115.613 also revises §115.613(c)(3) by replacing the term "this rule" with a reference to §115.612(a) in order to make the intent of this paragraph more explicit. The amendment to §115.613 further reletters existing §115.613(c) as §115.613(b) due to the deletion of existing §115.613(b) as described in the preceding paragraph.

Section 115.614, Innovative Products, is proposed for repeal because this section was developed for product categories other than automotive windshield washer fluid and therefore will no longer be necessary after the deletion of the other 42 consumer product categories.

The amendment to §115.615, Testing Requirements, replaces the term "subchapter" with the more specific term "division," replaces the term "consumer product" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule, and deletes the testing requirements in §115.615(c) - (e) for product categories other than automotive windshield washer fluid, which will no longer be necessary after the deletion of the other 42 consumer product categories.

The amendment to §115.616, Recordkeeping and Reporting Requirements, replaces the term "subchapter" with the more specific term "division" and replaces the term "consumer product" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule. The amendment to §115.616 also deletes §115.616(d) because this subsection was developed for the antiperspirant/deodorant product category and therefore will no longer be necessary after the deletion of this consumer product category.

The amendment to §115.617, Exemptions, replaces the term "consumer product" in §115.617(a) - (c) with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule and revise the term "undesignated head" in §115.617(b) to "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289).

The amendment to §115.617 also updates a reference in §115.617(d) from §115.612(a)(1) to §115.612(a), and replaces the term "Centigrade" in §115.617(d)(2) with the more commonly used term "Celsius." In addition, the amendment to §115.617 deletes exemptions in §115.617(d)(3) and (e) - (j) which will no longer be necessary after the deletion of the 42 consumer product categories other than automotive windshield washer fluid.

The amendment to §115.619, Counties and Compliance Schedules, revises the term "undesignated head" to "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289) and deletes references to dates which have become obsolete by the passing of the January 1, 1995 and January 1, 1996 compliance dates.

Finally, the division title is proposed to be changed from "Consumer Products" to "Automotive Windshield Washer Fluid" to more accurately reflect the content of the division.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments and repeal are in effect, there will be no fiscal implications for the commission or any other unit of state and local government due to implementation of the proposed amendments and repeal.

The purpose of the proposed rulemaking is to delete existing commission Chapter 115 consumer product rules which are duplicated by EPA's federal consumer products rule and to update

and correct a variety of references. This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or commission rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed amendments and repeal are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments and repeal will be potentially increased protection of the environment through increased compliance and enforcement of consumer product regulations. The elimination of duplicative requirements is expected to simplify enforcement and compliance provisions by allowing regulators and consumer product manufacturers to focus on one set of rules for compliance in Texas.

This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or state consumer products rules. No fiscal implications are anticipated for individuals and businesses due to implementation of the proposed amendments and repeal.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments and repeal, which are intended to delete existing commission Chapter 115 consumer products rules which is duplicated by EPA's federal consumer products rule and to update and correct a variety of references. This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or state consumer product rules. No fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed amendments and repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments and repeal do not adversely affect a local economy in a material way for the first five years that the proposed amendments and repeal 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 this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. "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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments and repeal to Chapter 115 are not major environmental rules because they are administrative in nature and are not specifically intended to protect the environment. The purpose of the proposed rulemaking is to eliminate existing commission Chapter 115 consumer products rules which are duplicated by EPA's consumer products rule and to update and correct a variety of references in the state rule. The proposed rulemaking would reduce the scope of the existing rules and would not add any additional regulatory requirements that are not already required by federal or state consumer products rules.

In addition, a draft regulatory impact analysis is not required because the proposed amendments and repeal do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed amendments and repeal are subject to Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to delete requirements which are duplicated by a federal consumer products rule and to update and correct a variety of references. The proposed rulemaking would reduce the scope of the existing rules. Promulgation and enforcement of these proposed amendments and repeal would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments and repeal do not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed amendments and repeal. Therefore, these amendments will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies.

The commission determined that the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality

in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, concerning Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 20, 2003, at 10:00 a.m. at the Texas Commission on Environmental Quality complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-039-115-AI. Comments must be received by 5:00 p.m., October 27, 2003. For further information, please contact Eddie Mack of the Strategic Assessment Division at (512) 239-1488 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

DIVISION 1. AUTOMOTIVE WINDSHIELD WASHER FLUID

30 TAC §§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, 115.619

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirement; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.600. Consumer Products Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission [~~Texas Natural Resource Conservation Commission (Commission)~~], the terms used by the commission [~~Commission~~] have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this division (relating to Automotive Windshield Washer Fluid) [~~subchapter~~], shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 115.10 of this title (relating to Definitions).

[~~(1) Aerosol product - A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This does not include pump sprays.~~]

[~~(2) Agricultural use - The use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers which are intended for home use, use in structural pest control, industrial use, or institutional use. The following are for the purposes of this subchapter only.~~]

[~~(A) Home use means use in a household or its immediate environment.~~]

[~~(B) Structural pest control means a use requiring a license under the Texas Structural Pest Control Act, Article 135B-6.~~]

[~~(C) Industrial use means use for or in a manufacturing, mining, or chemical process, or use in the operation of factories, processing plants, and similar sites.~~]

[~~(D) Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.~~]

[~~(3) Air freshener - Any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This does not include products that are used on the human body, products that function primarily as cleaning products, or disinfectant products claiming to deodorize by killing germs on surfaces. It does include spray disinfectants and other products that are expressly represented for use as air fresheners. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representations about a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.~~]

[~~(4) All other forms - All consumer product forms for which no form-specific volatile organic compound (VOC) standard is specified in §115.612(a) of this title (relating to Control Requirements). Unless specified otherwise by the applicable VOC standard,~~

this includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).]

[(5) Antiperspirant - Any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.]

[(6) ASTM - The American Society for Testing and Materials.]

(1) [(7)] Automotive windshield washer fluid - Any liquid designed for use in a motor vehicle windshield washer fluid system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield(s). [This does not include any fluid which is placed in the washer fluid system of a motor vehicle prior to the time of initial sale.]

[(8) Bait station insecticide - A container enclosing an insecticidal bait, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.]

[(9) Bathroom and tile cleaner - A product designed to clean tile or surfaces in bathrooms. This does not include products specifically designed to clean toilet bowls or toilet tanks.]

[(10) Carburetor-choke cleaner - A product designed to remove dirt and other contaminants from a carburetor. This does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.]

[(11) Charcoal lighter material - Any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This does not include any of the following:]

[(A) electrical starters and probes,]

[(B) metallic cylinders using paper tinder,]

[(C) natural gas, and]

[(D) propane.]

[(12) Construction and panel adhesive - Any one-component household adhesive having gap filling capabilities, and which distributes stress throughout the bonded area resulting in a reduction or elimination of mechanical fasteners. These materials are applied from caulking cartridges.]

(2) [(13)] Consumer - Any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not considered consumers of that product.

(3) [(14)] Consumer product - Any substance, product, or article, held by any consumer, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds [VOCs]. This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, or architectural coatings.

[(15) Contact adhesive - Any household adhesive that:]

[(A) is nitrile-based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex; and]

[(B) when applied to two substrates, forms an instantaneous, non-repositionable bond; and]

[(C) when dried to touch, exhibits a minimum 30-minute bonding range; and]

[(D) bonds only to itself without the need for reactivation by solvents or heat.]

(4) [(16)] Container/packaging - The part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

[(17) Cooking spray aerosols - Any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.]

[(18) Crawling bug insecticide - Any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This does not include products designed to be used exclusively on humans or animals, or any house dust mite product For the purposes of this definition only:]

[(A) House dust mite product - a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.]

[(B) House dust mite - mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.]

[(19) Deodorant - Any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.]

[(20) Disinfectant - Any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 United States Code (USC) §136, *et seq*.). This does not include any of the following:]

[(A) products designed solely for use on humans or animals;]

[(B) products designed for agricultural use;]

[(C) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; and]

[(D) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.]

(5) [(21)] Distributor - Any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

[(22) Double-phase aerosol air freshener - An aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.]

[(23) Dusting aid - A product designed to assist in removing dust and other soils from floors and other surfaces without leaving

a wax or silicone-based coating. This does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.]

[(24) Engine degreaser - A cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.]

[(25) Executive director - The executive director of the Texas Natural Resource Conservation Commission, or his or her delegate.]

[(26) Fabric protectant - A product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of ten fluid ounces or less.]

[(27) Flea and tick insecticide - Any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs; not including products that are designed to be used exclusively on humans or animals and their bedding.]

[(28) Flexible flooring material - Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.]

[(29) Floor polish or wax - A wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, or coatings subject to architectural coatings regulations.]

[(30) Flying bug insecticide - Any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths, or gnats. This does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.]

(6) [(31)] Fragrance - A substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two millimeters mercury at 20 degrees Celsius [Centigrade], which is added to a consumer product to impart an odor or scent or to counteract a malodor.

[(32) Furniture maintenance product - A wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. This does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.]

[(33) Gel - A colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.]

[(34) General purpose adhesive - Any non-aerosol household adhesive designed for use on a variety of substrates, not including contact adhesives or construction and panel adhesives.]

[(35) General purpose cleaner - A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces. This does not include non-water-based degreasers.]

[(36) Glass cleaner - A cleaning product designed primarily for cleaning surfaces made of glass. This does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, or photocopying machines.]

[(37) Hairspray - A consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.]

[(38) Hair mousse - A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.]

[(39) Hair styling gel - A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.]

[(40) High volatility organic compound (HVOC) - Any VOC that exerts a vapor pressure greater than 80 millimeters mercury when measured at 20 degrees Centigrade.]

[(41) Household adhesive - Any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.]

[(42) Household product - Any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.]

(7) [(43)] Initial sale - The bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in Texas or elsewhere; and such a bargain, sale, transfer, or delivery, accompanied by registration or licensing of said vehicle in Texas or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.

[(44) Insect repellent - A pesticide product that is designed to be applied on human skin, hair, or attire worn on humans in order to prevent contact with or repel biting insects or arthropods.]

[(45) Insecticide - A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:]

[(A) for agricultural use,]

[(B) for use in maintaining building structures, or]

[(C) restricted materials that require a permit for use and possession.]

[(46) Insecticide fogger - Any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.]

[(47) Institutional product - A consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional products do not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.]

(8) [~~(48)~~] Label - Any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

[~~(49) Laundry prewash - A product that is designed for application to a fabric prior to laundering and that supplements or contributes to the effectiveness of laundry detergents and/or provides specialized performance.~~]

[~~(50) Laundry starch product - A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.~~]

[~~(51) Lawn and garden insecticide - An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.~~]

[~~(52) Liquid - A substance or mixture of substances which is capable of flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90. This does not include powders or other materials that are composed entirely of solid particles.~~]

(9) [~~(53)~~] Manufacturer - Any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product for distribution or sale in Texas.

[~~(54) Medium volatility organic compound (MVOC) - Any VOC that exerts a vapor pressure greater than two millimeters mercury and less than or equal to 80 millimeters mercury when measured at 20 degrees Centrigrade.~~]

[~~(55) Nail polish - Any clear or colored coating designed for application to the fingernails or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.~~]

[~~(56) Nail polish remover - A product designed to remove nail polish and coatings from fingernails or toenails.~~]

[~~(57) Non-aerosol product - Any product that is not dispensed by a pressurized spray system.~~]

[~~(58) Nonresilient flooring - Flooring of a mineral content which is not flexible, including but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.~~]

[~~(59) Oven cleaner - Any product designed to clean or remove dried food deposits from oven walls.~~]

(10) [~~(60)~~] Percent by weight [~~Percent-by-weight~~] - The total weight of volatile organic compounds (VOCs) [~~VOC~~] except those VOCs exempted under §115.617 [~~§115617~~] of this title (relating to Exemptions), expressed as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:
Figure: 30 TAC §115.600(10)
[~~Figure: 30 TAC §§115.600(60)~~]

[~~(61) Pesticide - Includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term pesticide will not include anything which the U.S. Environmental Protection Agency does not consider to be a pesticide.~~]

(11) [~~(62)~~] Principal display panel or panels - That part, or those parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

[~~(63) Product category - The applicable category which best describes the product as listed in this section.~~]

[~~(64) Product form - The applicable form which most accurately describes the product's dispensing form, including aerosol products, gels, liquids, pump sprays, and solids.~~]

[~~(65) Propellant - A liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.~~]

[~~(66) Pump spray - A packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.~~]

[~~(67) Restricted materials - Any pesticides established for restricted use under FIFRA, §3(d) (7 USC §136, etc seq.)~~]

(12) [~~(68)~~] Retailer - Any person who sells, supplies, or offers consumer products for sale directly to consumers.

(13) [~~(69)~~] Retail outlet - Any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

[~~(70) Single-phase aerosol air freshener - An aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.~~]

[~~(71) Shaving cream - An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor in the removal of facial or other bodily hair, or other wet-shaving system.~~]

[~~(72) Solid - A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90.~~]

[~~(73) Spray buff product - A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.~~]

(14) [~~(74)~~] Subsequent sale - The bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed outside of Texas, save and except when such vehicle is not required under law to be registered or licensed in Texas or elsewhere; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where bargain, sale, transfer, or delivery occurred.

(15) [~~(75)~~] Usage directions - The text or graphics on the product's label or accompanying literature which describes to the end user how and in what quantity the product is to be used.

[~~(76) Wasp and hornet insecticide - Any insecticide product that is designed for use against wasps, hornets, yellow jackets, or bees by allowing the user to spray a high-volume directed stream or burst from a safe distance at the intended pest or its hiding place.~~]

[~~(77) Wax - A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as~~

carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.]

[(78) Wood floor wax - Wax-based products for use solely on wood floors.]

§115.610. Applicability.

Except as provided in §115.617 of this title (relating to Exemptions), this division (relating to Automotive Windshield Washer Fluid) [subchapter] shall apply to any person who sells, offers for sale, supplies, distributes, or manufactures automotive windshield washer fluid [consumer products] for use in the State of Texas.

§115.612. Control Requirements.

(a) [Volatile Organic Compound (VOC) content limits are as follows:]

[(1)] Except as provided in §115.613 and §115.617 [§§115.613, 115.614, and 115.617] of this title (relating to Alternate Control Requirements; [, Innovative Products,] and Exemptions), no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any automotive windshield washer fluid [consumer product] which was manufactured after January 1, 1995 [(January 1, 1996 for Nail Polish Removers, and Glass Cleaners All Other Forms)] and contains volatile organic compounds [VOC] in excess of 23.5% by weight [the limits specified in Table III].
[Figure: 30 TAC §115.612(a)(1)]

[(2) Except as provided in §§115.613, 115.614, and 115.617 of this title, no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any antiperspirant or deodorant which was manufactured after January 1, 1995, and contains high volatility organic compounds (HVOC) in excess of the limits specified in Table IV.]
[Figure: 30 TAC §115.612(a)(2)]

(b) For automotive windshield washer fluid [consumer products] for which the usage directions specifically state that the product should be diluted prior to use, the limits specified in subsection (a) of this section shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, the usage directions shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as extremely cold weather (below zero degrees Fahrenheit) [hard-to-remove soils or stains].

[(c) The provisions of Tables III and IV shall not apply to a consumer product manufactured prior to the effective date stated in subsection (a) of this section.]

[(d) Notwithstanding the definition of product category in §115.600 of this title (relating to Definitions), if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC standard is specified in §115.612 of this title (relating to Control Requirements), then the lowest VOC standard shall apply. This requirement does not apply to general purpose cleaners or antiperspirants.]

[(e) For consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 United States Code, §136 *et seq.*), the effective date of the VOC standards is one year after the date specified in subsection (a) of this section.]

[(f) The requirements for charcoal lighter material are as follows.]

[(1) No person shall sell for use in Texas any charcoal lighter material which was manufactured after January 1, 1996, that emits greater than an average of 0.020 pounds of VOC per start when used in accordance with the directions on the label of the product. Emissions are determined using the procedures specified in the South Coast Air Quality Management District (SCAQMD) Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991, or other methods which are approved by the executive director and are shown to provide equivalent results. Charcoal lighter materials certified by Executive Order of the California Air Resources Board (CARB) are adequate, but not necessary, to demonstrate compliance with the requirements of this subsection, unless the CARB certification is revoked.]

[(2) Charcoal lighter materials' labels and accompanying literature shall clearly show usage directions for the product. For liquid charcoal lighter materials, the directions shall accurately reflect the required quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol for that product.]

[(3) Records of emission testing results, physical property data, formulation data, and other information for use in determining compliance with the requirements of this subsection for all charcoal lighter materials must be made available to the executive director within 30 days of receipt of such requests.]

(c) [(g)] The requirements of subsection (a) [(a)(1)] of this section do not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale, or at the time of subsequent sale of vehicles registered or licensed outside of Texas.

§115.613. Alternate Control Requirements.

(a) Alternate [For all persons affected by this undesignated head, any alternate] methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Automotive Windshield Washer Fluid) [section] may be approved by the executive director in accordance with §115.910 [§§115.910 - 115.916] of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent or greater.

[(b) The executive director may exempt a consumer product from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer obtains a variance pursuant to appropriate California Air Resources Board (CARB) regulations, unless the CARB variance is revoked. The following procedures are applicable.]

[(1) A manufacturer shall apply in writing to the executive director for any alternate control requirements claimed under this subsection. The application shall include the supporting documentation that demonstrates that the product has been granted a variance pursuant to CARB regulations, and shall include documentation showing the terms and conditions of the CARB variance.]

[(2) Within 30 days of receipt of an alternate control requirements application, the executive director shall determine whether an application is complete.]

[(3) Within 90 days after an application has been deemed complete, the executive director shall determine whether, under what conditions, and to what extent, a deviation from the requirements of §115.612(a) of this title will be permitted. The executive director shall notify the applicant of the decision in writing, and shall specify the terms and conditions of the approved alternate control requirements.]

[(4) For any product for which alternate control requirements have been granted pursuant to this subsection, the manufacturer shall notify the executive director in writing within 30 days of any changes in the product formulation or terms and conditions of the corresponding CARB variance. The executive director shall determine

what, if any, changes to the alternate control requirements are needed, and shall notify the manufacturer of the decision in writing.]

[(5) If volatile organic compounds (VOC) standards are lowered for a product category through any subsequent rulemaking in Texas, all alternate control requirements granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.]

(b) [(c)] Any person who cannot comply with the requirements set forth in §115.612(a) of this title (relating to Control Requirements) because of extraordinary reasons beyond the person's reasonable control may apply in writing to the executive director for alternate control requirements.

(1) The application shall set forth the following:

(A) the specific grounds on which the alternate control requirements order is sought;

(B) the requested terms and conditions; and

(C) the specific method(s) by which compliance with the requested terms and conditions will be achieved.

(2) [The alternate control requirements request shall be processed in accordance with §103.11 of this title (relating to Types of Hearings).] Information submitted to the executive director by an applicant may be claimed as confidential, and if so claimed, shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(3) In considering whether to grant a deviation from §115.612(a) of this title [this rule], the executive director shall consider the facts and circumstances bearing on the reasonableness of a product's emissions, including:

(A) the character and degree of injury to or interference with the public's health and physical property associated with product emissions when used for its intended purpose;

(B) the product's social and economic value;

(C) the technical practicability and economic reasonableness of reducing the emissions resulting from the product; and

(D) the total emissions arising from use of the product.

(4) Any alternate control requirements order shall specify terms and conditions, a date by which final compliance with its terms and conditions will occur, and may contain a condition that specifies increments of progress to assure timely compliance.

(5) An alternate control requirements order shall cease to be effective upon failure of the party to whom the order was granted to comply with any substantive term or condition of the order.

(6) If volatile organic compound [VOC] standards are lowered for a product category through any subsequent rulemaking, all alternate control requirements orders granted for products in the product category shall have no force and effect as of the effective date of the modified volatile organic compound [VOC] standard.

[(7) Upon the application of any person, the executive director may review, and for good cause, modify or revoke an alternate control requirements order after holding a public hearing in accordance with §103.31 of this title (relating to Calling the Hearing) and §103.33 of this title (relating to Action on Request for a Hearing.)]

§115.615. Testing Requirements.

(a) Testing to determine compliance with the requirements of this division (relating to Automotive Windshield Washer Fluid) [subchapter] shall be performed using methods which are shown to accurately determine the concentration of volatile organic compounds (VOCs) in a subject product or its emissions.

(b) Testing to determine compliance with the requirements of this division [subchapter] may alternatively be demonstrated through calculation of the VOC content from records of amounts of constituents used to manufacture the product. Compliance determination based on these records may not be used unless the manufacturer of automotive windshield washer fluid [a consumer product] keeps accurate and updated records of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

[(c) Testing to determine whether a product is a liquid or solid shall be performed using American Society for Testing and Materials (ASTM) D4359-90 (May 25, 1990), which is incorporated by reference herein.]

[(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (September 28, 1990), which is incorporated by reference herein.]

[(e) Testing to determine compliance with the requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein, or other methods which are approved by the executive director and are shown to provide equivalent results.]

§115.616. Recordkeeping and Reporting Requirements.

(a) Each manufacturer of automotive windshield washer fluid [a consumer product] subject to §115.612 of this title (relating to Control Requirements) shall clearly display on each container or package for any automotive windshield washer fluid [consumer product] regulated under this division (relating to Automotive Windshield Washer Fluid) [subchapter], and manufactured after January 1, 1995, one of the following:

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

(b) If a manufacturer uses a code indicating the date of manufacture for any automotive windshield washer fluid [consumer product] subject to §115.612 of this title, an explanation of the code must be filed with the executive director no later than January 1, 1995.

(c) Records of product volatile organic compounds [(VOC)] content, based upon testing or chemical composition records as set forth in §115.615 of this title (relating to Testing Requirements), must be made available to the executive director within 30 days of receipt of such requests. Information submitted in response to such requests may be claimed as confidential, and if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

[(d) On or before January 1, 1995, each manufacturer subject to §115.612(a)(2) of this title shall submit to the executive director a written report. If a manufacturer introduces new products or makes formulation changes to existing products which alter information previously submitted pursuant to paragraph (5), (6), or (7) of this subsection, the manufacturer shall also submit by January 1 every year thereafter another report, detailing such information. Information submitted pursuant to this subsection may be claimed as confidential, and

if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act. Each report shall include the following information:]

[(1) the brand name for each of the manufacturer's antiperspirant and deodorant products;]

[(2) the owner of the trademark or brand name;]

[(3) the product forms;]

[(4) the annual sales in Texas in pounds per year and the method used to calculate annual sales;]

[(5) the total VOC content in percent by weight which:]

[(A) has a vapor pressure of 2.0 millimeters mercury (mm Hg) or less at 20 degrees Centigrade; or]

[(B) consists of more than 10 carbon atoms, if the vapor pressure is unknown;]

[(6) the total high volatility organic compounds content in percent by weight.]

[(7) the total medium volatility organic compounds content in percent by weight.]

§115.617. Exemptions.

(a) This division (relating to Automotive Windshield Washer Fluid) [rule] shall not apply to any automotive windshield washer fluid [consumer product] manufactured in Texas for shipment and use outside of Texas.

(b) The provisions of this division [undesignated head] shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Texas an automotive windshield washer fluid [a consumer product] that does not comply with the volatile organic compounds (VOC) standards specified in §115.612 of this title (relating to Control Requirements), as long as the manufacturer or distributor can demonstrate that the automotive windshield washer fluid [consumer product] is intended for shipment and use outside of Texas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the automotive windshield washer fluid [consumer product] is not distributed in Texas. This subsection does not apply to automotive windshield washer fluid [consumer products] that is [are] sold, supplied, or offered for sale by any person to retail outlets in Texas.

(c) The requirements of §115.612(a) of this title shall not apply to fragrances and colorants up to a combined level of 2.0% VOC by weight contained in any automotive windshield washer fluid [consumer product].

(d) The requirements of §115.612(a) [§115.612(a)(1)] of this title shall not apply to any VOC that:

(1) contains more than 12 carbon atoms per molecule, and for which the vapor pressure is unknown; or

(2) has a vapor pressure of 0.1 millimeter mercury (mm Hg) or less at 20 degrees Celsius. [Centigrade; or]

[(3) has a melting point higher than 20 degrees Centigrade and does not sublime (i.e., does not change directly from a solid into a gas without melting), if the vapor pressure is unknown.]

[(e) The requirements of §115.612(a)(2) of this title shall not apply to any VOC that:]

[(1) contains more than ten carbon atoms per molecule, and for which the vapor pressure is unknown; or]

[(2) has a vapor pressure of 2.0 millimeter Hg or less at 20 degrees Centigrade.]

[(f) The requirements of §115.616(b) of this title (relating to Recordkeeping Requirements) shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 United States Code §136/136y).]

[(g) The requirements of §115.612(a) of this title shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.]

[(h) The requirements of §115.612(a) of this title shall not apply to adhesives sold in containers of one fluid ounce or less.]

[(i) The requirements of §115.612(a) of this title shall not apply to bait station insecticides.]

[(j) The requirements of §115.612(a) of this title shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOC under §115.10 of this title (relating to Definitions) or exempted under subsection (d) of this section.]

§115.619. Counties and Compliance Schedules.

All affected persons within the State of Texas shall continue to comply [be in compliance] with the requirements of this division (relating to Automotive Windshield Washer Fluid) as required by §115.930 of this title (relating to Compliance Dates) [undesignated head soon as practicable, but in any case no later than the dates specified in §115.612 of this title (relating to Control Requirements), §115.613 of this title (relating to Alternate Control Requirements), §115.614 of this title (relating to Innovative Products), and §115.617 of this title (relating to Exemptions)].

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

Filed with the Office of the Secretary of State on September 12, 2003.

TRD-200305948
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 239-6087

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DIVISION 1. CONSUMER PRODUCTS

30 TAC §115.614

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the

protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.614. Innovative Products.

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
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office proposes an amendment to Title 31, Part 1, Chapter 3, Subchapter C of the Texas Administrative Code, §3.31(b)(16)(A) relating to fees for services and products. The amendment provides the Commissioner the discretion to waive the currently required in-kind contract maintenance fees. The Texas General Land Office will develop guidelines based on economies of scale to determine whether the fees shall be imposed.

The change will increase the flexibility of the Texas General Land Office to supply natural gas to its customers.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no significant negative fiscal impact to state or local government as a result of administering the section as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that there will be a slight public benefit due to potential savings as a consequence of reduced service charges for sales of natural gas by the State.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no impact on local employment.

Comments may be submitted to Melinda Tracy, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

The amendment to this section is proposed under Texas Natural Resources Code §31.051, which authorizes the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendment affects Sections 35.101 through 35.106 of the Utilities Code.

§3.31. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check, or other legal means acceptable to the General Land Office. Payment by means of electronic funds transfer may be required by Texas Government Code §404.095, §9.51 of this title (relating to Royalty and Reporting Obligations to the State), or by other chapters of this title.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) Cost of land title documents.

(A) Preparation of each patent or deed of acquittance: $50.

(B) Filing fee, original field notes: $25.

(C) Filing fee, corrected field notes: no charge.

(D) Filing fee, other instruments required by law to be filed with the General Land Office or accepted for filing by the General Land Office: $25 per instrument.

(E) recording fee per document, per county: the greater of $10 or the actual amount charged by the county clerk.

(2) Certificates of facts:

(A) Narrative certificates of fact consisting of all data from the inception of chain of title to the date of perfection of title and mineral history in paragraph form, short form certificate of fact (consisting of original award date, patent, deeds of acquittance, classification, current mineral history) and supplemental or limited certificates of fact (consisting of specific information or start date for history of a specific tract land):

(i) mineral classified land:

(I) first file: $100;

(II) each additional file: $10;

(ii) non-mineral classified land:

(I) first file: $75;

(II) each additional file: $10.

(B) Spanish documents: $50 per document, in addition to fees due under §1.3(b)(2)(A)(i) and (ii).

(3) Certified and non-certified classification letters:

(A) Certified classification letter:

(i) first file: $20;

(ii) each additional file: $10;

(B) Non-certified classification letter: no charge.

(4) Maps and sketches:

(A) Official maps: $15 per map.

(B) Sketches (blueline and large format copies); per linear foot: $2.00.

(C) Working sketch, per hour ($50 minimum): $20.

(D) Digitizally reproduced archival map collection up to 36 inches (large format copies): $15 per map.

(E) Digitizally reproduced archival map collection on special printer paper.

(i) 48 inches or less: $20 per map plus $8.00 shipping and handling;

(ii) greater than 48 inches: $40 per map plus $8.00 shipping and handling.

(5) Digital mapping (GIS):

(A) GIS maps printed on special printer paper:

(i) 8.5 inch by 11 inch: $7.00;

(ii) 30 inch by 36 inch: $19;

(iii) 36 inch by 48 inch: $27.

(B) Computer charges for GIS data placed on CD-ROM:

(i) cost of disk: $11;

(ii) programming personnel charge: $26 per hour;

(iii) computer resource charge: $1.50 per minute.

(C) Postage and handling: $15 per package.

(6) Spanish translations:

(A) Original translations: $.15 per word.

(B) Copies of previously translated Spanish or Mexican titles: $2.00 per page.

(7) Vacancies:

(A) Application fee: $150.

(B) Filing fee for original field notes: $25.

(C) Affidavit filing fee: $25.

(D) Each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of claimant's status, other than those filed in a contested case administrative proceeding: $25.

(8) Appraisal fees. Appraisal fees are charged for appraisals required by applications for deeds of acquittance and vacancies:

(A) First tract: $500.

(B) Each additional tract, same vicinity, same characteristics, and same owner: $50.

(C) If not listed above, or if 10 or more tracts are to be appraised at the same time, the fee may be negotiated by the General Land Office.

(9) Duplication fees--For purposes of this section the term Archival Records is defined as records maintained in the Archives and Records Division of the Texas General Land Office. The Archives and Records Division reserves the right to deny duplication of any document or map considered too fragile or brittle to safely copy. In addition, the Archives and Records Division reserves the right to specify with method(s) or reproduction may be used. Archival records for all original records affecting land titles, including original land grant files, Spanish Collection materials, school land and scrap files:

(A) Black and white photocopies and microfilm copies, per page:

(i) 8.5 inch by 11 inch: $1.00;

(ii) 8.5 inch by 14 inch: $1.00;

(iii) 11 inch by 17 inch: $2.00.

(B) Color photocopies, per page:

(i) 8.5 inch by 11 inch: $2.00;

(ii) 8.5 inch by 14 inch: $2.00;

(iii) 11 inch by 17 inch: $3.00.

(C) Blueline and large format copies: $15.

(D) Recorded media:

(i) VCR tapes, each: $15;

(ii) Audio cassettes, each: $7.50;

(iii) Raw field videos (VCR tape provided by requesting party, minimum one minute):

(I) First minute: $25;

(II) Each additional minute: $15.

(E) Photo processing (black and white only):

(i) 10 inch by 10 inch internegative: $6.00;

(ii) 10 inch by 10 inch contact print: $5.00;

(iii) 11 inch by 14 inch enlargement: $8.00;

(iv) 16 inch by 20 inch enlargement: $12.

(10) Genealogy search:

(A) Per name: $5.00.

(B) Field notes research, per quarter hour (minimum $10): $10.

(C) Other research of the official records of the General Land Office, per hour (minimum 1/2 hour): $25.

(11) Mailing fees:

(A) Mailing tubes, each: $1.75.

(B) Registered mail, each item: $5.50.

(C) Handling and preparation for mailing, each item: $1.00.

(12) Certification:

(A) Individual instruments or maps: $2.00.

(B) Contents of complete files, each file: $25.

(C) Copy of official Spanish translations, each: $25.

(13) Publications:

(A) Abstract volume (on microfiche): $12.50.

(B) Abstract volume supplement (hard copy and on microfiche): $10.

(14) Submerged lease data:

(A) Annual subscription rate: $300.

(B) Monthly rate: $25.

(C) Single copy, subscriber: $37.50.

(D) Single copy, non-subscriber: $75.

(E) Energy information service, per year: $180.

(F) Magnetic tape, per tape: $165.

(15) Geophysical and geochemical exploration:

(A) Non-Relinquishment Act lands:

(i) permit application filing fee: $100.

(ii) exploration and surface/bottom damage fees for unleased tracts in bays, other tideland areas, and the Gulf of Mexico.

(I) high velocity energy sources:

(-a-) $5.00 per acre in bays and other tideland areas;

(-b-) $2.00 per acre in the Gulf of Mexico;

(II) low velocity energy sources:

(-a-) $2.50 per acre in bays and other tideland areas;

(-b-) $1.00 per acre in the Gulf of Mexico;

(III) other exploration techniques: negotiable;

(iii) surface damage fees for unleased uplands:

(I) vibroseis: $2.50 per acre;

(II) high velocity energy sources: $5.00 per acre;

(III) gravity meter and/or magnetometer: fair market value, but not less than $2.50 per acre;

(IV) other exploration techniques: negotiable.

(B) Relinquishment Act lands:

(i) permit application filing fee: $100;

(ii) all fees for actual surface damages to personal property, improvements, livestock, and crops on unleased Relinquishment Act lands, if any, are to be negotiated with the surface owner. Any fees in excess of those attributable to the types of surface damages listed in this paragraph must be shared equally with the state.

(16) Miscellaneous services and fees:

(A) In-kind contract maintenance fee. Processing and accounting for in-kind oil, gas, and other related product contracts, from purchaser of state-owned productsunless deemed unnecessary by the Commissioner: per barrel delivered: $.05; per MMBTU delivered: $.03.

(B) Relinquishment Act lease processing fee: $100.

(C) highway right-of-way lease processing fee, including preparation of lease: $100.

(D) pooling application processing fee, including preparation and filing of pooling agreements: $100.

(E) oil, gas, and mineral lease application and filing fee, including processing, lease preparation, and filing of any oil, gas, or mineral lease not subject to other processing or nomination fees: $100.

(F) tract nomination fee, oil, gas, or mineral sealed bid lease sale fee: $100.

(G) prospect permit filing fee: $50.

(H) insufficient check fee (for each check returned): $25.

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

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

TRD-200305963
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 305-9129

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER D. OPERATION GAME THIEF FUND

31 TAC §55.116

The Operation Game Thief Committee proposes an amendment to §55.116, concerning Death Benefits: Payment. The amendment would increase the death benefit for eligible recipients from $10,000 to $25,000. The amendment is necessary because the Operation Game Thief Committee has determined that it is appropriate to increase the death benefit for the beneficiaries of department peace officers killed in the line of duty.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, there is no public benefit anticipated as a result of enforcing or administering the rule as proposed.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendment as proposed.

The committee has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as it has determined that the rule as proposed will not impact local economies.

The committee has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Lawson Turner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4626 (e-mail: lawson.turner@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §12.201, which requires the Operation Game Thief Committee to adopt rules for the implementation of the operation game thief program and maintenance of the operation game thief fund, and §12.206, which authorizes the committee to use the operation game thief fund to supplement any death benefits received by the families of peace officers employed by the department who are killed in the line of duty.

The amendment affects Parks and Wildlife Code, Chapter 12.

§55.116. Death Benefits: Payment.

(a) The amount of a death benefit payment granted to an eligible recipient shall be $25,000[~~$10,000~~] and payment processing will be initiated by the Coordinator, with concurrence of the Director of Law Enforcement, to occur within 15 working days after the death occurs.

(b) At each meeting, the committee shall review all disbursements of death benefits made by the Coordinator since the last committee meeting and may increase the amount of any death benefit or approve additional death benefits.

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

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

TRD-200305976
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42, §65.60

The Texas Parks and Wildlife Department proposes an amendment to §65.42, concerning Deer, and §65.60, concerning Pheasant: Open Seasons, Bag, and Possession Limits. The amendment to §65.42 would correct an error in subsection (b)(8) by restoring three subparagraphs that were not published as part of a previous rulemaking. The amendment to §65.60 would replace the current open season for pheasant in several Panhandle counties (December 6-January 4) with a season of the same length, but opening one week later (December 13-January 11). The amendment is necessary to prevent possible hunter and landowner confusion stemming from a publication error in widely distributed literature pertaining to the 2003-2004 hunting season. That error gives the opening day as December 13. The easiest solution is for the department to engage in rulemaking to make the season dates in the rule consistent with the season dates that have been distributed to the public. The proposed rule will not result in either depletion or waste of wildlife resources.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be accurate regulations and the elimination of possibly confusing conflicts between regulations and informational materials distributed to the hunting public.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendments as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter.

The amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

(a) (No change.)

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows. No person may take more than two bucks, in the aggregate, from the counties listed in paragraphs (1), (2), and (6) of this subsection.

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

(8) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLD permits have been issued for the property.

(9)-(10) (No change.)

(c) (No change.)

§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: Second [~~First~~] Saturday of December for 30 consecutive days.

(2) Daily Bag limit: Two cock pheasants.

(3) Possession limit: Four cock pheasants.

(b) In Chambers, Jefferson, and Liberty, counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Daily bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(c) In all other counties, there is no open season on pheasants.

(d) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

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

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

TRD-200305978
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 389-4775

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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.78

The Texas Parks and Wildlife Department proposes an amendment to §65.78, concerning the Statewide Hunting and Fishing Proclamation. The proposed rule would establish a 10-day closed season for crab traps.

The crab resources in Texas support valuable sport and commercial fisheries. Over six million pounds are harvested annually with a dockside value of $4.0 million. Responsibility for establishing seasons, bag limits, means and methods for taking wildlife resources, including crabs, is delegated to the Texas Parks and Wildlife Commission under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983). The crab fishery is managed using guidelines in the Crab Fishery Management Plan (FMP) adopted by the Commission in 1992. That FMP noted concerns about abandoned crab traps. Senate Bill 1410 from the 77th Texas Legislature provided the commission new authority to establish a season closed to the use of crab traps for the purpose of removing abandoned crab traps. The legislation authorizes the commission to create a closed season lasting a minimum of 10 days to a maximum of 30 days beginning no earlier than January 31st and ending no later than April 1st during any year of a closure. Senate Bill 607 from the 78th Texas Legislature, in regular session, declared "abandoned" any crab trap in public waters beginning the first day of a closed season. Based on review of last two years of closure, and through consultation with the Crab Advisory Committee, the department proposes to begin the closure each year on the third Friday in February and continuing for 10 consecutive days. The commercial crab season then reopens after the 10-day closed crab season and placement and/or use of crab traps in public waters is then allowed. This language allows members of the public, as well as members of industry, adequate notice of future closures that provides benefits to both.

Robin Riechers, staff economist, has determined that for each of the first five years that the amendment as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the amendment.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing or administering the rules as proposed will be better achievement of optimum yield for the crab fishery, increased conservation through reduced waste of the crab resource and other aquatic organisms, and increased boating safety by decreasing current navigation hazards. Overall, increased benefits to the public will be to provide on a continuing basis greater protection and enhancement of the crab population.

Anticipated benefits to the crab fishery include a reduction in current crab mortality associated with lost or abandoned traps. These crabs will be available for subsequent harvest and contribution to the spawning stock. Based on the number of traps removed in 2002 and the observed species found within the traps, it is estimated that on the day of the trap-removal event over 11,000 organisms were saved. The one-day release prevented the waste of over 5,500 crabs, 3,000 stone crabs, 855 sheepshead, and 36 diamond back terrapins. Studies from Louisiana indicate an average loss of 26 crabs/trap/year when no degradable panels are installed. Based on the observed traps, 66 % of the traps collected did not appear to have degradable panels. Using the percent that did not have degradable panels and the total traps collected, it is estimated that over 138,000 crabs were saved on an annual basis due to the removal of abandoned traps in 2002. The program will directly benefit the crab fishermen, the public, and the resource by wasting fewer crabs and other organisms. It is estimated that based on average weights of 0.5 pounds/crab, the direct benefit from the cleanup in 2002 was 69,000 additional pounds of crabs available for harvest throughout the year. The benefits listed above are based on the cleanup of 2002. The number of abandoned traps removed in 2003 was approximately one-half of the amount collected in 2002. While the benefits of the one-time cleanup in total organisms saved would have been reduced by approximately 50%, the overall cumulative benefit of the cleanup in consecutive years is that fewer organisms have the opportunity to be trapped in these abandoned traps. The direct release of organisms in subsequent years may likely be less due to fewer traps that may be available for removal. Previous estimates of lost traps are based on trap loss by legal crab fishermen and do not even consider illegal traps or recreational traps which are lost. While the current limited entry

system has probably decreased the number of lost traps per individual it has not eliminated these losses.

Mr. Riechers has also determined that for each of the first five years that the amendment as proposed is in effect, there will be no economic costs to micro-businesses, small businesses, or persons who are required to comply with the amendment.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robin Riechers, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4645 or 1-800-792-1112 extension 4645; e-mail at robin.riechers@tpwd.state.tx.us by no later than November 1, 2003. Comments may be submitted orally at public hearings that are scheduled around the state. Please call or check the TPWD web site, www.tpwd.state.tx.us to find the most convenient hearing.

The amendment is proposed under Parks and Wildlife Code, §78.115, which authorizes the commission to establish by rule a closed season for the use of crab traps in the public water of Texas, and requires that the closed season be not less than ten days or more than 30 days between January 31 and April 1 in years designated by the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 78.

§65.78. Crabs and Ghost Shrimp.

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

(c) Closed Crab Trap Season: It is unlawful to place, fish, or leave a crab trap or crab trap component in the coastal waters of the state from the third Friday in February for 10 consecutive days [~~12:01 am Saturday, February 15, 2003 through 12:00 midnight Sunday, March 2, 2003~~].

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

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

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

TRD-200305991
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 116. ADVISORY COMMITTEES/COUNCILS

40 TAC §116.5

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

The Texas Rehabilitation Commission (TRC) proposes to repeal Title 40, Chapter 116, §116.5, concerning the Community Rehabilitation Programs Advisory Committee. The repeal is being proposed because the Committee is no longer necessary pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §701 et seq., and it has been abolished in accordance with House Bill 2292, 78th Legislature.

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period after the section has been repealed, there will be no material fiscal implications for state or local government.

Mr. Wheeler also has determined that for each year of the first five years after the section has been repealed the public benefit anticipated as a result of repealing the section will be the agency's continued compliance with Chapter 111, Human Resources Code. There will be no material effect on small or micro businesses. There is no material anticipated economic cost to persons who no longer required to comply with the section as repealed. In accordance with Government Code section 2001.022, TRC has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The repeal is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§116.5. Community Rehabilitation Programs Advisory Committee.

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

Filed with the Office of the Secretary of State on September 10, 2003.

TRD-200305885
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 424-4050

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40 TAC §116.8

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

The Texas Rehabilitation Commission (TRC) proposes to repeal Title 40, Chapter 116, §116.8, concerning Comprehensive Rehabilitation Advisory Committee. The repeal is being proposed because the Committee has been abolished in accordance with House Bill 2292, 78th Legislature.

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period after the section has been repealed, there will be no material fiscal implications for state or local government.

Mr. Wheeler also has determined that for each year of the first five years after the section has been repealed the public benefit anticipated as a result of repealing the section will be the agency's continued compliance with Chapter 111, Human Resources Code. There will be no material effect on small or micro businesses. There is no material anticipated economic cost to persons who no longer required to comply with the section as repealed. In accordance with Government Code section 2001.022, TRC has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The repeal is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§116.8. Comprehensive Rehabilitation Advisory Committee.

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

Filed with the Office of the Secretary of State on September 10, 2003.

TRD-200305884
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 424-4050

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS

The Texas Workforce Commission (Commission) proposes the repeal of and new §815.28 titled Work Search Requirements, to Chapter 815 Unemployment Insurance, Subchapter B. Benefits, Claims and Appeals, concerning the establishment of methodologies to be used in formulating a numerical assignment of work search contacts and claimant work search requirements.

The purpose of the rule is to set forth provisions regarding the work search requirements that claimants must comply with and the process to be utilized by Local Workforce Development Boards when formulating the numerical weekly work search contact requirements. It is also the purpose of the rule to promote and support a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity, by re-attaching claimants to the workforce.

The Commission continues to instruct claimants stressing the importance of work search, and they are told specifically that they must retain a work search log documenting job contacts. Commission staff will continue to verify work search logs and failure to maintain the work search log could adversely affect the claimant's receipt of benefits. The Commission enforces the work search regulations by requiring claimants to make weekly work search contacts in order to maintain eligibility for benefits. In addition, the Agency runs a nightly computerized cross-match to identify claimants who have failed to adhere to profiling participation requirements. Those who do not participate may be held to be ineligible for benefits.

The Commission verifies the work search of the claimants using random sampling. Random sampling is utilized because it has been determined to be statistically valid.

This rule represents the integration of the Unemployment Compensation function and the Workforce Development Boards. The rule describes the procedure a Local Workforce Development Board shall use when establishing a number of weekly work search contacts that a claimant must make in order to maintain the claimant's benefits. When filing a claim for unemployment insurance benefits, each claimant is instructed to register for work. The claimants are informed that they must have a work registration on file within seven days of filing an initial claim as part of the eligibility requirements to receive unemployment insurance benefits, and that they may do so via the Agency job matching website or through their nearest Workforce Center. The phone number to the Center is provided.

The name, location and phone number of the nearest Workforce Center is also included in the information packet mailed to each claimant immediately after filing. Verification of compliance with work registration is automated between the unemployment insurance process and the Job Service Matching System, and claimants failing to comply may be held ineligible for benefits.

The Commission has determined that to hasten their return to work, claimants need guidance as to what constitutes a productive work search. The proposed rule provides examples of productive work search activities. These activities are examples of the types of activities that the Commission has determined will assist a claimant in his attempt to return to work.

The Commission has determined that language to define rural counties is appropriate for inclusion in the rule and that the population necessary to help define a rural county should be based on objective population data. Based on objective population data, the Commission has determined that the number is 10,000.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue to the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend, Chief Financial Officer, has determined that there is no adverse impact on small businesses as a result of enforcing or administering this rule as the rule does not require businesses to take any actions.

LaSha Lenzy, Director, Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rule will be in effect the public benefit anticipated as a result of the adoption of the proposed rule is to make the work search requirements for Unemployment Insurance Benefits more reflective of local work force conditions.

Mark Hughes, Acting Director, Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

For information about the Commission please visit our web page at www.twc.state.tx.us.

Comments on the proposed section may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

40 TAC §815.28

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

The repeal is proposed under Texas Labor Code §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4.

§815.28. Work Search Requirements.

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

Filed with the Office of the Secretary of State on September 11, 2003.

TRD-200305923

John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-2573

40 TAC §815.28

The new rule is proposed under Texas Labor Code §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code, Title 4.

§815.28. Work Search Requirements.

(a) Purpose. The purpose of this rule is to describe the work search requirements and process that must be met for claimants to continue to receive unemployment compensation benefits. A claimant is required to register for work, to actively seek work and be available for work, as well as accept suitable work. The rule also describes the process to be utilized by Local Workforce Development Boards when formulating the numerical weekly work search contact requirements.

(1) A claimant shall be considered available for work during the time the claimant is making a reasonable search for suitable work as defined by this section.

(A) Work registration alone does not establish that the claimant is making a reasonable search for suitable work.

(B) The claimant shall make a personal and diligent search for work.

(C) Unreasonable limitations by a claimant as to salary, hours, or conditions of work indicate that a claimant is not making a reasonable search for suitable work.

(D) The Agency expects each claimant to act in the same manner as a prudent person who is out of work and seeking work.

(2) The reasonableness of a search for work will, in part, depend upon the employment opportunities in the claimant's labor market area. A work search that may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities.

(b) General Work Search Requirements. A claimant shall make the minimum number of weekly work search contacts as required by the Agency.

(1) The claimant will be notified of the minimum number of weekly work search contacts required.

(2) If there is a change to the minimum weekly number of work search contacts, the claimant shall be notified of the change in writing by U.S. mail.

(3) Claimants are required to maintain weekly work search contact logs and may be required to submit weekly work search contact logs, using an acceptable method as determined by the Agency.

(4) The Agency shall provide to and publish guidelines for claimants describing the types of activities that may constitute a work search contact for purposes of a productive search for suitable work. Examples of such activities include, but are not limited to:

(A) utilizing employment resources available at Workforce Centers that directly lead to obtaining employment, such as

(i) using local labor market information;

(ii) identifying skills the claimant possesses that are consistent with targeted or demand occupations in the local workforce development area;

(iii) attending job search seminars, or other employment workshops that offer instruction in developing effective work search or interviewing techniques;

(iv) obtaining job postings and seeking employment for suitable positions needed by local employers;

(B) attending job search seminars, job clubs, or other employment workshops that offer instruction in improving individuals' skills for finding and obtaining employment;

(C) interviewing with potential employers, in-person or by telephone;

(D) registering for work with a private employment agency, placement facility of a school, or college or university if one is available to the claimant in his or her occupation or profession;

(E) other work search activities as may be provided in Agency guidelines.

(5) Failure to comply with work search requirements, without good cause, could result in an ineligibility determination, and discontinuance of benefits.

(c) Number of Work Search Requirements. The minimum number of weekly contacts assigned shall be three work search contacts for all claimants, unless otherwise provided by this section.

(d) A Local Workforce Development Board (Board), based on specific local labor market information and conditions, may advise the Agency that a claimant residing in the Board's area should make more than three work search contacts per week.

(e) Rural Counties. In counties designated as "rural" by the Agency the minimum number of weekly work search contacts may be reduced in response to specific local labor market information and conditions. "Rural" counties are defined as those counties having a population estimated by the Texas State Data Center at Texas A&M University to be not more than 10,000 as of July 1 of the most recent year for which county population estimates have been published.

(f) Local Boards shall have the flexibility within the guidelines provided in this section to formulate the appropriate number of work search contacts for their respective area, using appropriate guidelines to be developed in consultation with agency staff, and shall maintain written documentation. Boards shall review the assigned number of contacts for each area at least once per year on a date to be determined by the Agency.

(g) Local Policies. A Local Board shall develop, adopt, and modify its policies to promulgate the appropriate methodology for formulating the appropriate number of work search contacts for its area in a public process consistent with the procedures required for compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et seq.* A Board shall maintain written copies of the policies that are required by federal and state law or as requested by the Agency and make such policies available to the Agency and the public upon request. A Board shall also submit any modifications, amendments, or new policies to the Agency no later than two weeks after adoption of the policy by the Board.

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

Filed with the Office of the Secretary of State on September 11, 2003.

TRD-200305922
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 26, 2003
For further information, please call: (512) 463-2573

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING

SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.52

The Board of Vocational Nurse Examiners has withdrawn from consideration proposed new §235.52 which appeared in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5045).

Filed with the Office of the Secretary of State on September 11, 2003.

TRD-200305924
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: September 11, 2003
For further information, please call: (512) 305-7653

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 4. LIMITATIONS

1 TAC §354.1875

The Health and Human Services Commission (Commission) adopts an amendment to §354.1875 relating to Limitations on Provider Charges to Recipients, without changes to the proposed text as published in the May 23, 2003 issue of the *Texas Register* (28 TexReg 4030) and will not be republished. The adopted amendment repeals current subsections (b) and (d). Subsection (b) authorizes the commission to reduce the amount of reimbursement paid to a pharmacy provider enrolled in the Medicaid Vendor Drug Program by any cost sharing amount required of a Medicaid recipient pursuant to §354.3200 of this title, relating to Cost Sharing for Medicaid Recipients. Subsection (d) confirms a Medicaid recipient's responsibility for cost sharing amounts in accordance with federal regulations that authorize and limit recipient cost sharing. Because the adopted amendment will restore the language of §354.1875 to the language in effect prior to the adoption of new rules on December 16, 2002, and because implementation of those rules were blocked by an injunction granted by a state district court in Travis County on that same day, there will be no impact on current policy with the implementation of this adoption.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the Commission's duties under Chapter 531; and §32.021 of the Human Resources Code and §531.021 of the Texas Government Code, which provide HHSC with the authority to administer the federal medical assistance program (Medicaid) in Texas.

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 September 15, 2003.

TRD-200305959

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Effective date: October 5, 2003

Proposal publication date: May 23, 2003

For further information, please call: (512) 424-6576

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SUBCHAPTER X. RECIPIENT COST SHARING

1 TAC §354.3200

The Health and Human Services Commission (Commission) adopts the repeal of §354.3200 relating to Cost Sharing for Medicaid Recipients, without changes to the proposed text as published in the May 23, 2003 issue of the *Texas Register* (28 TexReg 4031) and will not be republished. The repeal is adopted simultaneously with the adoption of an amendment to §354.1875 relating to Limitations on Provider Charges to Recipients restoring the language in effect prior to the adoption of new rules on December 16, 2002. Because new §354.3200 did not result in implementation of recipient cost sharing in any Medicaid program, the repeal of this section should have no effect in the Medicaid program.

No comments were received regarding adoption of this repeal.

The repeal is adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the Commission's duties under Chapter 531; and §32.021 of the Human Resources Code and §531.021 of the Texas Government Code, which provide HHSC with the authority to administer the federal medical assistance program (Medicaid) in Texas.

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 September 15, 2003.

TRD-200305960

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Effective date: October 5, 2003

Proposal publication date: May 23, 2003

For further information, please call: (512) 424-6576

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES
SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.312

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.312 in its Medicaid Reimbursement Rates chapter with changes to the proposed text published in the June 27, 2003, issue of the *Texas Register* (28 TexReg 4723). The text of the rule will be republished.

The amendments are justified in that they clarify how the liability insurance add-on rate is calculated, clarify the types of purchased insurance that are acceptable to HHSC to receive the add-on payment, and detail the process that nursing facilities must complete before the add-on payment will be made.

A public hearing was held on July 16, 2003. The commission received written and oral comments from the Texas Association of Homes and Services for the Aging, the Texas Healthcare Association, and one individual representing a nursing facility. The commission also received 13 oral comments from individuals representing nursing facilities, eleven written comments from individuals one of which represents a nursing facility, and one written comment from a state agency. A summary of the comments related to the proposed rules and the commission's responses follow.

General Comment: One commenter indicated that he was in support of the rules as written.

Comment: Concerning §355.312, the rules should allow the liability insurance add-on payment rate to be paid for insurance provided by a captive insurance company.

Response: The commission agrees with this request and has added language at §355.312(a)(4), (e), and (g)(4) to include a definition of captive insurance and to include the requirements that must be met before the liability insurance add-on payment rate can be made to a nursing facility.

Comment: Concerning §355.312, all Centers for Medicare and Medicaid (CMS) approved alternative insurance products should be allowed to receive the add-on payment rate.

Response: The Human Resource Code, section 32.028 (h) requires that the liability add-on rate be paid to only those homes that purchase liability insurance acceptable to the commission. These rules describe the types of purchased liability insurance that HHSC had determined to be acceptable to receive the add-on payment rate. Self-insurance that is allowed by CMS is not acceptable to HHSC because it is not purchased liability insurance. HHSC is adopting this section without changes.

General Comment: Concerning §355.312, coverage from a trust organized and operating under article 21.49-4 of the Insurance Code should be eligible to receive the liability insurance add-on rate.

Response: Article 21.49-4 of the Insurance Code only applies to physicians and dentists and does not apply to nursing facilities. HHSC is adopting this section without changes.

General Comment: Concerning §355.312, the purchase of coverage through a risk retention group or purchasing group authorized under applicable federal laws should be eligible to receive the liability insurance add-on rate.

Response: The commission agrees with this comment and has added language at §355.312(c)(4) to include insurance coverage from a registered risk retention group recognized by the Texas Department of Insurance.

General Comment: Concerning §355.312, other contracts or arrangements for transferring and distributing risk relating to legal liability for damages, including cost or defense, legal costs, and other claims expense should be eligible to receive the liability insurance add-on rate.

Response: The commission disagrees that these types of administrative arrangements constitute purchased liability insurance acceptable to the commission. HHSC has the discretion under the Human Resource Code, section 32.028 (h) to determine the types of purchased liability insurance that the HHSC had determined to be acceptable to receive the add-on payment rate. HHSC is adopting this section without changes.

Comment: Concerning §355.312(a) the Insurance Code does not define or identify any entity as an independently procured insurance company. An insurance contract may legally be independently procured but an unlicensed insurance company is not something that is independently procured.

Response: The commission has added a definition of independently procured insurance at §355.312(a)(3) and language was changed in §355.312(d) to better define independently procured insurance contracts.

Comment: Concerning §355.312(b)(6), not having a rate hearing each time the add-on rate is changed is in direct violation of state law which requires that the process used to determine rates be described in rule. In addition, in the past when rates were determined by an allocation of funds public hearings were held.

Response: These rules define the process used to determine the add-on rate for purchased liability insurance. The portion of the general/administrative rate component attributable to allowable liability insurance costs referenced in §355.312(b)(1) is included in a public rate hearing for nursing facility rates. HHSC is adopting this paragraph without changes.

Comment: Concerning §355.312(c)(d) and (f)(3), the word "purchased" should be deleted from these subsections.

Response: The use of the word "purchased" comes from the Human Resource Code, section 32.028 (h) that requires that the liability add-on rate be paid to only those homes that purchase liability insurance acceptable to the commission. Therefore, these rule subsections reinforce the intent of this law. HHSC is adopting these subsections without changes in regard to this comment.

Comment: Concerning §355.312(d), a more efficient approach to addressing independently procured insurance arrangements would be to require the nursing facilities to present evidence that they have paid to the Comptroller all appropriate independently procured insurance taxes and to attest in an affidavit to questions that determine if the insurance was directly or indirectly solicited, procured, or effectuated in Texas.

Response: The commission agrees with this comment and has modified the language in this subsection and in §355.312(g)(3) to incorporate this process. This process has also been incorporated for captive insurance in §355.312(e) and (g)(4).

Comment: Concerning §355.312(d), the commission should not cut off the rate add-on payments if the Texas Department of Insurance has not approved the independently procured insurance arrangement. We should follow state law that provides for independently procured insurers.

Response: The commission has modified the process in this section that will be used to gather necessary information to make a determination of the nature of the arrangement by which the independently procured insurance was obtained. The nursing facility will be required to submit evidence that taxes were paid to the Comptroller and will be required to attest in an affidavit to questions regarding how the insurance was obtained. This information will be collected by HHSC.

In addition to the changes above, the commission has made the following changes:

The commission has modified §355.312(b) to remove the effective date of September 1, 2003 so that the effective date of these provisions will be the effective date of the rule.

The commission has modified §355.312(f) to clarify that if liability insurance add-on payment rates are made on insurance that is later determined to be unauthorized insurance that the payments will be recouped.

The amendment is adopted under the Texas 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 established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resource Code.

§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.

(a) Definitions.

(1) Purchased commercial liability insurance--Either general or professional liability insurance from a commercial carrier or a non-profit service corporation in an arm's-length transaction that provides for the shifting of risk to the unrelated party. The commercial carrier or non-profit service corporation must meet the requirements as set by the Texas Department of Insurance (TDI) for authorized insurance.

(2) Self-insurance--Self-insurance is a means whereby a contracted provider undertakes the risk to protect itself against anticipated liabilities by providing funds equivalent to liquidate those liabilities. If a provider enters into an arrangement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. Self-insurance is not purchased liability insurance.

(3) Independently procured insurance - an insurance transaction involving an insurance contract independently procured from an insurance company not licensed in Texas through negotiations occurring entirely outside the state of Texas that is reported and on which premium tax is paid.

(4) Purchased captive insurance - A company providing either general or professional liability insurance purchased from a nonadmitted captive insurance company that insures solely directors and officer's liability insurance for the directors and officers of the company's parent and affiliated companies and/or the risks of the company's parent and affiliated companies.

(b) Payment rates for purchased general and professional liability insurance will be determined as follows:

(1) Determine the portion of the general/administration rate component from 1 TAC §355.307 (relating to Reimbursement Setting Methodology) attributable to allowable liability insurance costs.

(2) Determine the amount of total dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.

(5) Payment rates for purchased general and professional liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Providers will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) Providers who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Providers who purchase professional liability insurance without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Providers who purchase both general and professional liability insurance are eligible to receive payment of both rates.

(c) Purchased liability insurance issued through entities meeting any one of the following criteria will be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance as appropriate. These entities have been determined by the TDI to be authorized to issue liability insurance policies in the State of Texas.

(1) An insurance company identified as an admitted, licensed, insurer authorized to write liability insurance in Texas. This type of insurance company is designated as "active" on the TDI website.

(2) An insurance company that is an eligible surplus lines insurer which requires that there be a Texas licensed surplus lines agent placing the coverage with the insurance company. This type of insurance company is designated as "eligible" on the TDI website.

(3) The Texas Medical Liability Insurance Underwriting Association (JUA). This insurance arrangement is designated as "active" on the TDI website.

(4) A risk retention group that is registered with the TDI and which is designated as "registered" on the TDI website.

(d) Independently procured insurance will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. To qualify for the purchased general and/or professional liability insurance payment rates, the coverage must have been purchased through an independently procured insurance. The liability insurance payment rates will not be paid to any nursing facility until HHSC Rate Analysis has received from the provider a signed and certified affidavit in the form provided by HHSC regarding the circumstances of the solicitation and procurement of coverage and evidence that independently procured taxes were paid to the Texas Comptroller. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. If, by October 1, 2003, HHSC has not received the affidavit and evidence that independently procured taxes were paid to the Texas Comptroller, HHSC will stop payment of the liability insurance payment rates until HHSC Rate Analysis receives and reviews the required information. Upon receipt and review of the affidavit and supporting information and a determination that the information is correct and complete to authorize payments, payments will be made retroactively to the effective date of the insurance policy or the date the liability insurance rates were stopped, whichever is later. HHSC may refer any questionable case to the TDI to determine if a violation of the Texas Insurance Code has occurred.

(e) Insurance purchased through a captive insurance company will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. The liability insurance payment rates will not be paid to any nursing facility until HHSC Rate Analysis has received from the provider a signed and certified affidavit in the form provided by HHSC and any requested supporting information regarding the financial arrangements and affiliation between the provider and the captive insurance company. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Insurance purchased through an "active" or "eligible" insurance company will automatically qualify for the payment rate for purchased general an/or professional liability insurance, regardless of whether such risk has been reinsured by a captive insurance company. It is the responsibility of the nursing facility to obtain any requested information from the captive insurance company or affiliates. HHSC may refer any questionable cases to TDI to determine if a violation of the Texas Insurance Code has occurred.

(f) Liability insurance payments will not be made to facilities that obtain unauthorized insurance. It is the responsibility of the nursing facility provider to ensure that liability insurance submitted for payment is authorized. Liability insurance payments made on insurance that is later determined to be unauthorized insurance will be recouped.

(g) To qualify for the purchased liability insurance payment rates each contracted entity must submit the following to HHSC Rate Analysis:

(1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis, signed by an authorized signatory for the provider as per Texas Department of Human Services Form 2031.

(2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences. For catastrophic or excess liability coverage, the evidence of coverage must also include the sum that the catastrophic or excess coverage must exceed to become payable. A binder is not acceptable as evidence of insurance.

(3) For independently procured liability insurance, the information identified in subsection (d) of this section.

(4) For insurance purchased through a captive insurance company, the information identified in subsection (e) of this section.

(h) If an insurance policy effective date is not the first day of the month, then the liability insurance payment rates will become effective the first day of the following month. If an insurance policy expiration date is not the last day of the month, then the liability insurance payment rates will be paid for the full month that includes the expiration date.

(i) It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change. Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance payment rates being stopped until documentation of the renewal per subsection (f) of this section is received by HHSC Rate Analysis.

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 September 11, 2003.

TRD-200305917
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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Proposal publication date: June 27, 2003
For further information, please call: (512) 424-6576

SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8551

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.8551 and new §355.8551 concerning the calculation of the Medicaid Vendor Drug Program dispensing fee. The repeal of §355.8551 is adopted without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4032) and will not be republished. New §355.8551 is adopted with changes to the proposed text as published in the May 23,2003 issue of the *Texas Register* (28 TexReg 4032). The text of the rule will be republished. The language in new §355.8551 modifies the components of the dispensing fee, prescribes the estimated dispensing expense and annual calculation of the expense, increases the inventory management factor comprising part of the calculation and authorizes

a delivery fee to be added to provider reimbursement under certain conditions. The changes from the proposed text are: a clarification of the criteria for payment of the delivery fee; and, the inclusion of a reference to 1 TAC §355.201 which was adopted pursuant to newly enacted §531.021(d) and (e) of the Government Code.

The changes were made as a result of a comment requesting clarification of the criteria for payment of the delivery fee and the implementation of a statutory change that occurred after the initial proposal was published.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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1 TAC §355.8551

The new rule is adopted under Texas Government Code §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; Human Resources Code, §32.021; and the Texas Government Code 531.021(a) which provides HHSC with the authority to administer the federal medical assistance program (Medicaid) in Texas; and the Texas Government Code, §531.021 (b), which provides the Health and Human Services Commission with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8551. Dispensing Fee.

The Texas Health and Human Services Commission (Commission) reimburses contracted Medicaid pharmacy providers according to the dispensing fee formula defined in this section. The dispensing fee is determined by the following formula: Dispensing Fee = (((Estimated Drug Ingredient Cost + Estimated Dispensing Expense) divided by (1 - Inventory Management Factor)) - Estimated Drug Ingredient Cost) + Delivery Fee, where:

(1) The estimated drug ingredient costs are defined in §355.8541 of this title (relating to Legend and Nonlegend Medication) and §355.8545 of this title (relating to Texas Maximum Allowable Cost).

(2) The estimated dispensing expense is $5.27 for state fiscal year 1997. This will be adjusted annually, subject to the availability of funds to account for general inflation.

(3) The inflation adjustment will be made, subject to the availability of appropriated funds, on the first day of the state fiscal year. The projected rate of inflation for the upcoming state fiscal year shall be based upon a forecast of the Implicit Price Deflator-Personal Consumption Expenditures produced by a nationally recognized forecasting firm.

(4) The inventory management factor is 2.0%.

(5) The total dispensing fee shall not exceed $200 per prescription.

(6) A delivery fee shall be paid, subject to the availability of appropriated funds; to approved providers who certify in a form prescribed by the Commission that the delivery services meet minimum conditions for payment of the fee. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and, publicly displaying the availability of prescription delivery services at no charge. The delivery fee is $.15 per prescription and is to be paid on all Medicaid prescriptions filled. This delivery fee is not to be paid for over-the-counter drugs, which are prescribed as a benefit of this program.

(7) Notwithstanding other provisions of this section, the Commission may adjust the dispensing fee to address budgetary constraints in accordance with the provisions of 1 TAC §355.201.

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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Steve Aragón
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Texas Health and Human Services Commission
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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. RAIL SAFETY RULES

SUBCHAPTER C. RAIL SAFETY PROGRAM

16 TAC §5.301

The Railroad Commission of Texas adopts new §5.301, relating to Rail Safety Program Fee, in Chapter 5, new subchapter C, relating to the rail safety program, with changes to the proposed version published in the August 1, 2003, issue of the *Texas Register* (28 TexReg 5961). The Commission adopts the new section to provide a reasonable fee to be assessed annually against railroads operating within the state, as required by Section 11, House Bill (HB) 3442, 78th Legislature, Regular Session (2003), which adds new Section 2 to Article 6448a, Revised Statutes ("the statute").

The statute provides that the Commission shall by rule adopt reasonable fees to be assessed annually against railroads operating within the state, that the Commission by rule shall establish the method by which the fees are calculated and assessed, that the total amount of fees collected by rules adopted by the Commission may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program, and that a fee collected under the statute shall be deposited to the credit of the general revenue fund to be used for the rail safety program. The statute further provides that in adopting a fee structure, the Commission may consider the gross ton miles for railroad operations in the state to provide for the equitable allocation among railroads of the cost of administering the Commission's rail safety program.

The larger railroads generate more gross ton miles per year than the smaller railroads. Because a fee based on gross ton miles will ensure that a smaller railroad will pay a smaller fee than a larger railroad, in proportion to the each railroad's annual gross ton miles, the Commission finds that assessing the fee based on gross ton miles will assure that the fees are equitably allocated among the railroads.

New §5.301(a) provides that each railroad operating within the state must pay an annual fee.

New §5.301(b) provides that each railroad operating within the state must report to the Commission, no later than July 1st of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and must be verified.

New §5.301(c) defines the term "gross ton miles" to mean either the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or, if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state; or, if a railroad is not required to file a Form R-1 with the USSTB, and if determining that railroad's actual calendar year gross ton miles is unduly burdensome, the railroad's good-faith estimate of gross ton miles as defined in new §5.301(c)(1).

New §5.301(d) provides that the Commission must determine the annual fee for each railroad operating in the state as follows: (1) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads operating in the state; and (2) the result will be multiplied by the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

New §5.301(e) provides that the Commission must, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

New §5.301(f) provides that each railroad operating in the state must, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment must be made payable to the State of Texas and will be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(e), or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(e), and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

New §5.301(g) differs from the version published in the August 1, 2003, issue of the *Texas Register* (28 TexReg 5961). In the adopted rule, subsection (g) is divided into paragraphs (1) and (2). Paragraph (1) contains the language of subsection (g) as published in the August 1, 2003, issue of the *Texas Register*. Paragraph (2) contains new language discussed below.

New §5.301(g) (1) provides that if a railroad does not timely report its gross ton miles, the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles will constitute a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

New §5.301(g)(2) provides that if the Commission has a rational basis for questioning the gross ton miles reported by a railroad, the Commission may, by letter, fax, or electronic mail, request the railroad to provide documentation or other evidence demonstrating how the railroad determined its reported gross ton miles. The request shall state the Commission's rational basis for questioning the reported gross ton miles and shall inform the railroad that it may deliver such documentation or evidence to the Commission by hand delivery, mail, fax, electronic mail or private carrier. If the Commission determines that a railroad has not provided sufficient documentation or other evidence within 14 calendar days of the request, the Commission may proceed under new §5.301(g)(1) as if the railroad did not timely report its gross ton miles. The Commission must inform a railroad whether it accepts the railroad's documentation or evidence or is proceeding under new §5.301(g)(1).

New §5.301(h) provides that fees collected under this section must be deposited to the credit of the general revenue fund to be used for the rail safety program.

New §5.301(i) provides that its provisions will control during the period beginning on the effective date of this section and ending on May 10, 2004. The definition of "gross ton miles" in new subsection (c) applies to subsection (i).

New §5.301(i)(1) requires each railroad operating within the state that is required to report its gross ton miles to the USSTB to report to the Commission, no later than October 15, 2003, the railroad's gross ton miles for calendar year 2002. The report must be in writing, signed by a duly authorized officer of the railroad, and must be verified. The Commission will then determine the annual fee of each such railroad operating in the state as follows: each such railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under proposed §5.301(i)(1) for calendar year 2002, and the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003. The Commission must, no later than November 1, 2003, notify each such railroad of the amount of the railroad's annual fee that is due and payable. Each such railroad must, no later than December 31, 2003, pay the fee to the Commission as provided in proposed new §5.301(f), except that the Commission will consider the payment to be timely made if it is received by the Commission on or before December 31, 2003, or is sent to the Commission by first- class United

States mail in an envelope properly addressed, stamped, and postmarked on or before December 31, 2003, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

New §5.301(i)(2) requires each railroad operating within the state that is not required to report its gross ton miles to the USSTB to report to the Commission, no later than February 1, 2004, the railroad's gross ton miles for calendar year 2002. The report must be in writing, signed by a duly authorized officer of the railroad, and must be verified. The Commission will then determine the annual fee of each such railroad operating in the state as follows: each such railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under proposed §5.301(i)(2) for the calendar year 2002, and the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003. The Commission must, no later than March 1, 2004, notify each such railroad of the amount of the railroad's annual fee that is due and payable. Each such railroad must, no later than April 30, 2004, pay the fee to the Commission as provided in proposed §5.301(f), except that the Commission will consider the payment to be timely made if it is received by the Commission on or before April 30, 2004, or is sent to the Commission by first- class United States mail in an envelope properly addressed, stamped, and postmarked on or before April 30, 2004, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

The Commission received four comments: one from Fort Worth & Western Railroad; one from Ironhorse Resources, Inc., on behalf of its two Texas rail subsidiaries, Rio Valley Switching Company and Southern Switching Company; one from the Moscow, Camden & San Augustine Railroad; and one jointly from Union Pacific Railroad Company, the Burlington Northern and Santa Fe Railway Company, the Texas City Terminal Railway Company, the Port Terminal Railroad Association, and the Houston Belt & Terminal Railway Company.

One comment noted that the proposed rule refers to 41 railroads operating within the state while the Texas Rail Plan shows 44 railroads operating within the state. The Commission disagrees that there are 44 railroads currently operating in the state. The Texas Rail Plan was created several years ago and was likely accurate at the time; however, there are now 41 railroads operating within the state, according to the Commission's more current information. The Commission acknowledges that the number of railroads operating within the state may change from year to year. While this economic reality may cause the amount of each operator's fee to vary from year to year, it does not require any amendment to the new §5.301.

The comment also states that the new rule does not provide that all funds collected under the rule are used only for railroad safety activities, but go into a general fund that could be diverted to other uses. The Commission disagrees with this comment because Section 2(e), Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, requires that the collected fees be deposited to the credit of the general revenue fund to be used for the rail safety program. Subsection (h) of the new rule also requires that fees collected under rule shall be deposited to the credit of the general revenue fund to be used for the rail safety program. Both the statute and the new rule require that the fees be used for the rail safety program. Another comment expressed concern that the new fee might be used for other purposes and requested that the railroads be furnished summary expense data from the Commission at the end of each fiscal year to assure the fees have been used only for rail safety. The Commission shares the concerns expressed by this comment and reiterates that both the statute and the new rule require that the fees be used for the rail safety program. Any railroad, other entity, or individual may request expense data from the Commission to verify that the fees have been used only for the rail safety program, pursuant to the state's public information laws, Chapter 552, Government Code. Accordingly, no change to the new rule is required by these comments.

One commenter advocated that a flat fee of $500 should be assessed to the small (Class III) railroads to ensure a minimal impact on small and micro-businesses, that small railroads do not keep gross ton mile calculations, and that a percentage proportion based on gross ton miles does not take into consideration the marginal status of small railroads and the capital requirements needed to upgrade these small companies. The Commission disagrees with these comments. The Commission considered establishing a flat fee for the smaller railroads, but due to the diversity in size of the smaller railroads, the Commission determined that a flat fee would be unduly burdensome on the smallest railroads. An unduly burdensome flat fee would exacerbate any effect on the marginal status or capital requirements of the smaller railroads. Basing the fee on gross ton miles is specifically authorized by the statute and provides for a fair allocation among railroads of the cost of administering the Commission's rail safety program, as required by Section 2(d), Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, by ensuring that small business and micro-business railroads will pay significantly smaller fees than the largest businesses required to pay the fee. If a railroad does not keep track of gross ton miles, it may make a good faith estimate or have the Commission make a good faith estimate of its gross ton miles.

Two comments maintain that the gross ton miles to be reported by the state's Class I and Class II railroads includes the gross ton miles of at least some of the state's Class III railroads. One of those two comments specifically states that the fee for the gross ton miles for the Port Terminal Railroad Association will be paid in part by Union Pacific, by Burlington Northern and Santa Fe and by the Texas-Mexican Railway. The comment also states that the fees for the gross ton miles of Houston Belt & Terminal Railway and Texas City Terminal Railway will be paid by Union Pacific and Burlington Northern and Santa Fe. The comment states the belief that the Port Terminal Railroad Association, Houston Belt & Terminal Railway, and Texas City Terminal Railway will not pay separate fees. The comment concludes that this proposed procedure will not violate the new rule because the reports will be filed and the fees will be paid for those three railroads although they will be part of the total reports and fees paid by Union Pacific, Burlington Northern and Santa Fe and the Texas-Mexican Railway. The Commission does not disagree with this analysis. The statute and the new rule require that each railroad operating in the state be assessed and pay an annual fee. The Commission acknowledges that neither the statute nor the new rule require gross ton miles to be reported twice or that railroads be twice assessed a fee. One railroad may voluntarily pay the fee

for another railroad. However, each railroad must report its gross ton miles to the Commission which will then assess the fee for each railroad. If one railroad's gross ton miles are included within another railroad's report, the railroad or the Commission may estimate the gross ton miles for that railroad.

Two commenters maintain that because the smaller railroads do not keep track of gross ton miles, that allowing good faith estimates of gross ton miles by these railroads will result in arbitrary or unfair fee assessments. The Commission intends to proceed on the assumption that all the railroads will strive to make good faith estimates as accurately as possible, because these estimates must be verified pursuant to subsections (b), (i)(1)(A) and (i)(2)(A) of the new rule. The fees to be assessed against the railroads that do not keep track of gross ton miles are estimated to be only five percent of the total fees to be paid by all railroads; this five percent of the total fees will be divided among 38 Class III railroads. Three of the Class III railroads may have their gross ton miles reported and fees paid by the state's largest railroads, according to a comment discussed above. Any inaccuracy in the good faith estimates of the remaining railroads will have a minimal effect on the amount of the fee assessed against any particular railroad.

Two commenters maintain that the fee is a "tax" that increases the cost of doing business in Texas and will place railroads at a competitive disadvantage with the trucking industry and other competing industries. The Commission acknowledges that any fee will increase the cost of doing business. However, regardless how the commenters choose to characterize the fee, the fee and the rule are mandated by statute and the Commission has no discretion but to adopt the new rule.

One commenter suggested that a formula for figuring gross tons would be simpler and stated that the gross weight of each rail car changes with each load. The Commission agrees that the gross weight of each rail car changes with each load. This is true whether the fee is based on gross tons or on gross ton miles. The Commission also agrees that computing gross tons is mathematically simpler than computing gross ton miles. However, the number of miles transported is an important factor in determining a fee to pay for the cost of rail safety inspections which involves miles of track as well as the load borne by the track. The Commission acknowledges that there may be methods other than gross ton miles to calculate the fee in an equitable manner and will consider these methods in a possible future rulemaking proceeding.

One comment maintains that the statute and its companion legislation, Senate Bill 1952, 78th Legislature, Regular Session, 2003, limits the fees to operate the Commission's rail safety program to $1,138,686 for fiscal year 2004 and $1,137,336 for fiscal year 2005. The comment states that when the appropriation was passed in Article IX, Section 11.59(c) of the General Appropriations Act for fiscal years 2004 and 2005 (House Bill 1, 78th Legislature, Regular Session, 2003), the appropriations to the rail safety program were contingent upon the fees recovering "other direct or indirect costs" of the program and that therefore the fees for fiscal year 2004 will total $1,574,552. The Commission notes first that Senate Bill 1952 did not pass. The statute and the General Appropriations Act were enacted into law, effective September 1, 2003. The new statute provides, in Section 2(c), Art. 6448a, that the total amount of fees to be collected by the new rule may not exceed the amount estimated by the Commission to be necessary to recover the costs of *administering* the commission's rail safety program. No total dollar amount is established or mentioned in the statute. It is reasonable to construe the statute to mean that the costs of administering the program include both direct and indirect costs, especially when indirect costs includes salaries and operating expenses to administer the rail safety program. Further, the Appropriations Act requires the Commission to assess "fees sufficient to generate, during the 2004-05 biennium, revenue to cover, at a minimum the General Revenue appropriations for the Rail Safety program as well 'Other direct and indirect costs' for the program appropriated elsewhere in this act." Article IX, Sec. 11.59(c), General Appropriations Act, House Bill 1, 78th Legislature, Regular Session, 2003. The Commission is under a statutory command to assess fees to recover the direct and indirect costs of the rail safety program. The comment does not specifically object to the inclusion of the direct and indirect costs of administering the program, but points out that federal law requires that railroads in Texas not be singled out for discriminatory tax treatment in comparison to other modes of transportation and cautions the Commission to be mindful of federal law requirements. Putting aside whether the fee is a "tax," the Commission disagrees with the implied objection, if any, to including the direct and indirect costs of administering the program for the reasons stated above. The Commission is mindful of federal requirements but must comply with the legislative mandate.

The Commission adopts new §5.301 pursuant to Section 2, Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, which requires the Commission by rule to adopt reasonable fees to be assessed annually against railroads operating within the state and further requires that the total amount of fees estimated to be collected may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program. The statute provides that the Commission may consider gross ton miles for railroad operations within the State of Texas to provide for the equitable allocation among railroads of the cost of administering the rail safety program and that collected fees be deposited to the credit of the general revenue fund to be used for the rail safety program.

Statutory authority: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003.

Cross reference to statute: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003.

Issued in Austin, Texas on September 9, 2003.

§5.301. Rail Safety Program Fee.

(a) Each railroad operating within the state shall pay an annual fee as provided by this section.

(b) Each railroad operating within the state shall report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.

(c) As used in this section, "gross ton miles" means:

(1) the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or

(2) if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state; or

(3) if a railroad is not required to file a Form R-1 with the USSTB, and if determining the railroad's actual calendar year gross ton miles is unduly burdensome, the railroad's good-faith estimate of gross ton miles as defined in paragraph (1) of this subsection.

(d) The Commission shall determine the annual fee for each railroad operating in the state as follows:

(1) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads operating in the state; and

(2) the result will be multiplied by the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

(e) The Commission shall, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

(f) Each railroad operating in the state shall, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment shall be made payable to the State of Texas and shall be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to subsection (e) of this section, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given, pursuant to subsection (e) of this section, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(g) The following requirements apply to railroad reports.

(1) If a railroad does not timely report its gross ton miles, the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles constitutes a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

(2) If the Commission has a rational basis for questioning the gross ton miles reported by a railroad, the Commission may, by letter, fax, or electronic mail, request the railroad to provide documentation or other evidence demonstrating how the railroad determined its reported gross ton miles. The request shall state the Commission's rational basis for questioning the reported gross ton miles and shall inform the railroad that it may deliver such documentation or evidence to the Commission by hand delivery, mail, fax, electronic mail or private carrier. If the Commission determines that a railroad has not provided sufficient documentation or other evidence within 14 calendar days of the request, the Commission may proceed under paragraph (1) of this subsection as if the railroad did not timely report its gross ton miles. The Commission shall inform a railroad whether it accepts the railroad's documentation or evidence or is proceeding under paragraph (1) of this subsection.

(h) Fees collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

(i) This subsection controls during the period beginning on the effective date of this section and ending on May 10, 2004. The definition of "gross ton miles" in subsection (c) of this section applies to this section.

(1) This paragraph applies to each railroad operating within this state that is required to report its gross ton miles to the USSTB.

(A) Each railroad shall report to the Commission, no later than October 15, 2003, the railroad's gross ton miles for the calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.

(B) The Commission shall determine the annual fee of each railroad operating in the state as follows:

(i) each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for calendar year 2002; and

(ii) the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

(C) The Commission shall, no later than November 1, 2003, notify each railroad of the amount of the railroad's annual fee that is due and payable.

(D) Each railroad shall, no later than December 31, 2003, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before December 31, 2003, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before December 31, 2003, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(2) This paragraph applies to each railroad operating within this state that is not required to report its gross ton miles to the USSTB.

(A) Each railroad shall report to the Commission, no later than February 1, 2004, the railroad's gross ton miles for calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the operator, and shall be verified.

(B) The Commission shall determine the annual fee of each such railroad operating in the state as follows:

(i) each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for the calendar year 2002; and

(ii) the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

(C) The Commission shall, no later than March 1, 2004, notify each railroad of the amount of the railroad's annual fee that is due and payable.

(D) Each railroad shall, no later than April 30, 2004, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before April 30, 2004, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before April 30, 2004, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

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 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas adopts amendments to §§9.101, 9.114, 9.131, 9.135-9.137, 9.140-9.142, 9.206, 9.301, 9.307, 9.311, 9.312, 9.401, and 9.402 of this title relating to Filings Required for Stationary LP-Gas Installations; Odorizing and Reports; 200 PSIG Working Pressure Stationary Vessels; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; Inspection of Cylinders at Each Filling; Uniform Protection Standards; Uniform Safety Requirements; LP-Gas Container Storage and Installation Requirements; Vehicle Identification Labels; Adoption by Reference of NFPA 54; Identification of Converted Appliances; Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; Certification Requirements for Joining Methods; Adoption by Reference of NFPA 58; and Clarification of Certain Terms Used in NFPA 58, without changes, and §9.143, relating to Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More, and §9.403, relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections, with changes to the versions published in the June 27, 2003, issue of the *Texas Register* (28 TexReg 4799). The Commission adopts these amendments in order to adopt by reference the 2001 edition of National Fire Protection Association (NFPA) *Liquefied Petroleum Gas Code*, commonly referred to as NFPA 58, in place of the 1998 edition adopted by reference effective February 1, 2001, and to make other substantive and non-substantive amendments. The changes adopted that differ from the proposal are found in §9.143(a) and (b), and the table in §9.403(a) in the rows for 2.3.3.2(b)(1), 2.3.3.2(b)(2), 3.2.3.1(c), 3.2.5, and 3.2.12.1; these changes are discussed more fully in subsequent paragraphs.

Texas Natural Resources Code, §113.011, provides that the Commission shall administer and enforce the laws of Texas and the rules and standards of the Commission relating to liquefied petroleum gas (LP-gas). Texas Natural Resources Code, §113.051, provides that the Commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the liquefied petroleum gas industry that will protect or tend to protect the health, welfare, and safety of the general public. Texas Natural Resources Code, §113.052, provides that the Commission may adopt by reference, in whole or in part, the published codes of the National Fire Protection Association to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Recently, it has become more difficult for LP-gas businesses doing business in Texas to conduct business regionally and/or nationally due to differences in state rules and regulations. Differing state requirements increase costs associated with operating an LP-gas business with operations in Texas and one or more additional states. Current national standards, which have been adopted by the Commission, impose safety standards and specifications on LP-gas businesses that insure a high degree of safety to the public health, safety, and welfare. Therefore, the Commission finds that it is in the public interest to adopt by reference national safety standards in order to increase public safety and remove regulatory burdens that increase the cost of operating an LP-gas business. In 2001, the Commission adopted the 1998 edition of NFPA 58. The Commission either adopted alternative or additional language for or did not adopt certain sections of the 1998 edition of NFPA 58, which are indicated in the table in §9.403(a). Because the 2001 edition of NFPA 58 has been adopted in whole or in part by most other states in the United States, the Texas LP-gas industry would benefit from adopting the update to the 2001 edition of NFPA 58, because Texas companies would be held to the same standards when doing business in other states; therefore, LP-gas companies wishing to expand their businesses to other states would have find it easier to do so.

The Commission adopts some amendments in order that the rules remain consistent with the 2001 edition of NFPA 58. Also, as the Commission did when adopting the 1998 edition, there are some sections in the 2001 edition of NFPA 58 for which the Commission adopts alternative or additional language, or language which the Commission does not adopt; these sections are indicated in the table in §9.403(a). The table also shows sections in NFPA 58 which were published with typographical or other errors that were corrected by NFPA in errata documents published at a later date.

The Commission included Chapter 9 in the adoption of the 1998 edition of NFPA 58 and will likewise adopt Chapter 9 in the update to the 2001 edition, even though at this time there are no installations in Texas covered by this chapter.

As with the adoption of the 1998 edition of NFPA 58, the Commission does not adopt Chapter 10 regarding marine shipping and receiving, because the Commission's §9.1 states that the LP-gas safety rules do not apply to these types of installations or activities.

Also, the Commission does not adopt language in NFPA 58 and other related pamphlets referring to the practice of engineering (such as "sound engineering practices" or "good engineering practices," for example) and has attempted to maintain this distinction in the update to the 2001 edition of NFPA 58.

Adopted Non-substantive Amendments

NFPA changed its numbering scheme between the 1998 and the 2001 editions of NFPA 58 from a number using a dash and periods to a number using all periods. For example, in §9.101(c)(2), the reference to NFPA 58 §3-2.2.3 is now §3.2.2.3. There are many instances throughout these rules where this non-substantive change has been proposed. In particular, the Commission rules which have amendments adopted solely to change the NFPA section numbers include §9.101, 9.114, 9.131, 9.135, 9.136, 9.137, 9.140, 9.141, 9.142, 9.206, 9.307, 9.311, and 9.312.

Clarifying and Substantive Amendments

The Commission adopts both substantive and non-substantive amendments to §9.143. The amendments in §9.143(a) reflect the rule numbering scheme of the 2001 edition of NFPA 58, correct some NFPA 58 section numbers, and add new language to exempt the filling of a container solely through a 1-3/4 inch double back check filler valve, directly installed in the container, and (in a change from the proposal) to allow the use of a commercially manufactured liquid evacuation valve, as discussed in a subsequent paragraph, from the requirements of §9.143; the wording for this exemption is also proposed in subsection (b). The reason for this exemption is that no bulkhead and ESV protection is required if containers are filled through a standard filler valve with double back check capabilities. These valves are designed to shear at an engineered point without loss of product in the event of a pull-away accident. The Commission finds that requiring bulkheads and ESVs on these small filler valves would be overly burdensome.

Amendments to §9.143(d)(7)(E)(iii) and (e) are non-substantive and reflect the rule numbering scheme of the 2001 edition of NFPA 58. The amendment to subsection (g) changes the requirements for stainless steel flexible connectors from 24 inches in length or less to 36 inches in length or less. The 2001 edition of NFPA 58, §1.7.26, defines the term "flexible connector" as not exceeding 36 inches, and §3.2.17 mandates that flexible connectors and hose used as flexible connectors shall not exceed 36 inches in length. The amendment to increase the maximum length to 36 inches is made in order to make Commission rules consistent with the 2001 edition of NFPA 58. The change in this requirement will not decrease safety and, in certain circumstances, may increase safety. Limiting a flexible connector's length to 24 inches may, in effect, make that connector rigid due to the physical limitations of the space in which it is installed. In circumstances where the connector needs a minimum amount of flexibility and the 24- inch maximum length reduces needed flexibility, safety may be compromised. For this reason, the Commission adopts this amendment to be consistent with the 2001 edition of NFPA 58.

New §9.401(a) adopts by reference the 2001 edition of NFPA 58, effective September 1, 2003, in order to update the 1998 edition currently adopted by the Commission. Adopted amendments to §9.401(b) are non-substantive and reflect the rule numbering scheme of the 2001 edition and update the edition dates of other NFPA standards and codes cited by the 2001 edition of NFPA 58.

Amendments in §9.402(a) are non-substantive, reflect the numbering scheme of the 2001 edition, and delete the term "engineering" which is no longer defined in the 2001 edition. The Commission, however, retains the language in subsection (b) which clarifies the Commission's policy on the practice of engineering.

Amendments in §9.403(a) include a non-substantive amendment to reflect NFPA's publication of a November 19, 2001, errata sheet. The errata sheet, prepared by NFPA, shows corrections such as typographical and other errors that were printed in the 2001 edition of NFPA 58. These errors are shown with their corrected wording on the applicable rows in the Table. In addition, the Commission adopts a new Table 1 in §9.403 to replace the previous table showing the NFPA 58 sections not adopted, adopted with changes, or in addition to existing Commission rules.

In the new table in §9.403(a), the Commission specifies which provisions of the 2001 edition of NFPA 58 it is adopting with changes, additional requirements, not adopting, and which have errata published by NFPA and corresponding corrections.

The Commission adopts this rule with changes from the proposal; the changes are discussed in subsequent paragraphs of this preamble.

NFPA 58 Sections Adopted with Additional Requirements

The rows in the table in §9.403 which indicate "additional requirements" refer to other Commission rules that accompany the NFPA 58 section. There are three types of changes within this category. The first group includes changes solely in the numbering scheme for the NFPA 58 section; for example, former NFPA 58 §1-3 is now §1.3. These sections, which have no changes other than the NFPA 58 section numbering scheme, are §§1.3, 2.2.1.4, 2.2.2.2, 2.2.6.1, 2.3.2.3, 2.4.4, 2.4.4.3, 2.4.6, 3.2.2.2, 3.2.2.3, 3.4.2.4, 3.9.3.8, 4.2.3.8, 4.4.3.1, 5.2.1.1, 5.4.2.1, and Appendix A.

The second group includes NFPA 58 sections which were reorganized as well as renumbered; for example, §1-6 in the 1998 edition of NFPA 58 is now §1.7.11 in the 2001 edition. No other changes are adopted. These sections include §1.7.11 (formerly §1-6), §3.2.2.8 (formerly §3-2.2.9), §3.2.4.2 (formerly §3-2.4.1(c), §3.2.4.4 (formerly §3-2.4.1(f), §3.2.9.1 (formerly §3-2.4.8(a); and §3.2.9.2(d) (formerly §3-2.4.9(d).

The third group includes the renumbering and some reorganization of the NFPA 58 sections, but also includes some other changes.

In §1.5, the Commission adopts the same changes as in the 1998 edition, with the additional clarification of the specific Commission rules that are applicable, whereas the exception adopted for the 1998 edition of the provision pointed out the applicable rule chapter and subchapter.

The Commission adopts an additional requirement for §2.6.2.1 in the 2001 edition, whereas in the 1998 edition the Commission adopted §2-6.2.1 with changes. The Commission does not adopt the prior change to §2.6.2.1 which required that an appliance be used according to the manufacturer's instructions. The prior exception is not needed because the Commission's rule 9.307 applies and it is not necessary to state that requirement as an exception to the NFPA provision. The Commission does not have control over the content of appliance instructions written by the manufacturer; such a requirement can, in effect, promulgate nonuniform and differing requirements for the same type of appliance made by different manufacturers; and NFPA 54, which the Commission has adopted, contains provisions addressing LP-gas appliances.

The Commission adopts an exception to §3.2.17 as an additional requirement instead of changing the provision as was done for §3-2.10.10 of the 1998 edition. The exception to the 1998 edition version required operators to comply with §9.143, which they would have to do despite the exception to this particular NFPA provision. Therefore, the Commission adopts wording to show §9.143 as an additional requirement rather than amending the text of the NFPA provision.

The Commission adopts the same type of change for §3.9.3.10 and §3.11.4.3(c). The exception to §3-9.3.10 in the 1998 edition added language telling operators to see Commission rule 9.140. Operators are already required to comply with §9.140; therefore, the Commission adopts wording to show §9.140 as an additional requirement rather than amending the text of the NFPA provision.

The same change is adopted for §3-11.4.3(c)(3).

Sections in NFPA 58 Not Adopted

There are three groups of NFPA 58 sections which the Commission does not adopt. The first group includes sections in the 1998 edition which were not adopted and are not adopted now; the only change is the numbering scheme. These sections are §§1.4.1, 1.4.2, 2.2.6.3, 2.2.6.5, 3.4.8.3, 3.11.5, 4.2.1.2, 5.3.1, 5.4.2.2, and Chapter 10. The row for 3.2.3.1(c) was included in this group in the proposal, but is adopted with a change, discussed in a subsequent paragraph.

The second group includes NFPA 58 sections which were reorganized as well as renumbered; for example, §1-6 is the 1998 edition is now §1.7.40 in the 2001 edition. The sections which have these types of changes are §1.7.40 (formerly §1-6), §§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6 (which were formerly all part of §3-2.10.11), and §8.1.3 (formerly §8.1.4).

The third group includes the renumbering and some reorganization of the NFPA 58 sections, but also includes some other adopted changes.

The requirements of §2-3.3.2 in the 1998 edition are substantively the same as the requirements of §2.3.3.2 in the 2001 edition. However, the text of §2.3.3.2 in the 2001 edition has been rewritten and is structurally different from §2-3.3.2 of the 1998 edition. As a result, the Commission has adopted with changes §2.3.3.2(a)-(b)(2), which in effect is no change from the Commission's adoption with changes of §2-3.3.2 of the 1998 edition. By not adopting §2.3.3.2(b)(3)-(4) of the 2001 edition, the requirements of this provision are substantively the same as the Commission's adoption with changes of §2-3.3.2 in the 1998 edition. The Commission adopts some changes from the proposal in the rows for 2.3.3.2(b)(1) and (b)(2), discussed in a subsequent paragraph.

The Commission does not adopt §3.3.3.6 of the 2001 edition because these requirements are covered by the exceptions to §2.3.3.2 of the 2001 edition. Section 3-3.3.7 in the 1998 edition was renumbered §3.3.3.6 in the 2001 edition. The requirements of Texas' exceptions to §3-3.3.7 in the 1998 edition are found in §2.3.3.2 of the 2001 edition.

The Commission does not adopt §5.4.3 of the 2001 edition because the text of this provision mandates an exception under certain conditions. The Commission has existing rule provisions for granting exceptions to its rules.

Sections in NFPA 58 Adopted with Changes

There are four groups of NFPA 58 sections which the Commission adopts with changes. The first group is sections which are adopted with the same changes in the 2001 edition as in the 1998 edition; the only difference is the numbering scheme. These are §§2.2.6.4, 3.2.2.1, 3.4.9.2, 3.4.2.1, 3.4.2.7, 6.3.6, 8.2.8.1, and 8.2.10.

The second group includes NFPA 58 sections which were reorganized as well as renumbered. These sections are §3.2.5 (formerly §3-2.4.1(a), §§3.2.18.1, 3.2.18.2, and 3.2.18.3 (formerly all part of §3-2.11), §3.8.2.8(e) (formerly §3- 8.2.7(d), and §3.4.4.1 (formerly §3-4.4). The Commission adopts a change from the proposal in the row for 3.2.5, discussed in a subsequent paragraph.

The third group includes NFPA 58 sections which were proposed with changes to the 1998 edition to address forthcoming changes in the 2001 edition. Now that these changes are part of the 2001 edition, the exceptions are no longer needed. These sections include §2-3.7(a), §3-2.2.7, §3-2.4.2(c), §3-2.4.3(a), §3-2.4.7(d), §3.2.9.3(d), §3.2.16.14 (formerly §3- 2.10.8(j), §§3.2.15.9 and 3.2.15.10 (formerly §3-2.10.9), §§3.2.11 through 3.2.15, §3.2.25.1(a) (formerly §3- 2.16.1.(a), §3.4.4.2 (formerly §3-4.4.(b), §3.4.5.1, §3.10.2.2 (formerly §3-10.2.3), §4.2.2.3, §5.4.1, and §8.2.3 (formerly §8-2.3.1).

The fourth group includes NFPA 58 sections which were adopted with changes to the 1998 edition and which are adopted now with some different changes to the 2001 edition.

The Commission adopts §2.2.1.5 of the 2001 edition as written, thus removing the exception made to §2-2.1.5 in the 1998 edition. The Commission has determined that it will increase public safety to require requalification of cylinders which may be installed adjacent to buildings without a distance separation.

The Commission retains the same changes to §2.3.1.5 as were made to §2-3.1.5 in the 1998 edition in regards to the size requirements of cylinders. The Commission does not adopt any changes with regard to the dates that were made in the 1998 edition of §2-3.1.5 because those dates have passed.

The Commission adopts a change to §2.3.3.2(a)(5) in order to make the provision consistent with the size of cylinder over which the Commission has jurisdiction under Texas Natural Resources Code, Chapter 113.

The Commission adopts a change to §3.2.12.1 similar to that made to §3-2.7.1 in the 1998 edition. In the 2001 edition of this provision, the Commission is changing the date on which single-stage regulators shall not be installed in fixed piping systems to February 1, 2001, which is consistent with the effective date of the adoption of the 1998 edition of NFPA 58. The Commission adopts a change from the proposal in the row for 3.2.12.1, discussed in a subsequent paragraph.

The Commission adopts a change to §3.2.24 in the 2001 edition in order to remove a reference to engineering practice. This change is consistent with the exception to the 1998 edition, §3-2.15.

The Commission adopts a change to §3.7.2.2 by removing "commercial" from the exception for fixed electrical equipment at installations of LP-gas systems. The justification for this change is that the Texas definition of "commercial" includes industrial applications and differs from the NFPA definition of "commercial," which excludes industrial applications and is based on tank size rather than operational activity.

The Commission adopts changes to §§3.11.3, 3.11.3.1, and 3.11.3.3 in order to make these provisions consistent with the Commission's adopted version of §2.3.3.2. The provisions of §§3.11.3, 3.11.3.1, and 3.11.3.3 are substantively the same as §3-11.3 of the 1998 edition and therefore is not a substantive change to §3-11.3 of the 1998 edition as adopted by the Commission with exceptions.

The Commission adopts changes to §4.4.3.2 in order to make this provision consistent with the requirements of Commission rule §9.136.

The exceptions to §§6-2.4 and 6-3.7 in the 1998 edition are not retained in the 2001 edition because the language in the 2001 edition is consistent with all fire extinguisher requirements in NFPA 58 and the exceptions create a third standard in addition to Department of Transportation federal requirements.

The exception to §6-3.3.4 in the 1998 edition is not retained in the 2001 edition because the implementation date in the Texas exception has passed and no exception is needed.

The Commission adopts changes to §6.5.2.1 in order to allow the exceptions as provided by the 2001 edition. The Commission did not adopt any of the exceptions in §6-5.2.1 in 1998 edition. However, the Commission has determined that it is less dangerous to public safety to transport a container with product for evacuation under controlled conditions than to attempt to evacuate a container within a residential or commercial environment.

The Commission adopts changes to §8.2.3(1) in order to allow the use of overfill prevention devices under certain limited circumstances. This is a change from the Commission's adopted exception to §8-2.3(k) of the 1998 edition which did not allow the sole use of overfill prevention devices.

The Commission adopts changes to §8.2.6.6 which are substantively the same as the changes made to §8-2.6.6 in the 1998 edition. The change to §8.2.6.6 in the 2001 edition will additionally allow original vehicle manufacturers to design and manufacture container mounting brackets.

The Commission does not adopt a change to the definition of "bulk plant" in the 2001 edition as was done in §1-6 of the 1998 edition. The definition of "bulk plant" has been changed in the 2001 update to remove a gallon requirement. Therefore, the 2001 edition's definition of "bulk plant" is consistent with current Commission rules and no exception is needed.

The Commission's exceptions to §§2-2.3.2, 2-2.3.3, and 2-2.3.6 of the 1998 edition removed certain dates. In the 2001 edition version of these rules, the Commission retains these dates because these dates refer to ASME design change dates, not rule implementation dates, and therefore no exceptions are needed.

The exception to §2-3.2.5 in the 1998 edition is not retained in the 2001 edition because the February 1, 2002, date has passed and all cylinders up to February 1, 1988, have already been required to have had their relief valves replaced.

The Commission's exceptions to §§2-3.4.2, 2-3.4.2(a) and 2-3.4.2(c) of the 1998 edition removed certain dates. In the 2001 edition, the Commission retains these dates because they refer to ASME design change dates, not rule implementation dates, and therefore no exceptions are needed.

The exception to §3-2.4.8(h)(3) in the 1998 edition is not retained in the 2001 edition, renumbered §3.2.9.1(f)(3), because the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission) does not have rules addressing these items and therefore no exception is needed.

The exception to §8-2.3.1(l) in the 1998 edition is not retained in the 2001 edition provision §8.2.3(j) because the design date has passed and no exception is needed.

The exception to §8-3.7 in the 1998 edition is not retained in the 2001 edition provision §8.3.7 because the implementation date has passed and no exception is needed.

Discussion of Comments Received and Changes Adopted that Differ from the Proposal

The Commission received three comments on the proposed amendments, one from an association. The Texas Propane Gas Association (TPGA) expressed support with the overall progress of the rulemaking project and commented on four specific proposals. First, regarding NFPA 58, 3.2.3.1(c), the Commission proposed this section (in the table in §9.403) as "not adopted," with a notation to see §9.27, relating to Application for an Exception to a Safety Rule. Section 3.2.3.1(c) refers to filling tanks installed on roofs. TPGA commented that this section should be adopted as written in NFPA 58; otherwise, the Commission's rules would allow tanks to be installed on roofs, but not filled.

The Commission agrees with this comment and has removed the row for 3.2.3.1(c) from the table in §9.403; by removing it from the table, the section is considered adopted as written in NFPA 58.

The second comment concerned NFPA 58, 3.2.5, which the Commission proposed in the table in §9.403 to be adopted with changes; the changes require that cylinders be set upon a firm foundation "of concrete or masonry." TPGA recommended that this section be adopted without any changes to the NFPA 58 wording; doing so would allow small cylinders to be mounted on a steel foundation which would provide for ample firmness. TPGA stated that the authority having jurisdiction (which the Commission has defined as being the Commission itself) could make the determination as to what constitutes a firm foundation.

The Commission agrees with this comment in principle, but disagrees with adopting 3.2.5 without any changes. The wording in NFPA 58 is unclear that the intent is not to set containers on wood or directly on the ground. The Commission adopts a slight nonsubstantive change from the proposal in the row for 3.2.5 to allow a foundation of metal, in addition to concrete or masonry.

TPGA's third comment concerned NFPA 58, 3.2.12.1, regarding two-stage and single-stage regulators. The Commission's proposal regarding this section was also found in the table in §9.403; the Commission proposed adopting 3.2.12.1 with one change: The last sentence would read, "Single-stage regulators shall not be installed in fixed piping systems after February 1, 2001," instead of the June 30, 1997, date in the current wording. TPGA stated that this wording could be interpreted to require all single-stage regulators to be replaced and suggested that the last sentence be changed to read, "Anyone installing a regulator after February 1, 2001, shall not install a single-stage regulator system."

The Commission's LP-Gas Advisory Committee made this similar comment at its June 2, 2003, meeting.

The Commission agrees in principle with the comments, but has added a new sentence to the end of this row that is more specific to the intent of the rule and clarifies that certain single-stage regulators are allowed to remain in service.

TPGA's fourth comment concerned proposed new wording to be added to §9.143(a) to exempt a container with a water capacity of 4,001 gallons or more from the bulkhead and ESV requirements if the container is filled through a 1 3/4 inch filler valve. TPGA also stated that the proposed new wording does not address exempting the same containers from the bulkhead and ESV requirements when product is removed from the container. TPGA stated that bulkheads and ESVs are necessary when product is being transferred through piping to and from cargo containers to stationary installations. However, TPGA also stated that a bulkhead and ESV would not be needed when a liquid evacuation valve is used to remove product on an emergency basis, or when a container is filled through a 1 3/4 inch double back check filler valve. TPGA recommended that an exemption be included

in the rule to allow the use of a liquid evacuation valve and filling a container through a double back check filler valve without requiring a bulkhead or ESV.

The Commission attempted to address the comment regarding the 1 3/4 inch filler valve in the exception to 2.3.3.2(b)(2) in the table in §9.403(a), but this section's relationship to §9.143(a) inadvertently was not clear. To clarify, the Commission adopts a change in 2.3.3.2(b)(2) to add a reference to the use of a double back flow check filler valve. This adopted change should clarify 2.3.3.2(b)(2) and §9.143(a), as well as make the requirements of these two rules consistent. In addition, in 2.3.3.2(b)(1), the Commission adopts a change from the proposal to add a back flow check valve. This change will make 2.3.3.2(b)(1) consistent with 2.3.3.2(b)(2)4. The Commission has also adopted additional wording in §9.143(a) and (b) to allow the use of a commercially manufactured liquid evacuation valve to allow the emergency removal of product.

The second comment was from Ford Motor Company (Ford) and concerned NFPA 58, 8.2.3(l), which the Commission proposed in the table in §9.403 to adopt with some wording changes. Ford requested that this proposed wording change be postponed until an analysis can be conducted, including the intended customer evaluation procedure, verification documentation required, and the type of tank marking proposed. Ford stated that its products will be certified to the applicable regulations, FMVSS and NFPA, at the time they are manufactured and offered for sale. The yearly inspection proposed will affect Ford's customers and dealers in ways that are undefined in the proposed rule. Ford asked how the customer will determine what to do, and what test method or acceptance criteria will be required to evaluate if the OPD is working properly. Without a test method, Ford stated it cannot determine if the owner can make the assessment and if the Commission would agree with that assessment. Testing an OPD is not a routine procedure that is performed by dealerships in the same manner as an oil change or tire rotation.

The Commission disagrees with the comment. The Commission does not establish testing procedures for OPDs and the rule in fact does not require testing. The rule requires only that OPDs are verified to be working properly. The rule allows an option to a fixed-liquid level gauge.

Ford also requested time to comment on whatever type of marking will be required to ensure tank integrity, and suggested that an inspection method and acceptance criteria for State and private vehicles will need to be developed.

The Commission disagrees that further specification is necessary for this marking; the rule states the OPD should be clearly marked.

Ford also commented that replacement of a properly working OPD valve every two years may have warranty implications, depending on implementation. Ford does not customarily cover under warranty the replacement of working parts. Further, in the event replacement service was improperly done by untrained private parties, not qualified technicians, the vehicle's warranty may be voided and liability may be acquired by the parties doing the replacement. Ford stated that the proposed wording change does not provide a rationale for the two-year replacement schedule for the OPD.

The Commission disagrees and notes that it has no jurisdiction over a warranty. The rule allows an optional second method to the use of a fixed liquid-level gauge; it is not a requirement.

SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.101, 9.114, 9.131, 9.135 - 9.137, 9.140 - 9.143

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on September 9, 2003.

§9.143. Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §3.2.10.11, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead and pneumatically-operated internal valves and pneumatically-operated emergency shutoff valves (ESVs), as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) for NFPA 58, §§3.2.18.1, 3.3.3.6, and 3.11.3. The filling of a container solely through a 1 3/4 inch double back check filler valve, directly installed in the container, and withdrawal of LP-gas through a commercially manufactured liquid evacuation valve, is exempt from the requirements of this section.

(b) Within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead and/or backflow check valves where the flow is in one direction into the container and ESVs installed shall install vertical bulkheads and pneumatic ESVs. The filling of a container solely through a 1 3/4 inch double back check filler valve, directly installed in the container, and withdrawal of LP-gas through a commercially manufactured liquid evacuation valve, is exempt from the requirements of this section.

(1) The pneumatic ESVs shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 24 inches long installed between the ESV and the bulkhead.

(2) The ESVs shall be installed in the piping so that any break resulting from a pullaway will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a

railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Temperature sensitive elements of ESVs shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-operated internal valves and ESVs shall be incorporated into at least one remote operating system.

(c) Existing installations which have horizontal bulkheads and/or backflow check valves where the flow is in one direction into the container or cable-actuated ESVs are not required to replace that equipment except as follows:

(1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;

(2) If a backflow check valve or a cable-actuated ESV requires replacement, it shall be replaced with a pneumatic actuated ESV; or

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatic actuated ESVs.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping;

(2) Only one or two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pullaway;

(3) Both liquid and vapor transfer hoses shall be plugged or capped;

(4) Bulkheads shall be located at least 10 feet from the container or containers. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Commission in writing and include all necessary information. The Commission may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) Horizontal bulkheads shall not be converted to vertical bulkheads;

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway;

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.

Figure: 16 TAC §9.143(d)(7) (No change.)

(A) Six-inch steel channel iron shall be used;

(B) Legs shall be four-inch schedule 80 piping;

(C) The top crossmember of a vertical bulkhead shall be 28 inches or less above ground level and shall be six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris;

(D) The kick plate shall be 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(i) Pipe sleeves shall have a clearance of 1/4 inch or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12-inch schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(ii) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12-inch length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12-inch nipple or a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the *LP-Gas Safety Rules*. The swivel-type piping may also be used for unloading, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) The Commission may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §2.3.3.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), ESVs and internal valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV. Existing installations shall comply by August 1, 2001. The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*. If the bulkheads, internal valves, backflow check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) By February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall be replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 36 inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, the Commission may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

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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Mary Ross McDonald
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §9.206

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.301, 9.307, 9.311, 9.312

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §§9.401 - 9.403

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction,

fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on September 9, 2003.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules, or with corrections listed in the Errata dated November 19, 2001, issued by NFPA to correct typographical or other errors in the published NFPA 58 pamphlet. According to NFPA, these errors may be corrected in future printings. Figure: 16 TAC §9.403(a)

(b) If a section in NFPA 58 refers to another section in NFPA 58 which the Commission has not adopted, or which the Commission has adopted with additional or alternative language, then persons shall comply with the applicable Commission rule.

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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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §402.584

The Texas Lottery Commission adopts new 16 TAC §402.584, relating to the transfer of funds without changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6175).

The purpose of the new rule is to identify the process by which a licensed authorized organization conducting bingo or an organization applying for a license to conduct bingo may request permission to loan money from its general fund to its bingo account for necessary expenses.

The new rule will give applicants and licensees a clearer understanding of the requirements necessary to comply with the Bingo Enabling Act.

No comments were received regarding adoption of this new rule.

The new rule is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, §2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and under Occupations Code, §2001.451(c) which provides that a licensed authorized organization may lend money from its general fund to its bingo account if the organization requests and receives prior approval from the commission.

The new rule implements Occupations Code, Chapter 2001.

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 September 12, 2003.

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For further information, please call: (512) 344-5113

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16 TAC §402.591

The Texas Lottery Commission adopts new 16 TAC §402.591, relating to location verification inspections without changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6175).

The rule clarifies the purpose of a location verification inspection and the information the commission is verifying when it makes a location verification inspection.

No comments were received regarding adoption of this section.

The new rule is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and under Occupations Code, §2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose.

The new rule implements Occupations Code, Chapter 2001.

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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16 TAC §402.595

The Texas Lottery Commission adopts new 16 TAC §402.595, relating to tax review inspections without changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6176).

The new section sets out the purpose of a tax review inspection for each type of inspection, the reasons a tax review inspection is conducted, who the commission will contact to arrange a tax review inspection, and what will occur during a tax review inspection. The rule clarifies the purpose of a tax review inspection and informs persons of what will occur during a tax review inspection so that person subject to the rule will have better understanding of what occurs during a tax review inspection.

No comments were received regarding adoption of this section.

The new rule is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and under Occupations Code, §2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose.

The new rule implements Occupations Code, Chapter 2001.

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 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER F. ARCHITECT'S SEAL

22 TAC §§1.101 - 1.106

The Texas Board of Architectural Examiners adopts amendments to §§1.101, 1.102, 1.103, 1.104, 1.105 and 1.106 of Title 22, Chapter 1, Subchapter F, pertaining to the use of an architect's seal as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3682). Each section is being adopted with changes.

Since the adoption of the existing rules in this subchapter in August 2000, the agency has received comments indicating that compliance with some aspects of the rules is impractical. In addition, the evolution of the design industry has necessitated that the agency reevaluate some provisions of the subchapter. As a result of the proposed amendments, the requirements related to the sealing of a registrant's design documents will be more practical and also will be more clearly described in the rules so that it will be easier for affected parties to understand and comply with the requirements.

Changes to proposed §1.101 include the addition of language that more clearly specifies the intent of §1.101, which is to ensure that documents regulated by the subchapter are released only after following the procedures set out in §1.103(a) or (b). Changes to proposed §1.102 include the substitution of "image" for "facsimile"; the addition of language to allow the use of impression or embossing seals, as contemplated by the governing statutory language, so long as the seals will produce visible and legible images when copied or reproduced; the substitution of "the same as the design of" in lieu of "an exact replica of"; the addition of language to verbally describe the minimum diameter of the seal; and the addition of subsection (c) to make it clear that documents may be issued in a variety of formats. Changes to proposed §1.103 include the restructuring of the section to make the requirements easier to understand; the deletion of the word "original" before "Construction Document" in several subsections; the substitution of "signing" for "signature"; the removal of language indicating documents may be issued in a variety of formats (modified and moved to §1.102); the addition of language to prohibit concealing or obscuring the registrant's name and registration number on the seal; the restructuring of subsection (a)(4) to clarify the sealing requirements for specifications and to require that only the drawings and specifications in supplemental documents must be sealed; the addition of language to make it clear that the rule applies not only to a paper sheet but also to the electronic equivalent of a paper sheet; the elimination of the requirement that registrants include their registration numbers on documents issued for purposes other than regulatory approval, permitting, and construction and the specification of the exact wording that must be included as a disclaimer on each such document; the addition of language to allow the issuance of drawings and specifications in a feasibility study without the registrant's seal; and the elimination of the requirement that drawings and specifications in feasibility studies must be maintained for ten years. Changes to proposed §1.104 include the elimination of the requirement that a registrant must provide express written authorization before another person may use the registrant's seal or modify a document bearing a registrant's seal; the limitation of the application of subsection (d) so that it applies only to registrants instead of to all persons; the elimination of the explanatory note in subsection (d), which is unnecessary in light of the modification of the proposed language; and the substitution of "Construction Document" for "document" and the deletion of "by any person" in subsection (e). Changes

to proposed §1.105 include the substitution of "design" for "plans and specifications"; the substitution of "signing" for "signature"; the addition of language to make it clear that the rule applies not only to a paper sheet but also to the electronic equivalent of a paper sheet; the deletion of the phrase "professional, legal, and technical," which was included in error when the proposed text was published; and the addition of language to clarify that a registrant must maintain both the adapted and the original prototypical design documents for ten years. Changes to proposed §1.106 include modifications of the language to implement new statutory provisions that will be effective on September 1, 2003 and will require registrants to include a statement of jurisdiction in every written contract for professional services and to otherwise provide the statement of jurisdiction to clients with whom they do not enter into written contracts.

Section 1.101 clarifies that a registrant may not issue a document regulated by the subchapter unless the document is sealed, signed, and dated or is clearly marked so that it cannot be used improperly. The amended rule no longer states that a registrant must procure a seal because this language is superfluous in light of the explicit language of the Architects' Registration Law and also because this requirement is implied by the language of the subchapter. The amended rule no longer states that a registrant must personally authorize the use of his or her seal because this language is superfluous in light of the explicit language of the Architects' Registration Law and the language of other subsections. The amended rule no longer states that a registrant is responsible for the security of his or her seal. Section 1.102 more clearly states that a registrant must use a seal which will be visible if the sealed document is copied and also provides a clearer description of the required design of a registrant's seal. Section 1.103 describes the requirements related to a registrant's use of his or her seal; describes the requirements related to the retention of sealed documents and changes the commencement of the retention period from the date of substantial completion of the project to the date of signature on the sealed documents; reorganizes some subsections of the subchapter; allows a registrant to place his or her signature across or directly under or adjacent to the seal; specifies which parts (drawings and specifications) of feasibility studies and supplemental documents must be sealed; eliminates the requirement that a registrant must seal documents prepared by certain consultants; eliminates the requirement that a special statement be placed on electronic documents in lieu of the registrant's signature; eliminates specific references to electronic documents so that such documents will no longer be subject to special requirements but, instead, will be subject to the same general requirements as other types of documents; eliminates the requirement that a registrant include his or her registration number on documents issued for purposes other than regulatory approval, permitting, and construction and specifies the exact disclaimer that must be included on such documents; allows the issuance of drawings and specifications in a feasibility study without the registrant's seal; and eliminates the notification requirement related to the completion, correction, revision, or supplementation of work prepared by another licensed design professional. Section 1.104 describes the prohibitions related to a registrant's seal; reorganizes some subsections of the subchapter; clarifies the requirements related to the sealing of a document by a registrant who is responsible for the preparation of only a portion of the document; eliminates requirements of express written authorization to perform certain acts; and eliminates the prohibition against signature reproductions. Section 1.105 simplifies and clarifies the requirements related to prototypical design documents; eliminates the requirement that a prototypical design must have been used in multiple locations in order for a registrant to be authorized to adapt and seal the design documents; eliminates the notification requirement related to prototypical design documents; makes it clear that a registrant must maintain both the adapted and the original prototypical design documents for ten years. Section 1.106 clarifies the requirements related to the statement of jurisdiction a registrant must provide to each client and describes the method for providing the statement of jurisdiction to clients.

The Board received comments and responded to them as follows:

Comment: Sealing of addenda, change orders, construction change directives, and other supplemental documents should be limited to drawings and specifications within these documents.

Response: Suggested change made.

Comment: Sealing of feasibility studies should be limited to drawings and specifications within feasibility studies.

Response: Suggested change made.

Comment: The registrant's name and registration number and the date and the "not for regulatory approval, permitting, or construction" disclaimer are not necessary on presentation documents.

Response: Because the term "presentation documents" could be interpreted very broadly, thereby thwarting the intent of the rule, and because it is impractical to develop a precise definition of the term, the suggested change has not been made.

Comment: The requirement to maintain copies of documents for ten years is overly cumbersome in light of its extremely limited value in terms of protecting the public.

Response: Because copies can be maintained in any format chosen by the registrant, the burden is not great when compared to the increased accountability of requiring that documents be maintained. Therefore, the suggested change has not been made.

Comment: Documents issued after the "for construction" set (addenda, change orders, etc.) should not have to be sealed. Instead, only the registrant's signature should be required on such documents so that the registrant can respond immediately and on-site to field issues instead of having to return to the office and get his stamp.

Response: Under the proposed rules, a registrant may respond on-site to field issues by modifying existing documents and then adding a dated revision note to each modified document. Such a change would not require a new seal. Therefore, the suggested change is unnecessary and has not been made.

Comment: The definition of "supervision and control" is unclear. This problem should be resolved by requiring a registrant to seal drawings and specifications prepared only by the architect, the architect's employees, and contract labor. Documents prepared by other persons should not be sealed or should be sealed by the applicable professional preparing the document(s).

Response: Allowing registrants to seal documents prepared by anyone with whom they contract would be problematic because it essentially would allow registrants to "plan stamp" as long as they contract with the persons who have prepared the sealed documents. Plan stamping endangers the health, safety, and

welfare of the public because it enables unregistered persons to perform professional services even though they might be unqualified to do so. Therefore, the suggested change has not been made.

Comment: There is no procedure for prototypical designs used less than twice.

Response: The rule is no longer limited to prototypical designs used at least twice.

Comment: The process for advising and using a third-party design professional's documents is inadequate.

Response: The proposed language in this area has been modified.

Comment: It is unclear whether registrants may continue to utilize electronic documents.

Response: New language has been added to clarify that registrants may issue documents in any format they choose, including electronically.

Comment: Drawings and specifications included in feasibility studies might not be suitable for construction and, therefore, should not have to be sealed.

Response: The language has been modified to allow the registrant to seal such documents or mark them as unsuitable for regulatory approval, permitting, or construction.

Comment: Requiring registrants to sign their documents does little, if anything, to protect the public.

Response: The signature requirement helps ensure the document has been prepared by the person whose seal is affixed to the document. Therefore, no change has been made in response to this comment.

Comment: It is not clear how proposed §1.104(b) and (d) work together.

Response: Section 1.104(d) has been modified so that the two subsections now appear to be more harmonious.

Comment: It is not clear whether a registrant must maintain both the original prototypical documents and the adapted prototypical documents.

Response: Language has been added to clarify that both sets must be maintained for ten years.

Comment: The "prohibitions," as proposed, are impractical in the context of the reuse of electronic drawing files because they do not allow a registrant to take apart and reuse selected parts of an electronic drawing file that has been sealed and issued by another registrant.

Response: Making the suggested modification would require major changes to the proposed language, including a change to allow the seal to be removed from a document that has been sealed and issued by a registrant. Because registrants may transfer unsealed documents to the people on their design teams and those documents may be taken apart and reused without violating the "prohibitions," there appears to be sufficient flexibility despite the proposed language. Therefore, the suggested change has not been made, although the "prohibitions" section has been modified to clarify its requirements and ensure they are practical.

Comment: The word "labeled" seems awkward and unclear.

Response: The Board disagrees with the comment and believes "labeled" conveys the Board's intent properly. The Board was unable to identify a term that seemed more suitable.

The amendments are adopted pursuant to §§1051.210, 1051.302, and 1051.202 of Chapter 1051, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the sealing requirements for architectural drawings and specifications.

§1.101. Seal Required.

As provided below, an Architect may not issue or authorize the issuance of a document regulated by this subchapter unless, pursuant to the requirements of this subchapter, the document is:

(1) sealed, signed, and dated pursuant to §1.103(a) of this title, thereby indicating that it may be used for regulatory approval, permitting, or construction; or

(2) labeled with the Architect's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction pursuant to §1.103(b) of this title.

§1.102. Type and Design.

(a) On every document requiring an Architect's seal, the Architect shall affix or cause the affixation of a seal that will produce a clearly visible and legible image of the seal when the document is copied or reproduced. An Architect may not affix or authorize the affixation of an impression or embossing seal on a document requiring a seal unless the impression or embossing seal will produce a clearly visible and legible image of the seal when the document is copied or reproduced.

(b) The design of an Architect's seal shall be the same as the design of the sample seal shown in this subsection except that the name of the Architect and the Architect's registration number shall be substituted for the name and registration number shown on the sample seal. The diameter of the seal shall be no smaller than one and one-half (1.5) inches.

Figure: 22 TAC §1.102(b) (No change.)

(c) A document regulated by this subchapter may be issued electronically or in any other format selected by the Architect whose seal and signature are affixed to the document.

§1.103. Required Use of Seal and Retention of Sealed Documents.

(a) Construction documents:

(1) On every Construction Document prepared by an Architect or under an Architect's Supervision and Control, the Architect shall affix or cause the affixation of:

(A) the Architect's seal;

(B) the Architect's signature (across the face of the seal's image or directly under or adjacent to the seal's image); and

(C) the date of signing (including the month, day, and year) before the Construction Document is issued by or under the authority of the Architect.

(2) The Architect's seal and signature and the date must be affixed in a manner that will be clearly visible and legible on each copy of a Construction Document issued by or under the authority of the Architect. The Architect's signature and the date may not conceal or obscure the name or registration number on the seal.

(3) Construction Documents requiring a seal, signature, and date include the following:

(A) each sheet of drawings or electronic equivalent of a sheet of drawings;

(B) each specification: if a specification is included in a bound grouping of specifications that includes a table of contents or index listing each individual specification, the seal must be placed in at least one conspicuous location on the bound document; any individual specification sheet or electronic equivalent of a specification sheet that is issued separately must be sealed individually;

(C) each sheet or electronic equivalent of a sheet that identifies the project and provides a list of sealed Construction Documents, such as a title sheet, table of contents, or index; and

(D) each architectural drawing and specification that is part of an addenda, change order, construction change directive, or other Supplemental Document.

(b) Documents issued for purposes other than regulatory approval, permitting, and construction:

(1) An architectural drawing or specification issued by or under the authority of an Architect for a purpose other than regulatory approval, permitting, or construction shall include:

(A) the Architect's name;

(B) the date the document is issued (including the month, day, and year); and

(C) the following statement placed in a conspicuous location on the document: "Not for regulatory approval, permitting, or construction."

(2) Each architectural drawing and specification included in a Feasibility Study issued by or under the authority of an Architect must be sealed, signed, and dated in the manner described in subsection (a) of this section or labeled with the Architect's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction in the manner described in this subsection.

(c) For a minimum of ten (10) years from the date of signature on each Construction Document and Prototypical Construction Document sealed by or under the authority of an Architect, the sealing Architect shall be responsible for the maintenance of the sealed, signed, and dated original document or a copy of the document bearing the clearly visible and legible seal, signature, and date.

§1.104. Prohibitions.

(a) Except as provided in §1.105 of this title, an Architect may not affix or authorize the affixation of his/her seal to any document unless the document was prepared by the Architect or under the Architect's Supervision and Control.

(b) If only a portion of a document was prepared by an Architect or under an Architect's Supervision and Control, the Architect's seal may not be affixed to the document unless:

(1) the portion of the document prepared by the Architect or under the Architect's Supervision and Control is clearly identified; and

(2) it is clearly indicated on the document that the Architect's seal applies only to that portion of the document prepared by the Architect or under the Architect's Supervision and Control.

(c) Only the Architect and any person with the Architect's consent may use or attempt to use an Architect's seal. No other person may use or attempt to use:

(1) an Architect's seal;

(2) a copy of an Architect's seal; or

(3) a replica of an Architect's seal.

(d) An Architect may not modify a document bearing another Architect's seal without first:

(1) taking reasonable steps to notify the sealing Architect of the intent to modify the document; and

(2) clearly indicating on the document the extent of the modifications made.

(e) Once a Construction Document bearing an Architect's seal is issued, the seal may not be removed.

§1.105. Prototypical Design.

(a) An Architect may not affix or authorize the affixation of the Architect's seal to a Prototypical Construction Document derived from a Prototypical design prepared by another person unless:

(1) the Architect thoroughly reviews and makes appropriate changes to all aspects of the Prototypical design to adapt the Prototypical design to the specific site and ensure compliance with all applicable statutes, codes, and other regulatory provisions;

(2) the Architect affixes or causes the affixation of the Architect's seal and signature and the date of signing to each sheet or electronic equivalent of a sheet of the adapted Prototypical Construction Documents in the manner described in §1.103(a) of this title; and

(3) the Architect accepts full responsibility for each sheet or electronic equivalent of a sheet of the adapted Prototypical Construction Documents on which the Architect's seal is placed.

(b) In addition to the responsibility set forth in §1.103(c) of this title, an Architect who affixes or authorizes the affixation of his/her seal to an adapted Prototypical Construction Document derived from a Prototypical design prepared by another person shall be responsible for the maintenance of a copy of the complete set of Prototypical design documents prepared by the other person for at least ten (10) years from the date of the Architect's signature on the adapted Prototypical Construction Document.

§1.106. Other Professional Responsibilities.

(a) An Architect shall provide a written statement of jurisdiction to each client for whom the Architect renders an architectural service in Texas.

(b) The statement of jurisdiction shall:

(1) state that "The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas";

(2) include the Board's current mailing address and telephone number; and

(3) be placed within every written contract for architectural services.

(c) If an Architect provides an architectural service to a client without entering into a written contract with the client, the Architect shall provide the client with the statement of jurisdiction:

(1) by including the statement of jurisdiction in each bill for architectural services presented to the client; or

(2) if the client visits the Architect's office, by posting the statement of jurisdiction on a sign prominently displayed in the Architect's office.

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 September 9, 2003.

TRD-200305867
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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Proposal publication date: May 2, 2003
For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER F. LANDSCAPE ARCHITECT'S SEAL

22 TAC §§3.101 - 3.104

The Texas Board of Architectural Examiners adopts amendments to §§3.101, 3.102, 3.103 and 3.104 of Title 22, Chapter 3, Subchapter F, pertaining to the use of the landscape architect's seal as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3686). Each section is being adopted with changes.

Since the adoption of the existing rules in this subchapter in August 2000, the agency has received comments indicating that compliance with some aspects of the rules is impractical. In addition, the evolution of the design industry has necessitated that the agency reevaluate some provisions of the subchapter. As a result of the amendments, the requirements related to the sealing of landscape architectural design documents will be more practical and also will be more clearly described in the rules so that it will be easier for affected parties to understand and comply with the requirements.

Changes to proposed §3.101 include the addition of language that more clearly specifies the intent of §3.101, which is to ensure that documents regulated by the subchapter are released only after following the procedures set out in §3.103(a) or (b). Changes to proposed §3.102 include the substitution of "image" for "facsimile"; the addition of language to allow the use of impression or embossing seals, as contemplated by the governing statutory language, so long as the seals will produce visible and legible images when copied or reproduced; the substitution of "the same as the design of" in lieu of "an exact replica of"; the addition of language to verbally describe the minimum diameter of the seal; and the addition of subsection (c) to make it clear that documents may be issued in a variety of formats. Changes to proposed §3.103 include the restructuring of the section to make the requirements easier to understand; the deletion of the word "original" before "Construction Document" in several subsections; the substitution of "signing" for "signature"; the removal of language indicating documents may be issued in a variety of formats (modified and moved to §3.102); the addition of language to prohibit concealing or obscuring the registrant's name and registration number on the seal; the restructuring of subsection (a)(4) to clarify the sealing requirements for specifications and to require that only the drawings and specifications in supplemental documents must be sealed; the addition of language to make it clear that the rule applies not only to a paper sheet but also to the electronic equivalent of a paper sheet; the elimination of the requirement that registrants include their registration numbers on documents issued for purposes other than regulatory approval, permitting, and construction and the specification of the exact wording that must be included as a disclaimer on each such document; the addition of language to allow the issuance of drawings and specifications in a feasibility study without the registrant's seal; and the elimination of the requirement that drawings and specifications in feasibility studies must be maintained for ten years. Changes to proposed §3.104 include the elimination of the requirement that a registrant must provide express written authorization before another person my use the registrant's seal or modify a document bearing a registrant's seal; the limitation of the application of subsection (d) so that it applies only to registrants instead of to all persons; the elimination of the explanatory note in subsection (d), which is unnecessary in light of the modification of the proposed language; and the substitution of "Construction Document" for "document" and the deletion of "by any person" in subsection (e).

Section 3.101 clarifies that a landscape architect may not issue a document regulated by the subchapter unless the document is sealed, signed, and dated or is clearly marked so that it cannot be used improperly. The amended rule no longer states that a landscape architect must procure a seal because this language is superfluous in light of the explicit language of the Landscape Architects' Registration Law and also because this requirement is implied by the language of the subchapter. The amended rule no longer states that a landscape architect must personally authorize the use of his or her seal because this language is superfluous in light of the explicit language of the Landscape Architects' Registration Law and the language of other subsections. The amended rule no longer states that a landscape architect is responsible for the security of his or her seal. Section 3.102 states that a landscape architect must use a seal which will be visible if the sealed document is copied and also is intended to provide a clearer description of the required design of a landscape architect's seal. Section 3.103 describes the requirements related to a landscape architect's use of his or her seal; describes the requirements related to the retention of sealed documents and changes the commencement of the retention period from the date of substantial completion of the project to the date of signature on the sealed documents; reorganizes some subsections of the subchapter; allows a landscape architect to place the landscape architect's signature across or adjacent to the seal in addition to under the seal; specifies which parts (drawings and specifications) of feasibility studies and supplemental documents must be sealed; eliminates the requirement that a landscape architect seal documents prepared by certain consultants; eliminates the requirement that a special statement be placed on electronic documents in lieu of the landscape architect's signature; eliminates specific references to electronic documents so that such documents will no longer be subject to special requirements but, instead, will be subject to the same general requirements as other types of documents; eliminates the requirement that a landscape architect include his or her registration number on documents issued for purposes other than regulatory approval, permitting, and construction and specifies the exact disclaimer that must be included on such documents; allows the issuance of drawings and specifications in a feasibility study without the landscape architect's seal; and eliminates the notification requirement related to the completion, correction, revision, or supplementation of work prepared by another licensed design professional. Section 3.104 describes the prohibitions

related to a landscape architect's seal; reorganizes some subsections of the subchapter; clarifies the requirements related to the sealing of a document by a landscape architect who is responsible for the preparation of only a portion of the document; eliminates requirements of express written authorization to perform certain acts; and eliminates the prohibition against signature reproductions.

The Board received comments and responded to them as follows:

Comment: Sealing of addenda, change orders, construction change directives, and other supplemental documents should be limited to drawings and specifications within these documents.

Response: Suggested change made.

Comment: Sealing of feasibility studies should be limited to drawings and specifications within feasibility studies.

Response: Suggested change made.

Comment: The registrant's name and registration number and the date and the "not for regulatory approval, permitting, or construction" disclaimer are not necessary on presentation documents.

Response: Because the term "presentation documents" could be interpreted very broadly, thereby thwarting the intent of the rule, and because it is impractical to develop a precise definition of the term, the suggested change has not been made.

Comment: The requirement to maintain copies of documents for ten years is overly cumbersome in light of its extremely limited value in terms of protecting the public.

Response: Because copies can be maintained in any format chosen by the registrant, the burden is not great when compared to the increased accountability of requiring that documents be maintained. Therefore, the suggested change has not been made.

Comment: Documents issued after the "for construction" set (addenda, change orders, etc.) should not have to be sealed. Instead, only the registrant's signature should be required on such documents so that the registrant can respond immediately and on-site to field issues instead of having to return to the office and get his stamp.

Response: Under the proposed rules, a registrant may respond on-site to field issues by modifying existing documents and then adding a dated revision note to each modified document. Such a change would not require a new seal. Therefore, the suggested change is unnecessary and has not been made.

Comment: The definition of "supervision and control" is unclear. This problem should be resolved by requiring a registrant to seal drawings and specifications prepared only by the architect, the architect's employees, and contract labor. Documents prepared by other persons should not be sealed or should be sealed by the applicable professional preparing the document(s).

Response: Allowing registrants to seal documents prepared by anyone with whom they contract would be problematic because it essentially would allow registrants to "plan stamp" as long as they contract with the persons who have prepared the sealed documents. Plan stamping endangers the health, safety, and welfare of the public because it enables unregistered persons to perform professional services even though they might be unqualified to do so. Therefore, the suggested change has not been made.

Comment: There is no procedure for prototypical designs used less than twice.

Response: The rule is no longer limited to prototypical designs used at least twice.

Comment: The process for advising and using a third-party design professional's documents is inadequate.

Response: The proposed language in this area has been modified.

Comment: It is unclear whether registrants may continue to utilize electronic documents.

Response: New language has been added to clarify that registrants may issue documents in any format they choose, including electronically.

Comment: Drawings and specifications included in feasibility studies might not be suitable for construction and, therefore, should not have to be sealed.

Response: The language has been modified to allow the registrant to seal such documents or mark them as unsuitable for regulatory approval, permitting, or construction.

Comment: Requiring registrants to sign their documents does little, if anything, to protect the public.

Response: The signature requirement helps ensure the document has been prepared by the person whose seal is affixed to the document. Therefore, no change has been made in response to this comment.

Comment: It is not clear how proposed §1.104(b) and (d) work together.

Response: Section 1.104(d) has been modified so that the two subsections now appear to be more harmonious.

Comment: It is not clear whether a registrant must maintain both the original prototypical documents and the adapted prototypical documents.

Response: Language has been added to clarify that both sets must be maintained for ten years.

Comment: The "prohibitions," as proposed, are impractical in the context of the reuse of electronic drawing files because they do not allow a registrant to take apart and reuse selected parts of an electronic drawing file that has been sealed and issued by another registrant.

Response: Making the suggested modification would require major changes to the proposed language, including a change to allow the seal to be removed from a document that has been sealed and issued by a registrant. Because registrants may transfer unsealed documents to the people on their design teams and those documents may be taken apart and reused without violating the "prohibitions," there appears to be sufficient flexibility despite the proposed language. Therefore, the suggested change has not been made, although the "prohibitions" section has been modified to clarify its requirements and ensure they are practical.

Comment: The word "labeled" seems awkward and unclear.

Response: The Board disagrees with the comment and believes "labeled" conveys the Board's intent properly. The Board was unable to identify a term that seemed more suitable.

The amendments are adopted pursuant to §§1052.051, 1052.056, and 1052.152 of Chapter 1052 of the Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the sealing of landscape architectural drawings and specifications.

§3.101. Seal Required.

As provided below, a Landscape Architect may not issue or authorize the issuance of a document regulated by this subchapter unless, pursuant to the requirements of this subchapter, the document is:

(1) sealed, signed, and dated, pursuant to §3.103(a) of this title, thereby indicating that it may be used for regulatory approval, permitting, or construction; or

(2) labeled with the Landscape Architect's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction pursuant to §3.103(b) of this title.

§3.102. Type and Design.

(a) On every document requiring a Landscape Architect's seal, the Landscape Architect shall affix or cause the affixation of a seal that will produce a clearly visible and legible image of the seal when the document is copied or reproduced. A Landscape Architect may not affix or authorize the affixation of an impression or embossing seal on a document requiring a seal unless the impression or embossing seal will produce a clearly visible and legible image of the seal when the document is copied or reproduced.

(b) The design of a Landscape Architect's seal shall be the same as the design of the sample seal shown in this subsection except that the name of the Landscape Architect and the Landscape Architect's registration number shall be substituted for the name and registration number shown on the sample seal. The diameter of the seal shall be no smaller than one and one-half (1.5) inches.
Figure: 22 TAC §3.102(b) (No change.)

(c) A document regulated by this subchapter may be issued electronically or in any other format selected by the Landscape Architect whose seal and signature are affixed to the document.

§3.103. Required Use of Seal and Retention of Sealed Documents

(a) Construction Documents:

(1) On every Construction Document prepared by a Landscape Architect or under a Landscape Architect's Supervision and Control, the Landscape Architect shall affix or cause the affixation of:

(A) the Landscape Architect's seal;

(B) the Landscape Architect's signature (across the face of the seal's image or directly under or adjacent to the seal's image); and

(C) the date of signing (including the month, day, and year) before the Construction Document is issued by or under the authority of the Landscape Architect.

(2) The Landscape Architect's seal and signature and the date must be affixed in a manner that will be clearly visible and legible on each copy of a Construction Document issued by or under the authority of the Landscape Architect. The Landscape Architect's signature and the date may not conceal or obscure the name or registration number on the seal.

(3) Construction Documents requiring a seal, signature, and date include the following:

(A) each sheet of drawings or electronic equivalent of a sheet of drawings;

(B) each specification: if a specification is included in a bound grouping of specifications that includes a table of contents or index listing each individual specification, the seal must be placed in at least one conspicuous location on the bound document; any individual specification sheet or electronic equivalent of a specification sheet that is issued separately must be sealed individually;

(C) each sheet or electronic equivalent of a sheet that identifies the project and provides a list of sealed Construction Documents, such as a title sheet, table of contents, or index; and

(D) each architectural drawing and specification that is part of an addenda, change order, construction change directive, or other Supplemental Document.

(b) Documents issued for purposes other than regulatory approval, permitting, and construction:

(1) A landscape architectural drawing or specification issued by or under the authority of a Landscape Architect for a purpose other than regulatory approval, permitting, or construction shall include:

(A) the Landscape Architect's name;

(B) the date the document is issued (including the month, day, and year); and

(C) the following statement placed in a conspicuous location on the document: "Not for regulatory approval, permitting, or construction."

(2) Each landscape architectural drawing and specification included in a Feasibility Study issued by or under the authority of a Landscape Architect must be sealed, signed, and dated in the manner described in subsection (a) of this section or labeled with the Landscape Architect's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction in the manner described in subsection (b) of this section.

(c) For a minimum of ten (10) years from the date of signature on each Construction Document and Prototypical Construction Document sealed by or under the authority of a Landscape Architect, the sealing Landscape Architect shall be responsible for the maintenance of the sealed, signed, and dated original document or a copy of the document bearing the clearly visible and legible seal, signature, and date.

§3.104. Prohibitions.

(a) Except as provided in §3.105 of this title, a Landscape Architect may not affix or authorize the affixation of his/her seal to any document unless the document was prepared by the Landscape Architect or under the Landscape Architect's Supervision and Control.

(b) If only a portion of a document was prepared by a Landscape Architect or under a Landscape Architect's Supervision and Control, the Landscape Architect's seal may not be affixed to the document unless:

(1) the portion of the document prepared by the Landscape Architect or under the Landscape Architect's Supervision and Control is clearly identified; and

(2) it is clearly indicated on the document that the Landscape Architect's seal applies only to that portion of the document prepared by the Landscape Architect or under the Landscape Architect's Supervision and Control.

(c) Only the Landscape Architect and any person with the Landscape Architect's consent may use or attempt to use a Landscape Architect's seal. No other person may use or attempt to use:

(1) a Landscape Architect's seal;

(2) a copy of a Landscape Architect's seal; or

(3) a replica of a Landscape Architect's seal.

(d) A Landscape Architect may not modify a document bearing another Landscape Architect's seal without first:

(1) taking reasonable steps to notify the sealing Landscape Architect of the intent to modify the document; and

(2) clearly indicating on the document the extent of the modifications made.

(e) Once a Construction Document bearing a Landscape Architect's seal is issued, the seal may not be removed.

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 September 9, 2003.

TRD-200305868
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 29, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-8535

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22 TAC §3.105

The Texas Board of Architectural Examiners adopts the repeal of §3.105 for Title 22, Chapter 3, Subchapter F, which requires that a landscape architect provide a written statement of jurisdiction to each and every client for whom the landscape architect renders landscape architectural services in Texas. The repeal is being adopted without change. The proposal to repeal this rule was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3689).

By replacing the repealed section with a new section and reorganizing existing sections, the requirements in this area are more clearly stated and, therefore, easier to understand and follow.

Section 3.105 is being repealed to accommodate the addition of a new section to the subchapter through the reorganization of existing sections.

The board received no comments concerning the repeal of this rule.

The repeal is adopted pursuant to §1052.051 of Chapter 1052, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules and includes implied authority to repeal rules that have been promulgated.

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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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §3.105, §3.106

The Texas Board of Architectural Examiners adopts new §3.105 and §3.106 of Title 22, Chapter 3, Subchapter F, pertaining to the use of the landscape architect's seal as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3689). Both sections are being adopted with changes.

As a result of the new rules, affected parties will have guidance regarding the requirements related to the adaptation and use of prototypical landscape architectural designs in Texas. In addition, the requirements related to the required statement of jurisdiction and to a landscape architect's duty to report unsafe courses of action taken against the landscape architect's advice will be more clearly stated and, therefore, easier to understand and follow.

Changes to proposed §3.105 include the substitution of "design" for "plans and specifications"; the substitution of "signing" for "signature"; the addition of language to make it clear that the rule applies not only to a paper sheet but also to the electronic equivalent of a paper sheet; the deletion of the phrase "professional, legal, and technical," which was included in error when the proposed text was published; and the addition of language to clarify that a registrant must maintain both the adapted and the original prototypical design documents for ten years. Changes to proposed §3.106 include modifications of the language to implement new statutory provisions that will be effective on September 1, 2003 and will require registrants to include a statement of jurisdiction in every written contract for professional services and to otherwise provide the statement of jurisdiction to clients with whom they do not enter into written contracts.

Section 3.105 sets forth the conditions under which a landscape architect may adapt and seal prototypical construction documents derived from prototypical plans and specifications prepared by another person. The section requires that the landscape architect thoroughly review and adapt the prototypical plans and specifications to comply with applicable statutes, codes, and other regulatory provisions; that the landscape architect seal and accept responsibility for the adapted documents; and that the landscape architect maintain copies of both the complete set of original prototypical plans and specifications and the adapted prototypical documents for ten (10) years. Section 3.106 requires that a landscape architect provide a written statement of jurisdiction to each and every client for whom the landscape architect renders landscape architectural services in Texas. It specifies what the statement of jurisdiction shall say and where it shall be placed. The section also sets forth the actions a landscape architect must take if he or she becomes aware of a course of action taken against the landscape architect's advice which may violate an applicable statute, code, or other regulatory provision and which is likely in

the landscape architect's judgment to have a material adverse effect on the safe use of the completed project.

The board received no comments from the public concerning the adopt of these two rules.

The amendments are adopted pursuant to §§1052.051, 1052.056, 1052.104, and 1052.152 of the Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the sealing of landscape architectural documents and the statement of jurisdiction that must be provided to clients.

§3.105. Prototypical Design.

(a) A Landscape Architect may not affix or authorize the affixation of the Landscape Architect's seal to a Prototypical Construction Document derived from a Prototypical design prepared by another person unless:

(1) the Landscape Architect thoroughly reviews and makes appropriate changes to all aspects of the Prototypical design to adapt the Prototypical design to the specific site and ensure compliance with all applicable statutes, codes, and other regulatory provisions;

(2) the Landscape Architect affixes or causes the affixation of the Landscape Architect's seal and signature and the date of signing to each sheet or electronic equivalent of a sheet of the adapted Prototypical Construction Documents in the manner described in §3.103(a) of this title; and

(3) the Landscape Architect accepts full responsibility for each sheet or electronic equivalent of a sheet of the adapted Prototypical Construction Documents on which the Landscape Architect's seal is placed.

(b) In addition to the responsibility set forth in §3.103(c) of this title, a Landscape Architect who affixes or authorizes the affixation of his/her seal to an adapted Prototypical Construction Document derived from a Prototypical design prepared by another person shall be responsible for the maintenance of a copy of the complete set of Prototypical design documents prepared by the other person for at least ten (10) years from the date of the Landscape Architect's signature on the adapted Prototypical Construction Document.

§3.106. Other Professional Responsibilities.

(a) A Landscape Architect shall provide a written statement of jurisdiction to each client for whom the Landscape Architect renders a landscape architectural service in Texas.

(b) The statement of jurisdiction shall:

(1) state that "The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas";

(2) include the Board's current mailing address and telephone number; and

(3) be placed within every written contract for landscape architectural services.

(c) If a Landscape Architect provides a landscape architectural service to a client without entering into a written contract with the client, the Landscape Architect shall provide the client with the statement of jurisdiction:

(1) by including the statement of jurisdiction in each bill for landscape architectural services presented to the client, or

(2) if the client visits the Landscape Architect's office, by posting the statement of jurisdiction on a sign prominently displayed in the Landscape Architect's office.

(d) If, in the course of his/her work on a landscape architectural project, a Landscape Architect becomes aware of a course of action taken against the Landscape Architect's advice which may violate an applicable statute, code, or other regulatory provision and which is reasonably likely to have a material adverse effect on the safe use of the completed project, the Landscape Architect shall:

(1) report the course of action in writing to the owner, to the local building official with jurisdiction over the project, and to other responsible parties; and

(2) refuse to consent to the course of action.

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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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER F. THE INTERIOR DESIGNER'S SEAL

22 TAC §§5.111 - 5.115

Texas Board of Architectural Examiners adopts amendments to §§5.111, 5.112, 5.113, 5.114, and 5.115 of Title 22, Chapter 5, Subchapter F, pertaining to the use of the Interior Designer's seal as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3690). Each section is being adopted with changes.

Since the adoption of the existing rules in this subchapter in August 2000, the agency has received comments indicating that compliance with some aspects of the rules is impractical. In addition, the evolution of the design industry has necessitated that the agency reevaluate some provisions of the subchapter. As a result of the proposed amendments, the requirements related to the sealing of a registrant's design documents will be more practical and also will be more clearly described in the rules so that it will be easier for affected parties to understand and comply with the requirements.

Changes to proposed §5.111 include the addition of language that more clearly specifies the intent of §5.111, which is to ensure that documents regulated by the subchapter are released only after following the procedures set out in §5.113(a) or (b). Changes to proposed §5.112 include the substitution of "image" for "facsimile"; the addition of language to allow the use of impression or embossing seals so long as the seals will produce visible and legible images when copied or reproduced; the substitution of "the same as the design of" in lieu of "an exact replica of"; the addition of language to verbally describe the minimum diameter of the seal; and the addition of subsection (c) to make it clear that documents may be issued in a variety of formats. Changes to proposed §5.113 include the restructuring of the section to make the requirements easier to understand; the deletion

of the word "original" before "Construction Document" in several subsections; the substitution of "signing" for "signature"; the removal of language indicating documents may be issued in a variety of formats (modified and moved to §5.112); the addition of language to prohibit concealing or obscuring the registrant's name and registration number on the seal; the restructuring of subsection (a)(4) to clarify the sealing requirements for specifications and to require that only the drawings and specifications in supplemental documents must be sealed; the addition of language to make it clear that the rule applies not only to a paper sheet but also to the electronic equivalent of a paper sheet; the elimination of the requirement that registrants include their registration numbers on documents issued for purposes other than regulatory approval, permitting, and construction and the specification of the exact wording that must be included as a disclaimer on each such document; the addition of language to allow the issuance of drawings and specifications in a feasibility study without the registrant's seal; and the elimination of the requirement that drawings and specifications in feasibility studies must be maintained for ten years. Changes to proposed §5.114 include the elimination of the requirement that a registrant must provide express written authorization before another person my use the registrant's seal or modify a document bearing a registrant's seal; the limitation of the application of subsection (d) so that it applies only to registrants instead of to all persons; the elimination of the explanatory note in subsection (d), which is unnecessary in light of the modification of the proposed language; and the substitution of "Construction Document" for "document" and the deletion of "by any person" in subsection (e). Changes to proposed §5.115 include modifications of the language to implement new statutory provisions that will be effective on September 1, 2003 and will require registrants to include a statement of jurisdiction in every written contract for professional services and to otherwise provide the statement of jurisdiction to clients with whom they do not enter into written contracts.

Section 5.111 clarifies that an interior designer may not issue a document regulated by the subchapter unless the document is sealed, signed, and dated or is clearly marked so that it cannot be used improperly. The amended rule no longer states that an interior designer must procure a seal; this language is superfluous because this requirement is implied by other language contained in the subchapter. The amended rule no longer states that an interior designer must personally authorize the use of his or her seal because this language is superfluous in light of the language of other subsections. The amended rule no longer states that an interior designer is responsible for the security of his or her seal. Section 5.112 states that an interior designer must use a seal which will be visible if the sealed document is copied and also is intended to provide a clearer description of the required design of an interior designer's seal. Section 5.113 describes the requirements related to an interior designer's use of his or her seal; describes the requirements related to the retention of sealed documents and changes the commencement of the retention period from the date of substantial completion of the project to the date of signature on the sealed documents; reorganizes some subsections of the subchapter; allows an interior designer to place the interior designer's signature across or directly under or adjacent to the seal in addition to under the seal; specifies which parts (drawings and specifications) of feasibility studies and supplemental documents must be sealed; eliminates the requirement that an interior designer must seal documents prepared by certain consultants; eliminates the requirement that a special statement must be placed on electronic documents in lieu of the interior designer's signature; eliminates specific references to electronic documents so that such documents will no longer be subject to special requirements but, instead, will be subject to the same general requirements as other types of documents; eliminates the requirement that an interior designer include his or her registration number on documents issued for purposes other than regulatory approval, permitting, and construction and specifies the exact disclaimer that must be included on such documents; allows the issuance of drawings and specifications in a feasibility study without the interior designer's seal; and eliminates the notification requirement related to the completion, correction, revision, or supplementation of work prepared by another licensed design professional. Section 5.114 describes the prohibitions related to an interior designer's seal; reorganizes some subsections of the subchapter; clarifies the requirements related to the sealing of a document by an interior designer who is responsible for the preparation of only a portion of the document; eliminates requirements of express written authorization to perform certain acts; and eliminates the prohibition of signature reproductions. Section 5.115 clarifies the requirements related to the statement of jurisdiction an interior designer must provide to each client; more specifically describes the method for providing the statement of jurisdiction to clients; and more clearly describes the requirements related to an interior designer's duty to report unsafe courses of action taken against the interior designer's advice.

The Board received comments and responded to them as follows:

Comment: Sealing of addenda, change orders, construction change directives, and other supplemental documents should be limited to drawings and specifications within these documents.

Response: Suggested change made.

Comment: Sealing of feasibility studies should be limited to drawings and specifications within feasibility studies.

Response: Suggested change made.

Comment: The registrant's name and registration number and the date and the "not for regulatory approval, permitting, or construction" disclaimer are not necessary on presentation documents.

Response: Because the term "presentation documents" could be interpreted very broadly, thereby thwarting the intent of the rule, and because it is impractical to develop a precise definition of the term, the suggested change has not been made.

Comment: The requirement to maintain copies of documents for ten years is overly cumbersome in light of its extremely limited value in terms of protecting the public.

Response: Because copies can be maintained in any format chosen by the registrant, the burden is not great when compared to the increased accountability of requiring that documents be maintained. Therefore, the suggested change has not been made.

Comment: Documents issued after the "for construction" set (addenda, change orders, etc.) should not have to be sealed. Instead, only the registrant's signature should be required on such documents so that the registrant can respond immediately and on-site to field issues instead of having to return to the office and get his stamp.

Response: Under the proposed rules, a registrant may respond on-site to field issues by modifying existing documents and then adding a dated revision note to each modified document. Such a change would not require a new seal. Therefore, the suggested change is unnecessary and has not been made.

Comment: The definition of "supervision and control" is unclear. This problem should be resolved by requiring a registrant to seal drawings and specifications prepared only by the architect, the architect's employees, and contract labor. Documents prepared by other persons should not be sealed or should be sealed by the applicable professional preparing the document(s).

Response: Allowing registrants to seal documents prepared by anyone with whom they contract would be problematic because it essentially would allow registrants to "plan stamp" as long as they contract with the persons who have prepared the sealed documents. Plan stamping endangers the health, safety, and welfare of the public because it enables unregistered persons to perform professional services even though they might be unqualified to do so. Therefore, the suggested change has not been made.

Comment: There is no procedure for prototypical designs used less than twice.

Response: The rule is no longer limited to prototypical designs used at least twice.

Comment: The process for advising and using a third-party design professional's documents is inadequate.

Response: The proposed language in this area has been modified.

Comment: It is unclear whether registrants may continue to utilize electronic documents.

Response: New language has been added to clarify that registrants may issue documents in any format they choose, including electronically.

Comment: Drawings and specifications included in feasibility studies might not be suitable for construction and, therefore, should not have to be sealed.

Response: The language has been modified to allow the registrant to seal such documents or mark them as unsuitable for regulatory approval, permitting, or construction.

Comment: Requiring registrants to sign their documents does little, if anything, to protect the public.

Response: The signature requirement helps ensure the document has been prepared by the person whose seal is affixed to the document. Therefore, no change has been made in response to this comment.

Comment: It is not clear how proposed §1.104(b) and (d) work together.

Response: Section 1.104(d) has been modified so that the two subsections now appear to be more harmonious.

Comment: It is not clear whether a registrant must maintain both the original prototypical documents and the adapted prototypical documents.

Response: Language has been added to clarify that both sets must be maintained for ten years.

Comment: The "prohibitions," as proposed, are impractical in the context of the reuse of electronic drawing files because they do not allow a registrant to take apart and reuse selected parts of an electronic drawing file that has been sealed and issued by another registrant.

Response: Making the suggested modification would require major changes to the proposed language, including a change to allow the seal to be removed from a document that has been sealed and issued by a registrant. Because registrants may transfer unsealed documents to the people on their design teams and those documents may be taken apart and reused without violating the "prohibitions," there appears to be sufficient flexibility despite the proposed language. Therefore, the suggested change has not been made, although the "prohibitions" section has been modified to clarify its requirements and ensure they are practical.

Comment: The word "labeled" seems awkward and unclear.

Response: The Board disagrees with the comment and believes "labeled" conveys the Board's intent properly. The Board was unable to identify a term that seemed more suitable.

The amendments are adopted pursuant to §1053.051 and §1053.160 of Chapter 1053 of the Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the interior designer's seal.

§5.111. Seal Required.

As provided below, an Interior Designer may not issue or authorize the issuance of a document regulated by this subchapter unless, pursuant to the requirements of this subchapter, the document is:

(1) sealed, signed, and dated pursuant to §5.113(a) of this title thereby indicating that it may be used for regulatory approval, permitting, or construction; or

(2) labeled with the Interior Designer's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction pursuant to §5.113(b) of this title.

§5.112. Type and Design.

(a) On every document requiring an Interior Designer's seal, the Interior Designer shall affix or cause the affixation of a seal that will produce a clearly visible and legible image of the seal when the document is copied or reproduced. An Interior Designer may not affix or authorize the affixation of an impression or embossing seal on a document requiring a seal unless the impression or embossing seal will produce a clearly visible and legible image of the seal when the document is copied or reproduced.

(b) The design of an Interior Designer's seal shall be the same as the design of the sample seal shown in this subsection except that the name of the Interior Designer and the Interior Designer's registration number shall be substituted for the name and registration number shown on the sample seal. The diameter of the seal shall be no smaller than one and one-half (1.5) inches.
Figure: 22 TAC §5.112(b) (No change.)

(c) A document regulated by this subchapter may be issued electronically or in any other format selected by the Interior Designer whose seal and signature are affixed to the document.

§5.113. Required Use of Seal and Retention of Sealed Documents.

(a) Construction Documents:

(1) On every Construction Document prepared by an Interior Designer or under an Interior Designer's Supervision and Control, the Interior Designer shall affix or cause the affixation of:

(A) the Interior Designer's seal;

(B) the Interior Designer's signature (across the face of the seal's image or directly under or adjacent to the seal's image); and

(C) the date of signing (including the month, day, and year) before the Construction Document is issued by or under the authority of the Interior Designer.

(2) The Interior Designer's seal and signature and the date must be affixed in a manner that will be clearly visible and legible on each copy of a Construction Document issued by or under the authority of the Interior Designer. The Interior Designer's signature and the date may not conceal or obscure the name or registration number on the seal.

(3) Construction Documents requiring a seal, signature, and date include the following:

(A) each sheet of drawings or electronic equivalent of a sheet of drawings;

(B) each specification: if a specification is included in a bound grouping of specifications that includes a table of contents or index listing each individual specification, the seal must be placed in at least one conspicuous location on the bound document; any individual specification sheet or electronic equivalent of a specification sheet that is issued separately must be sealed individually;

(C) each sheet or electronic equivalent of a sheet that identifies the project and provides a list of sealed Construction Documents, such as a title sheet, table of contents, or index; and

(D) each interior design drawing and specification that is part of an addenda, change order, construction change directive, or other Supplemental Document.

(b) Documents issued for purposes other than regulatory approval, permitting, and construction:

(1) An interior design drawing or specification issued by or under the authority of an Interior Designer for a purpose other than regulatory approval, permitting, or construction shall include:

(A) the Interior Designer's name;

(B) the date the document is issued (including the month, day, and year); and

(C) the following statement placed in a conspicuous location on the document: "Not for regulatory approval, permitting, or construction."

(2) Each interior design drawing and specification included in a Feasibility Study issued by or under the authority of an Interior Designer must be sealed, signed, and dated in the manner described in subsection (a) of this section or labeled with the Interior Designer's name and the date and clearly marked to indicate that it may not be used for regulatory approval, permitting, or construction in the manner described in subsection (b) of this section.

(c) For a minimum of ten (10) years from the date of signature on each Construction Document sealed by or under the authority of an Interior Designer, the sealing Interior Designer shall be responsible for the maintenance of the sealed, signed, and dated original document or a copy of the document bearing the clearly visible and legible seal, signature, and date.

§5.114. Prohibitions.

(a) An Interior Designer may not affix or authorize the affixation of his/her seal to any document unless the document was prepared by the Interior Designer or under the Interior Designer's Supervision and Control.

(b) If only a portion of a document was prepared by an Interior Designer or under an Interior Designer's Supervision and Control, the Interior Designer's seal may not be affixed to the document unless:

(1) the portion of the document prepared by the Interior Designer or under the Interior Designer's Supervision and Control is clearly identified; and

(2) it is clearly indicated on the document that the Interior Designer's seal applies only to that portion of the document prepared by the Interior Designer or under the Interior Designer's Supervision and Control.

(c) Only the Interior Designer and any person with the Interior Designer's consent may use or attempt to use an Interior Designer's seal. No other person may use or attempt to use:

(1) an Interior Designer's seal;

(2) a copy of an Interior Designer's seal; or

(3) a replica of an Interior Designer's seal.

(d) An Interior Designer may not modify a document bearing another Interior Designer's seal without first:

(1) taking reasonable steps to notify the sealing Interior Designer of the intent to modify the document; and

(2) clearly indicating on the document the extent of the modifications made.

(e) Once a Construction Document bearing an Interior Designer's seal is issued, the seal may not be removed.

§5.115. Other Professional Responsibilities.

(a) An Interior Designer shall provide a written statement of jurisdiction to each client for whom the Interior Designer renders an interior design service in Texas.

(b) The statement of jurisdiction shall:

(1) state that "The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as interior designers in Texas";

(2) include the Board's current mailing address and telephone number; and

(3) be placed within every written contract for interior design services.

(c) If an Interior Designer provides an interior design service to a client without entering into a written contract with the client, the Interior Designer shall provide the client with the statement of jurisdiction:

(1) by including the statement of jurisdiction in each bill for interior design services presented to the client; or

(2) if the client visits the Interior Designer's office, by posting the statement of jurisdiction on a sign prominently displayed in the Interior Designer's office.

(d) If, in the course of his/her work on an interior design project, an Interior Designer becomes aware of a course of action taken against the Interior Designer's advice which may violate an applicable statute, code, or other regulatory provision and which is reasonably likely to have a material adverse effect on the safe use of the completed project, the Interior Designer shall:

(1) report the course of action in writing to the owner, to the local building official with jurisdiction over the project, and to other responsible parties; and

(2) refuse to consent to the course of action.

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 September 9, 2003.

TRD-200305871
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 233. EDUCATION
SUBCHAPTER D. VOCATIONAL NURSING EDUCATION STANDARDS

22 TAC §233.65

The Board of Vocational Nurse Examiners adopts an amendment to §233.65, relating to admission criteria without changes to the proposed text published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5043).

The adopted amendment will assist vocational programs to adhere with EEO, ADA, and Affirmative Action requirements.

No comments were received relative to the adoption of this rule

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 September 11, 2003.

TRD-200305927
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: October 1, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 305-7653

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CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.6

The Board of Vocational Nurse Examiners adopts an amendment to §235.6, relating to applications for licensure by endorsement without changes to the proposed text published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5044).

The adopted amendment will provide consistency with Rule 235.48 Reactivation of a License and 239.64 Board Action Possible Upon Reinstatement.

No comments were received relative to the adoption of this rule

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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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Terrie L. Hairston
Executive Director
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Effective date: October 1, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 305-7653

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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.48

The Board of Vocational Nurse Examiners adopts amendment of §235.48 relating to reactivation of a license with changes to the proposed text published in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5044).

The adopted amendment is a formatting change only, clearly articulating agency policy and procedure regarding continuing education requirements.

No comments were received relative to the adoption of this rule

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

§235.48. Reactivation of a License.

(a) A vocational nurse who has been on delinquent or inactive status for less than two years must provide proof of 20 hours of continuing education prior to the renewal of a license.

(b) A vocational nurse who has been on inactive status or whose license has been delinquent for two years, but less than four years, shall meet the following criteria for licensure:

(1) Submit reactivation form and affidavits provided by the Board with required fees;

(2) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this

state or another state within the past four years immediately prior to renewal; and

(3) submit proof of 20 hours of continuing education; or

(4) submit evidence of successful completion of a refresher course or an agreement to supervised employment with a copy of the job description, and verification of such submitted to the Board office prior to the issuance of a license.

(c) A vocational nurse who has been on inactive status or whose license has been delinquent for four years, but less than ten years, shall meet the following criteria for licensure:

(1) Submit reactivation form and affidavits provided by the Board with required fees;

(2) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four years immediately prior to renewal; and

(3) submit proof of 20 hours of continuing education; or

(4) submit evidence of successful completion of a refresher course and an agreement to supervised employment with a copy of the job description, and verification of such submitted to the Board office prior to the issuance of a license.

(d) If a temporary permit is required to complete a refresher course or an agreement to supervised employment, one will be issued upon receipt of the required documentation and fees in the Board office.

(e) An individual whose license is in an inactive or delinquent status for ten years or longer will not be issued a renewed license. The licensee shall be required to repeat the vocational nursing program, and shall take and pass the national licensure examination, unless subsection (b) (2) of this section is met.

(f) An individual whose license is in an inactive status or is delinquent for nonpayment of renewal fees, continues to be a licensee of the Board, and is subject to all provisions of Chapter 302, Texas Occupations Code and Board rules governing licensed vocational nurses, until such time as the license is suspended or revoked by the Board, or the license is not renewable as set out in subsection (e) of this section.

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 September 11, 2003.

TRD-200305925
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: October 1, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 305-7653

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CHAPTER 237. CONTINUING EDUCATION
SUBCHAPTER B. CONTINUING EDUCATION

22 TAC §237.19

The Board of Vocational Nurse Examiners adopts an amendment to §237.19, relating to relicensure process without changes to the proposed text published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5045).

The adopted amendment will be in congruence with requirements in rule 235.52, and to enable a greater number of licensees to renew on line, decrease administrative time and over riding the system.

No comments were received relative to the adoption of this rule

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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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Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
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Proposal publication date: July 4, 2003
For further information, please call: (512) 305-7653

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §§741.1, 741.12, 741.32, 741.41, 741.62, 741.65, 741.102, 741.112, 741.121, 741.161 - 741.164, 741.191, 741.192, and 741.195; new §741.15 and repeal of §741.67, concerning speech-language pathology and audiology. Section 741.62 is adopted with changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3457). The amendments to §§741.1, 741.12, 741.32, 741.41, 741.65, 741.102, 741.112, 741.121, 741.161 - 741.164, 741.191, 741.192, and 741.195; new §741.15 and repeal of §741.67, are adopted without changes, and the sections will not be republished.

Specifically, the sections cover definitions; committees; hearing screening; code of ethics; practice of interns and assistants; fitting and dispensing of a hearing instrument; notary requirement on forms; examination code; renewal procedures, including continuing education, inactive status, and late renewal; basis and procedures for denial of license and disciplinary actions; and schedule of sanctions. The new section covers impartiality and nondiscrimination. The repealed section covers the limited license to practice speech-language pathology in the public schools that is no longer valid.

The amendments move the definition of an assistant in speech-language pathology to §741.1 from §741.65; correct the

definition of hearing screening; define "under the direction of"; identify who may provide hearing screening; require licensees to provide specified therapy in a safe environment with appropriate equipment; expand misleading advertising to include advertising audiological services when an audiologist is not readily available to assist clients; establish supervisory responsibilities including experience required and amount of supervision for interns and assistants; comply with requirements of legislation, now codified in the Occupations Code, Chapter 401, passed by the 77th Legislature, Regular Session, as Senate Bill (SB) 12 relating to prohibition of discrimination based on the use of certain information in the determination of eligibility for employment, an occupational license, or insurance coverage, SB 700 relating to the suspension of a license for failure to comply with the terms of a court order providing for the possession of or access to a child, and certain sections of House Bill 2812 relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conform codifications enacted by the 76th Legislature to other Acts of that legislature; establish the time frame for the board's designee to respond; issue an intern license to doctoral students; establish procedures upon completion of the internship; clarify core curriculum for applicants for the assistant license; establish procedures to evaluate foreign-educated applicants; identify procedures an assistant may not perform; specify that the physician should preferably be one who specializes in diseases of the ear to coincide with the federal Food and Drug Administration, 21 CFR, §801.420; require a fitting and dispensing contract to include a specific date for when the client must return the hearing instrument to qualify for a refund; remove notary requirement from board forms; correct the reference code for examination reporting; delete the renewal reference to the limited license; clarify that providing false information and failure to respond timely to requests are grounds for disciplinary action; clarify that it is the licensee's knowledge and service delivery that are impacted by the continuing education event; clarify that inactive status must be maintained or the license record will be deleted; establish time frame for submission of renewal documentation before license renewal is denied and the fee forfeited; identify which anonymous complaints will not be investigated; and clarify the schedule of sanctions. Because of the amendments the following sections were renumbered as required §§741.1, 741.41, 741.62, 741.65, 741.161, and 741.164. Editorial corrections were made to §§741.12(a)(2), 741.32(a), 741.41(b)(11)(A) and (C), 741.41(d)(2) and (5), 741.41(e)(1) - (3), 741.41(j)(4), 741.41(k), 741.41(o), 741.62(i), 741.65(b)(2), 741.112(e)(5), 741.161(m), 741.162(o)(3), 741.192(q)(3) and 741.192(r). New §741.15 defines impartiality and nondiscrimination to include genetic information or family health history. Section 741.67 was repealed because the license is no longer valid.

No public comments were received on the proposal during the comment period; however, a department staff comment was received and the change follows.

Change: Concerning proposed §741.62(e), the statement "§741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License)," was changed to "§741.61(a) - (c) of this title" to be consistent with the other references in this section.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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 September 15, 2003.

TRD-200305980
Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: October 5, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER B. THE BOARD

22 TAC §741.12, §741.15

The amendment and new rule are adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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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Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER C. SCREENING PROCEDURES

22 TAC §741.32

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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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Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER D. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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 September 15, 2003.

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Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §741.62, §741.65

The amendments are adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Texas Occupations Code, §401.311, and §741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology. Within 15 working days of receipt of the request, the board's designee shall evaluate the documentation and shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcripts is required and shall be evaluated under §741.61(b) of this title.

(d) An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. In addition, effective August 1, 2004, the supervisor shall have practiced speech-language pathology for at least three years and shall submit a signed statement verifying he or she has met this requirement.

(1) Approval from the board office shall be required prior to practice by the intern. The form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) when other supervisors are added.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) An intern may renew the license without submitting a new form but may not practice.

(4) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately. The board shall hold the supervisor responsible for the practice of the intern until the supervisor notifies the board, in writing, of the change in supervision.

(5) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client clinical work. Part-time equivalent is defined as follows:

(A) 0 - 15 hours per week--no credit will be given;

(B) 15 - 19 hours per week for over 72 weeks;

(C) 20 - 24 hours per week for over 60 weeks; or

(D) 25 - 29 hours per week for over 48 weeks;

(4) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(5) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six face-to-face observations per segment by the board approved supervisor of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six other monitoring activities per segment with the board approved supervisor which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(6) not be initiated if other options to complete the supervisory process set out in paragraph (5) of this subsection are requested unless approval by the board's designee is granted. The supervisor shall provide a detailed plan of supervision, in writing, with the request. Within 15 working days of receipt of the plan, the board's designee shall accept or reject the plan.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) and (2) of this section shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor. Within 15 working days of receipt of the request, the board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) An intern who is employed full-time as defined by subsection (h)(3) of this section and wishes to practice on an as needed basis at an additional site, shall submit the intern plan and agreement of supervision form. At the additional site, the intern shall receive the minimum of one hour of face-to-face supervision and one hour of indirect supervision per month.

(k) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. The board may request a copy of this documentation.

(l) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location.

(3) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week.

(m) Any reference to the licensee's title shall state clearly that the license status is that of an intern in speech-language pathology.

(n) If the intern wishes to continue to practice, within 60 days of completion of the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

(o) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:

(1) The current supervisor shall submit a signed statement agreeing to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern

receives either the speech-language pathology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

(3) Supervision required while awaiting approval of either the speech-language pathology license or the temporary certificate of registration shall be consistent with supervision requirements established in subsection (h) of this section.

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 September 15, 2003.

TRD-200305984
Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: October 5, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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22 TAC §741.67

The repeal is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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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Cheryl Sancibrian
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SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.102

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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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Cheryl Sancibrian
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SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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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Cheryl Sancibrian
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For further information, please call: (512) 458-7236

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SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.121

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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-200305988

Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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For further information, please call: (512) 458-7236

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SUBCHAPTER L. LICENSE AND REGISTRATION RENEWAL

22 TAC §§741.161 - 741.164

The amendments are adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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-200305989
Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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For further information, please call: (512) 458-7236

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SUBCHAPTER N. DENIAL, PROBATION, SUSPENSION, OR REVOCATION OF LICENSURE OR REGISTRATION

22 TAC §§741.191, 741.192, 741.195

The amendments are adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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 September 15, 2003.

TRD-200305990
Cheryl Sancibrian
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: October 5, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 458-7236

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

22 TAC §§851.151 - 851.158

The Texas Board of Professional Geoscientists ("Board") adopts new rules at 22 Texas Administrative Code, Part 39, Chapter 851, Subchapter C, §§851.151-851.158 regarding Compliance and Enforcement for the professional geoscientist program as published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5048), without changes, and will not be republished.

The adopted rules establish conditions for business entities that engage in the public practice of geoscience; explain notification responsibilities of license holders regarding changes in business names and/or geoscience associations; and explain the purpose and required use of the geoscientist's seal. The adoption also outlines possible disciplinary actions for those that do not comply with the Texas Geoscience Practice Act (Act); and establishes the investigative process and enforcement action for violations of the Act by non-license holders.

These rules are necessary to implement Senate Bill 405, Acts of the 77th Texas Legislature, §4.04, which authorizes the Board to enforce the Act, §6.13, which authorizes the board to establish the requirements for usage of the seal, §8.01, which authorizes the board to adopt rules relating to the public practice of geoscience by a firm or corporation, and §10.03, which requires the board to adopt rules of procedure for the imposition of administrative penalties.

The Board drafted and distributed the proposed rules to persons internal and external to the agency.

No comments were received regarding the proposed rules.

The new rules are adopted under Senate Bill 405, 77th Texas Legislature, §4.04, which authorizes the Board to enforce the Act, §6.13, which authorizes the board to establish the requirements for usage of the seal, §8.01, which authorizes the board to adopt rules relating to the public practice of geoscience by a firm or corporation, and §10.03, which authorizes the Board to adopt rules of procedure for imposition of administrative penalties.

The statute affected by the adoption is Senate Bill 405, 77th Texas Legislature, and the code sections in which it may be codified. No other statutes, articles, or codes are affected by 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 September 10, 2003.

TRD-200305895
Michael D. Hess
Executive Director
Texas Board of Professional Geoscientists
Effective date: September 30, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 463-7348

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SUBCHAPTER D. HEARINGS--CONTESTED CASES

22 TAC §§851.201 - 851.243

The Texas Board of Professional Geoscientists ("Board") adopts new rules at 22 Texas Administrative Code, Part 39, Chapter 851, Subchapter D, §§851.201-851.243 regarding Hearings-Contested Cases concerning licensed professional geoscientists as published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5051), without changes, and will not be republished.

The adopted rules establish that Board contested case hearings will be conducted by a State Office of Administrative Hearings (SOAH) administrative law judge and explain Board responsibilities relating to referring contested cases to the SOAH for hearings. The adoption also clarify jurisdiction of contested cases when the board files a written request for setting a hearing or requesting assignment of a judge to consider motions and pre-hearing matters; set requirements for filings of contested cases, stipulations, agreements, and service of notices, orders, and decisions; and establish the practice and procedure for hearing proceedings.

These rules are necessary to implement Senate Bill 405, Acts of the 77th Texas Legislature, §10.03, which authorizes the Board to adopt rules of procedure for imposition of an administrative penalty.

The Board drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received regarding the proposed rules.

The new rules are adopted under Senate Bill 405, 77th Texas Legislature, §10.03 which authorizes the Board to adopt rules of procedure for the imposition of an administrative penalty which may result in a contested case hearing.

The statute affected by the adoption is Senate Bill 405, 77th Texas Legislature, and the code sections in which it may be codified. No other statutes, articles, or codes are affected by the 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.

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TRD-200305896
Michael D. Hess
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 463-7348

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.607

The Commissioner of Insurance adopts amendments to §34.607, concerning adopted standards regarding fire alarm, fire detection, or supervisory services or systems. The amended sections are adopted with one grammatical change to the proposed text as published in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5116).

The adoption of the most recent Life Safety Code is necessary as it is the minimum standards for the municipalities that have adopted the most recently published international standards. The changes to the Life Safety Code standards were made to clarify existing requirements, eliminate redundant language, restructure the document for ease in use, mandate existing current installation practices, encourage competent system design, adapt existing requirements to current state-of-the-art equipment, and add installation requirements to provide a greater level of safety to the public that rely on the performance of fire alarm and detection systems. The amendments also expand the list of acceptable alternate model code sets to include the International Building Code (2000 and later editions) and International Fire Code (2000 and later editions); the International Residential Code® for One and Two Family Dwellings (2000 and later editions); and NFPA 5000™, Building Construction and Safety Code™ (2003 and later editions) and NFPA 1 Fire Prevention Code (2000 and later editions).

The amendments to §34.607 replace the existing standards and recommendations for the Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code) issued in 1997 with the most recently published version of those standards and recommendations issued in 2000 and add to the acceptable alternative model code sets. The amendments also expand the list of acceptable alternate model code sets to include the International Building Code (2000 and later editions) and International Fire Code (2000 and later editions); the International Residential Code® for One and Two Family Dwellings (2000 and later editions); and NFPA 5000™, Building Construction and Safety Code™ (2003 and later editions) and NFPA 1 Fire Prevention Code (2000 and later editions). These code sets are first editions which some cities are adopting in lieu of the older existing models as the International Conference of Building Officials (ICBO), the Southern Building Code Congress International (SBCCI) and the Building Officials Code Administrators (BOCA) will eventually be replaced by the newly published codes. Expanding the alternate model code sets to include the news codes will allow installers to

comply with their city's code. The grammatical change occurred at the end of subsection (b)(3) where a period was replaced with "; or" to indicate that the list of additional acceptable alternative model code sets continues.

No comments were received.

The amendments are adopted under the Insurance Code Article 5.43-2(b) and Government Code §36.001. Section 6 of Article 5.43-2 provides that the Commissioner of Insurance may adopt rules necessary to the administration of Article 5.43-2. Section 6 also provides that the commissioner shall adopt standards applicable to any fire alarm device, equipment, or system regulated by Article 5.43-2. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this chapter, the Texas Insurance Code, Article 5.43-2, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

(1) NFPA 11-1998, Standard for Low-Expansion Foam.

(2) NFPA 11A-1994, Standard for Medium- and High-Expansion Foam Systems.

(3) NFPA 12-1998, Standard on Carbon Dioxide Extinguishing Systems.

(4) NFPA 12A-1997, Standard on Halon 1301 Fire Extinguishing Systems.

(5) NFPA 13-1996, Standard for the Installation of Sprinkler Systems.

(6) NFPA 13D-1996, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(7) NFPA 13R-1996, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(8) NFPA 15-1996, Standard for Water Spray Fixed Systems for Fire Protection.

(9) NFPA 16-1995, Standard for the Installation of Deluge Foam-Water Sprinkler and Foam Water Spray Systems.

(10) NFPA 17-1998, Standard for Dry Chemical Extinguishing Systems.

(11) NFPA 17A-1998, Standard for Wet Chemical Extinguishing Systems.

(12) NFPA 25-1998, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(13) NFPA 70-1999, National Electrical Code.

(14) NFPA 72-1996, National Fire Alarm Code.

(15) NFPA 90A-1996, Standard for the Installation of Air Conditioning and Ventilating Systems.

(16) NFPA 101® - 2000, and later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code)®, or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101.

(17) UL 827 October 1, 1996, Standard for Central Station Alarm Services.

(b) The acceptable alternative model code sets are:

(1) the Uniform Building Code-1991 and later editions, and the Uniform Fire Code-1991 and later editions; or

(2) the SBCCI Building Code-1991 and later editions, and the SBCCI Fire Code-1991 and later editions; or

(3) the BOCA Building Code-1991 and later editions, and the BOCA Fire Code-1991 and later editions; or

(4) the International Building Code- 2000 and later editions, and the International Fire Code- 2000 and later editions; or

(5) the International Residential Code® for One- and Two-Family Dwellings- 2000 and later editions; or

(6) NFPA 5000™, Building Construction and Safety Code™ - 2003 and later editions, and NFPA 1 Fire Prevention Code- 2000 and later editions.

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 September 9, 2003.

TRD-200305852
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 29, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §312.2, §312.8

The Texas Commission on Environmental Quality (commission) adopts amendments to §312.2 and §312.8. Sections 312.2 and §312.8 are adopted *with changes* to the proposed text as published in the June 6, 2003, issue of the *Texas Register* (28 TexReg 4391).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to Chapter 312, concerning Sludge Use, Disposal, and Transportation; 30 TAC Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 330, concerning Municipal Solid Waste. This

rulemaking is the result of that petition. The petitioner identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission identified language modifications that were needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being adopted concurrently for these chapters.

SECTION BY SECTION DISCUSSION

Adopted §312.2, Applicability, amends subsection (g) to indicate that Chapter 312 does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been designed for oil-water separation. Recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. Two commas are deleted in subsection (f) because they are not needed. Since proposal, the term "engineered" has been replaced with the word "designed"; the sentence "These waste management units by design are not plumbed to a municipal sanitary sewer." has been deleted; the words "recycling of" have been added at the beginning of the phrase "oil-water mixtures"; and the sentence "Waste in waste management units that do not meet the design criteria in this subsection and that are plumbed directly to a sanitary sewer are covered by this chapter." has been added in subsection (g).

Adopted §312.8, General Definitions, adds new paragraph (37) to provide a definition of grit trap and amends the definition of grit trap waste. The commission is replacing the term "interceptors" with the term "grit traps" and adding "Waste collected in a grit trap." to §312.8(38) in response to comment. In addition, the commission is adding "Grit trap waste" to the beginning of the second sentence in §312.8(38) to be consistent with the definition of grit trap waste in §330.2(53).

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. This rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

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 adopted rule amendments do not satisfy the definition of a major environmental rule. This rulemaking adds regulatory language which states that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been designed for oil-water separation are not regulated under Chapter 312. In addition, the adopted rules contain language stating that recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. This rulemaking adds a definition of grit trap and amends the definition of grit trap waste. The amendments are not a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a regulatory impact assessment is not required because this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This rulemaking does not exceed a standard set by federal law, but conforms with federal law. This rulemaking does not exceed an express requirement of state law, but conforms with state law. This rulemaking does not 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. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely Texas Health and Safety Code (THSC), §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. Finally, this rulemaking is not adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to explain that recycling of oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been designed for oil-water separation are not regulated under Chapter 312 and to explain that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. This rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil is regulated under

Chapter 324 and is not subject to Chapter 312. The promulgation and enforcement of these amended rules will not burden private real property nor adversely affect property values because the adopted rule amendments will merely specify that waste in certain waste management units that contain recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption 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 prepared a consistency determination for the adopted rules under 31 TAC §505.22 and found that this rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this 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 adopted 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 adopted 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. This rulemaking defines grit trap and grit trap waste; indicates that Chapter 312 does not apply to oily water mixtures in waste management units; and indicates that recycling of oil-water mixtures in waste management units designed for oil-water separation must comply with the requirements found in Chapter 324.

PUBLIC COMMENT

A public hearing was not held on this rulemaking and one comment was received from Safety-Kleen Systems, Inc. (SK) during the comment period, which closed July 7, 2003.

RESPONSE TO COMMENT

SK commented that the commission is inconsistent with the federal used oil recycling program and cites to a United States Environmental Protection Agency revision found in the March 4, 1994 issue of the *Federal Register* (59 FR 10550). SK requested that the commission clarify that a decision as to whether used oil and used oil mixtures collected from oil/water separation units may be regulated is not dependent on whether the oil/water separation unit is connected to a municipal sanitary sewer.

The commission partially agrees with this comment. The proposed rules are not inconsistent with any existing federal regulations. However, the commission acknowledges that a decision as to whether used oil and used oil mixtures collected from oil-water separation units may be regulated is not dependent on whether the oil-water separation unit is connected to a sanitary sewer. Chapter 312 will not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil/water separators or have been designed for oil-water separation. Recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. Waste in waste management units that do not meet the design criteria in §312.2(g) and that are plumbed directly to a sanitary sewer will be covered by Chapter 312. Therefore, the sentence "These waste management units by design are not plumbed to a municipal sanitary sewer." has been deleted from §312.2(g).

SK noted that in proposed §330.2(53), grit trap waste is described as "waste collected in a grit trap" and that for consistency's sake, the same phrase should be added to a complementing proposed definition in Chapter 312. As a proposed solution, SK suggested addition of this phrase to proposed §312.8(38).

The commission concurs with this comment and "Waste collected in a grit trap." has been added to §312.8(38).

SK commented that the wording of the second sentence in proposed §312.8(38) defining grit trap waste could potentially lead to confusion as the term "interceptor" is not discretely defined. The commenter further suggested deletion of this wording and insertion of examples of facilities where grit traps may exist in §312.8(37).

The commission partially agrees with this comment. In order to remove any ambiguity regarding the term "interceptors" or the regulatory status of waste removed from grit traps, the commission is replacing the term "interceptors" with the term "grit traps" in existing language in §312.8(38). In response to the suggested listing of facilities which would typically operate grit traps, the commission points out that such a list is already provided within the proposed definition of grit trap waste in §312.8(38). Therefore, no change has been made in response to this portion of the comment.

In a similar comment, it was discussed that a listing of example facilities was given where grit traps may exist. SK expressed concern that this could be taken to imply that a grit trap and an oil/water separator could not exist at the same facility, and that it is possible for a grit trap or an oil/water separator to be located at an establishment not enumerated in the example facility list.

The commission realizes that it is possible for a grit trap and an oil/water separator to be located at the same facility and further acknowledges the potential for a grit trap or an oil/water separator to exist at a facility other than that listed in proposed §312.8(38). However, the commission points out that the facilities listed as typical sites which may own and operate a grit trap is not intended to be an exhaustive listing of such facilities, nor is it intended to imply that grit trap and oil/water separator activities are mutually exclusive. The purpose of the proposed rules is to more clearly delineate the management standards for these distinct waste streams based on design and functions of the units, and reiterates that the listing of facilities where grit traps might be located is intended to function only as supportive examples in determining the applicable rules. Therefore, no change has been made in response to this comment.

SK commented that proposed language in §312.2(g) excludes waste from units which function specifically as oil/water separators. SK expressed concern that this exclusion, in concert with a proposed rule in Chapter 324 describing an oil/water separator, focused too narrowly on theoretical design specifications and could exclude oil-water mixtures from regulation as used oil, even if the mixture was derived from a unit whose purpose was to separate used oil from water.

The commission disagrees with this comment. The commission recognizes that oil-water mixtures may be generated in circumstances or units that do not strictly adhere to the design parameters outlined in the proposed rule. However, the intent of the rule is not that design requirements laid out in the regulatory description of an oil/water separator in Chapter 324 should function as an exhaustive listing of only the units which would be excluded from regulation as grit trap waste. The commission reiterates that the purpose of this rule is to draw a clear and enforceable distinction between oil/water separators and grit trap units, removing any ambiguity regarding the regulatory status of grit trap waste versus mixtures better regulated under the existing used oil regulations. The further purpose of proposed §312.2(g) is to define a grit trap through construction and design considerations while emphasizing that the purpose of these units is neither to collect nor accumulate oil. No change has been made in response to this comment.

SK requested that an additional sentence be added to proposed §312.2(g) stating specifically that used oils and oil/water mixtures would be excluded from regulation as grit trap waste.

The commission disagrees with this comment. The current wording of proposed §312.2(g) sufficiently outlines the regulatory framework of either grit trap waste or used oil and is sufficiently clear to remove any potential confusion. No change has been made in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state and to adopt rules repealing any statement of general applicability that interprets law or policy; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

§312.2. Applicability.

(a) This chapter applies to any person who prepares sewage sludge or domestic septage.

(b) This chapter applies to any person who fires sewage sludge in a sewage sludge incinerator.

(c) This chapter applies to any person who applies sewage sludge or domestic septage to the land and to the owner/operator of a surface disposal site.

(d) This chapter applies to sewage sludge or domestic septage applied to the land or placed on a surface disposal site.

(e) This chapter applies to sewage sludge fired in a sewage sludge incinerator.

(f) This chapter applies to land where sewage sludge or domestic septage is applied to a surface disposal site and to a sewage sludge incinerator.

(g) This chapter applies to any person who transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste. This chapter does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil/water separators or have been designed for oil-water separation. Recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324 of this title (relating to Used Oil Standards). Waste in waste management units that do not meet the design criteria in this subsection and that are plumbed directly to a sanitary sewer are covered by this chapter.

(h) This chapter applies to the exit gas from a sewage sludge incinerator stack.

(i) This chapter applies to any person who applies water treatment sludge for disposal in a landfill, surface impoundment, or waste pile, as defined in 40 Code of Federal Regulations (CFR) §257.2.

(j) This chapter applies to any person who applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards).

(k) This chapter applies to water treatment sludge which is disposed of in a landfill, surface impoundment, or waste pile, as defined in 40 CFR §257.2.

(l) This chapter applies to water treatment sludge which is disposed of in a land application unit, as defined in §312.121 of this title.

§312.8. General Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) 25-year, 24-hour rainfall event--The rainfall event with a recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(2) Active sludge unit--A sludge unit that has not closed and/or is still receiving sewage sludge.

(3) Aerobic digestion--The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water and other by-products by microorganisms in the presence of free oxygen.

(4) Agricultural land--Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(5) Agricultural Management Unit (AMU)--A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) Agronomic rate--The whole sludge application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(7) Anaerobic digestion--The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide and other by-products by microorganisms in the absence of free oxygen.

(8) Annual metal loading rate--The maximum amount of a pollutant (dry weight basis) that can be applied to a unit area of land during a 365-day period.

(9) Annual whole sludge application rate--The maximum amount of sewage sludge that can be applied to a unit area of land during a 365-day period.

(10) Apply sewage sludge or sewage sludge applied to the land--Land application or the spraying/spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil.

(11) Aquifer--A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(12) Base flood--A flood that has a 1% chance of occurring in any given year.

(13) Beneficial use--Placement of sewage sludge onto land in a manner which complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations which the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(14) Bulk sewage sludge--Sewage sludge that is not sold or given away in a bag or other container for application to the land.

(15) CFR--Code of Federal Regulations.

(16) Class A sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction).

(17) Class B sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title.

(18) Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(19) Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(20) Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(21) Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(22) Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(23) Displacement--The relative movement of any two sides of a fault measured in any direction.

(24) Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal shall not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(25) Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(26) Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(27) Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(28) Experimental use--Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(29) Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(30) Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(31) Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(32) Fiber crops--Crops such as flax and cotton.

(33) Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(34) Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(35) Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(36) Forest--Land densely vegetated with trees and/or underbrush.

(37) Grit trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(38) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(39) Groundwater--Water below the land surface in the saturated zone.

(40) Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(41) Industrial wastewater--Wastewater generated in a commercial or industrial process.

(42) Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(43) Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(44) Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(45) Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(46) Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(47) 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.

(48) Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners shall be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners shall be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(49) Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(50) Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g. kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(51) Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(52) Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(53) Off-site--Property which cannot be characterized as "on-site."

(54) On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access shall be by crossing the right-of-way or the right-of-way shall be under the control of the person.

(55) Operator--The person responsible for the overall operation of a facility or beneficial use site.

(56) Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(57) Owner--The person who owns a facility or part of a facility.

(58) Pasture--Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(59) Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(60) Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(61) Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(62) Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(63) Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(64) Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(65) Range land--Open land with indigenous vegetation.

(66) Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and/or construction sites.

(67) Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off the land surface.

(68) Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(69) Sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(70) Sewage sludge debris--Solid material such as rubber, plastic, glass, or other trash which may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(71) Sludge lagoon--An existing surface impoundment located on-site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment shall be considered an active sludge unit, as defined in this section.

(72) Sludge unit--Land on which only sewage sludge is placed for disposal. A sludge unit shall be used for sewage sludge. This does not include land on which sewage sludge is either stored or treated.

(73) Sludge unit boundary--The outermost perimeter of a surface disposal site.

(74) Source separated yard waste--For purposes of this chapter, shall have the same definition as found in Chapter 332 of this title (relating to Composting).

(75) Specific oxygen uptake rate (SOUR)--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(76) Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(77) Store or storage--The placement of sewage sludge on land for longer than seven days.

(78) Temporary storage--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(79) Three hundred sixty-five day period--A running total which covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(80) Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(81) Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(82) Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(83) Treatment works--Either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(84) Unstablized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(85) Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

(86) Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(87) Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(88) Water treatment sludge--Sludge generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(89) Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration 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.

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 324. USED OIL STANDARDS
SUBCHAPTER A. USED OIL RECYCLING

30 TAC §324.3

The Texas Commission on Environmental Quality (commission) adopts an amendment to §324.3. Section 324.3 is adopted *with changes* to the proposed text as published in the June 6, 2003, issue of the *Texas Register* (28 TexReg 4395).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to 30 TAC Chapter 312, concerning Sludge Use, Disposal, and Transportation; Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petitioner identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other

interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission identified language modifications that were needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being adopted concurrently for these chapters.

SECTION DISCUSSION

Adopted §324.3, Applicability, adds new paragraph (5) to indicate that recycling of oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been designed for oil-water separation must be managed solely under this chapter. Other tanks, sumps, and grit trap waste management units that are not designed for oil-water separation and are plumbed directly to a sanitary sewer must comply with the requirements found in Chapters 312 and 330. In §324.3(5), the term "engineered" is replaced with the term "designed" in response to comment. Since proposal, the phrase "to be recycled that are" has been added and the phrase "and are not plumbed to a municipal sanitary sewer system" has been deleted from the first sentence in §324.3(5). Also, the word "directly" has been added after the word "plumbed"; the word "trapping" has been replaced with the word "trap"; and the word municipal has been deleted from the last sentence in §324.3(5).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. This rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

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. This adopted rule amendment does not satisfy the definition of a major environmental rule. This rulemaking adds regulatory language which states that oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been designed for oil-water separation must be managed under this chapter. Other tanks, sumps, and grit trap waste management units that are plumbed to a sanitary sewer must comply with the requirements found in Chapters 312 and 330. The amendment is not a major environmental rule because it is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a regulatory impact assessment is not required because this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This rulemaking does not exceed a standard set by federal law, but conforms with federal law. This rulemaking does not exceed an express requirement of state law because it conforms to the requirement under Texas Health and Safety Code (THSC), §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. This rulemaking does not 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. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely THSC, §371.028. Finally, this rulemaking is not adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to add regulatory language which states that oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been designed for oil-water separation must be managed under this chapter. Other tanks, sumps, and grit trap waste management units that are plumbed directly to a sanitary sewer must comply with the requirements found in Chapters 312 and 330. This rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil is regulated under Chapter 324 and is not subject to Chapter 312. The promulgation and enforcement of this amended rule will not burden private real property nor adversely affect property values because the adopted rule amendment will explain that certain waste that contains recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption 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 prepared a consistency determination for the adopted rule under 31 TAC §505.22 and found that this rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this 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 adopted rule 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 this rule will not violate (exceed) any standards identified in the applicable CMP goals and policies because the adopted 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. This rulemaking defines grit trap and grit trap waste;

indicates that Chapter 312 does not apply to oily water mixtures in waste management units; and indicates that recycling of oil-water mixtures in waste management units designed for oil-water separation must comply with the requirements found in Chapter 324.

PUBLIC COMMENT

A public hearing was not held on this rulemaking and one comment was received from Safety-Kleen Systems, Inc. (SK) during the comment period, which closed July 7, 2003.

RESPONSE TO COMMENT

SK commented that the commission is inconsistent with the federal used oil recycling program and cites to a United States Environmental Protection Agency revision found in the March 4, 1994, issue of the *Federal Register* (59 FR 10550). SK requested that the commission clarify that a decision as to whether used oil and used oil mixtures collected from oil/water separation units may be regulated is not dependent on whether the oil/water separation unit is connected to a municipal sanitary sewer.

The commission partially agrees with this comment. The proposed rules are not in conflict with any existing federal regulations. However, the commission recognizes that oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or that have been designed for oil-water separation are sometimes plumbed to a sanitary sewer system. These oily water mixtures may contain recoverable amounts of used oil which if recycled, are subject to Chapter 324. Therefore, the phrase "and are not plumbed to a municipal sanitary sewer" has been deleted from the first sentence in §324.3(5).

SK commented that proposed language in §324.3(5) and similar language proposed simultaneously in Chapters 312 and 330 contain specific design criteria to be used in differentiation between grit traps and oil/water separators. The commenter expressed concern that these criteria focused too narrowly on theoretical design specifications and could exclude oil-water mixtures from regulation as used oil, even if the mixture was derived from a unit whose purpose was to separate used oil from water. The example of bilge water containing oil was used to demonstrate simpler units which would generate oil-water mixtures eligible for regulation as used oil.

The commission disagrees with this comment. The commission does recognize that oil-water mixtures may be generated in circumstances or units that do not strictly adhere to the design parameters outlined in proposed §324.3(5) and the complementing sections in this rulemaking. However, the intent of this rulemaking is not that design requirements laid out in the rules should function as an exhaustive listing of only the units from which the oil-water mixture can be regulated as used oil. The commission points out that criteria such as those of the American Petroleum Institute are useful in the determination of the regulatory status of the units as grit traps or oil/water separators and addition of the phrase "or have been engineered for oil-water separation" are sufficiently broad in providing a technical basis for this regulatory determination. The commission reiterates that the purpose of these rules is to draw a clear and enforceable distinction between oil/water separators and grit trap units, removing any ambiguity regarding the regulatory status of grit trap waste and mixtures better regulated under the existing used oil regulations.

SK commented about the use of the term "engineered" in §324.3(5) and the use of the term "designed" in other proposed revisions. SK was unclear if these terms were to be used interchangeably and recommended that the commission use one term to preclude any potential confusion.

The commission agrees with this comment. For consistency, the term "engineered" will be replaced with "designed" in §324.3(5). However, the commission notes that equipment manufactured to accomplish separation of oil and water would involve engineering review and would at some point in design or installation require review by a licensed professional engineer.

SK commented that use of the term "must be managed solely under this chapter" in proposed §324.3(5) is not accurate, citing as an example the potential for a handler of an oil-water mixture to dispose of this material rather than recover the hydrocarbon component in compliance with Chapter 324.

The commission disagrees with this comment. While other management alternatives may be encountered for oil-water mixtures other than conventional recycling as used oil, the only other likely scenario is the one discussed by SK, that being disposal. In the event that a mixture derived from an oil/water separator was to be disposed, the commission notes that the proposed change is located within the applicability section regarding the management of used oil. Within this applicability statement is a reference to 40 Code of Federal Regulations Part 279, Subpart B, which would exclude such a mixture from regulation as used oil if disposed; rather the waste would be regulated under other applicable waste disposal provisions. The commission reiterates that the overriding goal of this rulemaking is to clearly differentiate the management standards for oil-water mixtures and grit trap waste and is avoiding complicating cross-references or linked citations.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability that interprets law or policy; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

§324.3. Applicability.

Applicability and exemptions from applicability will be as in 40 Code of Federal Regulations (CFR) Part 279, Subpart B, and as clarified here.

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). EPA Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Part 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the

generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(5) Oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or that have been designed for oil-water separation must be managed under this chapter. Management of wastes from other tanks, sumps, and grit trap waste management units that are plumbed directly to a sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).

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 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (commission) adopts amendments to §§330.2, 330.4, and 330.66. Section 330.2 and §330.66 are adopted *with changes* to the proposed text as published in the June 6, 2003, issue of the *Texas Register* (28 TexReg 4397). Section 330.4 is adopted *without change* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to 30 TAC Chapter 312, concerning Sludge Use, Disposal, and Transportation; 30 TAC Chapter 324, concerning Used Oil Standards; and Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petitioner identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission identified language modifications that were needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being adopted concurrently for these chapters.

SECTION BY SECTION DISCUSSION

Adopted §330.2, Definitions, adds the definition of grit trap in new paragraph (52); adds the definition of grit trap waste in new paragraph (53); renumbers the subsequent paragraphs accordingly; and formats paragraph (3) to identify the referenced section titles. The commission also deletes renumbered paragraph (137)(O) because the term "used oil" is addressed in Chapter 324. In addition, the word "vertical" has been added to §330.2(52) and the term "interceptors" has been replaced with the term "grit traps" in §330.2(53) in response to comment.

Adopted §330.4, Permit Required, amends subsection (r) by requiring a separate permit or registration for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324.

Adopted §330.66, Liquid Waste Transfer Facility Design and Operation, amends subsection (a) to indicate that §330.66 does not apply to transfer facilities that handle only liquid wastes that contain recyclable used oil from oil/water separators which are regulated under Chapter 324. In addition, the language "or any other similar waste management unit designed to collect oil" has been added to §330.66(a)(1) in response to comment.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject

to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. This rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

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 adopted rule amendments do not satisfy the definition of a major environmental rule. This rulemaking adds regulatory language which states that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been designed for oil-water separation, are not regulated under Chapter 312. In addition, the adopted rules contain language stating that recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The amendments are not a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a regulatory impact assessment is not required because this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This rulemaking does not exceed a standard set by federal law, but conforms with federal law. This rulemaking does not exceed an express requirement of state law because it conforms to the requirement under Texas Health and Safety Code (THSC), §371.028. This rulemaking does not 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. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. Finally, this rulemaking is not adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to explain that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been designed for oil-water separation are not regulated under Chapter 312. In addition, the adopted rules contain language stating that recycling of oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. This rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil (including mixtures containing, or contaminated with, used oil) is regulated under Chapter 324 and is not subject to Chapter 330. The promulgation and enforcement of these amended rules will not burden private real property nor adversely affect property values because the adopted rule amendments will merely specify that certain waste that contains recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption 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 prepared a consistency determination for the adopted rules under 31 TAC §505.22 and found that this rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this 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 adopted 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 adopted 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. This rulemaking defines grit trap and grit trap waste and indicates that a separate permit or registration is not required under this chapter for the storage, transportation, or handling of used oil mixtures collected from oil/water separators.

PUBLIC COMMENT

A public hearing was not held on this rulemaking and one comment was received from Safety-Kleen Systems, Inc. (SK) during the comment period, which closed July 7, 2003.

RESPONSE TO COMMENT

SK commented that wording of the second sentence in proposed §330.2(53) defining grit trap waste and complementary wording in §312.8 could potentially lead to confusion as the term "interceptor" is not discretely defined. SK further suggested deletion of this wording and also insertion of examples of facilities where grit traps may exist in Chapters 312 and 330.

The commission disagrees with this comment. To remove any ambiguity regarding the term "interceptors" or the regulatory status of waste removed from grit traps, the commission is replacing the term "interceptors" with the term "grit traps" in existing language in §330.2(53).

SK commented that the term "vertical" is used in proposed §312.8(37) as part of defining a grit trap; however, the term is not used in proposed §330.2(52). SK suggested the addition of the word "vertical" to §330.2(52).

The commission agrees with this comment and the word "vertical" has been added to §330.2(52).

SK discussed in another comment that a listing of example facilities was given where grit traps may exist. SK expressed concern that this could be taken to imply that a grit trap and an oil/water separator as defined in proposed §324.3(5) could not exist at the same facility, and that it is possible for a grit trap or an oil/water separator to be located at an establishment not enumerated in the example facility list.

The commission realizes that it is possible for a grit trap and an oil/water separator to be located at the same facility and further acknowledges the potential for a grit trap to exist at a facility other than that listed in proposed §312.8(38) and §330.2(53). However, the commission points out that the facilities listed as typical sites which may own and operate a grit trap is not intended to be an exhaustive listing of such facilities, nor is it intended to imply that grit trap and oil/water separator activities are mutually exclusive. The purpose of this rulemaking is to more clearly delineate the management standards for these distinct waste streams based on design and functions of the units, and reiterates that the listing of facilities where grit traps might be located is intended to function only as supportive examples in determining the applicable rules. No change has been made in response to this comment.

SK commented that proposed language in §330.2(53) and similar language in Chapters 312 and 324 contain specific design criteria to be used in differentiation between grit traps and oil/water separators. SK expressed concern that these criteria focused too narrowly on theoretical design specifications and could exclude oil-water mixtures from regulation as used oil, even if the mixture was derived from a unit whose purpose was to separate used oil from water. The example of bilge water containing oil was used to demonstrate simpler units which would generate oil-water mixtures eligible for regulation as used oil.

The commission recognizes that oil-water mixtures may be generated in circumstances or units that do not strictly adhere to the design parameters outlined in proposed §324.3(5) and the complementing sections in today's rule. However, the intent of the rule is not that design requirements laid out in the rule should function as an exhaustive listing of the only units from which the oil-water mixture can be regulated as used oil. Criteria such as those of the American Petroleum Institute are useful in the determination of the regulatory status of the units as grit traps or oil-water separators and addition of the phrase "or have been designed for oil-water separation" are sufficiently broad in providing a technical basis for this regulatory determination. The commission reiterates that the purpose of these rules is to draw a clear and enforceable distinction between oil/water separators and grit trap units, removing any ambiguity regarding the regulatory status of grit trap waste and mixtures better regulated under the existing used oil regulations. No change has been made in response to this comment.

Regarding proposed §330.4(r), SK discussed the need for a separate registration or permit for management of used oil and commented that some used oil activities would not require this separate permit or registration.

The commission disagrees with this comment. Most commercial management activities of used oil do trigger registration requirements exclusive of those for a generator. The management of used oil in conjunction with other waste management activities are subject to any and all applicable requirements for this waste stream including registration, if necessary. No change has been made in response to this comment.

SK suggested the addition of an additional sentence regarding the applicability of Chapter 330, specifically a sentence stating that used oil would not be subject to regulation under this chapter.

The commission disagrees with this comment. The current wording of proposed §330.2(52) and (53) sufficiently outlines the regulatory framework of either grit trap waste or used oil and is sufficiently clear to remove any potential confusion. No change has been made in response to this comment.

SK suggested that the last sentence of proposed §330.66(a)(1) be revised as follows: "This section shall not apply to transfer facilities that handle only liquid wastes that contain recyclable used oil from oil/water separators *(or other units)* which are regulated under the recycling rules of Chapter 324 of this title (relating to Used Oil Standards)."

The commission agrees with this comment. However, the suggested language is too broad. Therefore, the commission has added the language "or any other similar waste management unit designed to collect oil" to §330.66(a)(1).

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.2, §330.4

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability that interprets law or policy; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

§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, have the following meanings.

(1) 100-year flood--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) Acid--A substance containing hydrogen that will release hydrogen (hydronium) ions when dissolved in water. Acids will have a pH of less than 7.0 and usually have a sour taste and will cause blue litmus dye to turn red.

(3) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.250 - 330.253 of this title (relating to Applicability; Closure Requirements for MSWLF Units

That Stop Receiving Waste Prior to October 19, 1991, and MSW Sites; Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, But Stop Receiving Waste Prior to October 9, 1993; and Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites).

(4) Active portion--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.250 - 330.253 of this title.

(5) Airport--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(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 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), 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, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable ACM means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable ACM means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(9) ASTM--The American Society of Testing and Materials.

(10) Battery--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(11) Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(12) Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(13) Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(14) Bird hazard--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(15) Brush--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(16) Buffer zone--A zone free of municipal solid waste processing and disposal activities adjacent to the site boundary.

(17) CFR--Code of Federal Regulations.

(18) Citizens' collection station--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles). The facility may consist of one or more storage containers, bins, or trailers.

(19) Class I industrial solid waste--See industrial solid waste.

(20) Collection--The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(21) Collection system--The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(22) Commercial solid waste--All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(23) 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) 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 and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component.

(25) 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) Composting--The controlled biological decomposition of organic materials through microbial activity.

(27) Conditionally exempt small-quantity generator--A person who generates no more than 220 pounds of hazardous waste in a calendar month.

(28) 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) Contaminate--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of ground or surface water.

(30) 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) Discard--To abandon a material and not use, reuse, 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) 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) 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) 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) 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) Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(37) 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) Dredged material--Material that is excavated or dredged from waters of the United States.

(39) 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) Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(41) Endangered or threatened species--Any species listed as such under Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(42) 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, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(43) Existing municipal solid waste landfill 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) 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) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(46) 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) Fill material--Any material used for the primary purpose of filling an excavation.

(48) 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) 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) Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(51) Generator--Any person, by site or location, whose act or process produces a solid waste or first causes it to become regulated.

(52) Grit Trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(53) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(54) Groundwater--Water below the land surface in a zone of saturation.

(55) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code, §§6901 *et seq*., as amended.

(56) Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(57) 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.

(58) Industrial hazardous waste--Hazardous waste determined to be of industrial origin.

(59) 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 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 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 Waste Determination).

(60) Inert material--A naturally occurring nonputrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

(61) In situ--In natural or original position.

(62) 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.

(63) Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(64) 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.

(65) Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(66) Lead--The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

(67) 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.

(68) 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).

(69) 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.

(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).

(71) Litter--Rubbish and putrescible waste.

(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.

(73) Man-made inert material--Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

(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). 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.

(75) Monofill--A landfill or landfill trench into which only one type of waste is placed.

(76) MSWLF--Municipal solid waste landfill facility.

(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.

(78) 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 solid waste.

(79) Municipal solid waste 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.

(80) Municipal solid waste landfill 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. A municipal solid waste landfill (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.

(81) Municipal solid waste site--A plot of ground designated or used for the processing, storage, or disposal of solid waste.

(82) Navigable waters--The waters of the United States, including the territorial seas.

(83) New municipal solid waste landfill unit--Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(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.

(85) Non-RACM--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(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.

(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.

(88) Operate--To conduct, work, run, manage, or control.

(89) Operating record--All plans, submittals, and correspondence for a municipal solid waste landfill facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(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.

(91) Operator--The person(s) responsible for operating the facility or part of a facility.

(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.

(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 (relating to Radiation Control).

(94) Owner--The person who owns a facility or part of a facility.

(95) PCB--Polychlorinated biphenyl molecule.

(96) Polychlorinated biphenyl waste(s)--Those polychlorinated biphenyls (PCBs) and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 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.

(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) 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.

(99) 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.

(100) Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(101) Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(102) 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 unit.

(103) 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).

(104) 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.

(105) Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(106) 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 the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code, §§6901 *et seq*., as amended.

(107) 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.

(108) 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.

(109) Qualified groundwater scientist--A licensed geoscientist or licensed engineer who has received a baccalaureate or postgraduate 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.

(110) RACM--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material (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.

(111) Radioactive waste--Waste that requires specific licensing under Texas Health and Safety Code, Chapter 401, and the rules adopted by the commission under that law.

(112) 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.

(113) 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.

(114) Refuse--Same as rubbish.

(115) Registration--The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

(116) Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3, and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(117) Relevant point of compliance--See point of compliance.

(118) Resource recovery--The recovery of material or energy from solid waste.

(119) 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.

(120) 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).

(121) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(122) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(123) Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(124) Saturated zone--That part of the earth's crust in which all voids are filled with water.

(125) Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(126) Scrap tire--Any tire that can no longer be used for its original intended purpose.

(127) 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.

(128) Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(129) Site--Same as facility.

(130) 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.

(131) 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.

(132) Site operator--The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

(133) 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.

(134) Small municipal solid waste landfill--A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

(135) 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, 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 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 under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 United States Code, §§6901 *et seq.*).

(136) 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.

(137) 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 of this title (relating to Household Materials Which Could Be Classified as Hazardous 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), 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) light ballasts and/or small capacitors containing polychlorinated biphenyl compounds;

(P) 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;

(Q) 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;

(R) any waste stream other than household or commercial garbage, refuse, or rubbish;

(S) lead acid storage batteries; and

(T) used-oil filters from internal combustion engines.

(138) 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 (relating to Definitions).

(139) Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations, Part 257, Appendix II.

(140) 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 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.

(141) 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.

(142) Store--To keep, hold, accumulate, or aggregate.

(143) 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 that is necessary for protection of human health and the environment.

(144) 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.

(145) Surface water--Surface water as included in water in the state.

(146) Texas Civil Statutes--Vernon's Texas Revised Civil Statutes Annotated.

(147) 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.

(148) 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.

(149) Transporter--A person who collects and transports solid waste; does not include a person transporting his or her household waste.

(150) Trash--Same as Rubbish.

(151) Treatment--Same as Processing.

(152) 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.

(153) 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.

(154) Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(155) Unconfined water--Water that is not controlled or impeded in its direction or velocity.

(156) Unit--Municipal solid waste landfill unit.

(157) 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.

(158) 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.

(159) 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.

(160) Washout--The carrying away of solid waste by waters.

(161) 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.

(162) 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.

(163) 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.

(164) 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.

(165) 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.

(166) 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.

(167) 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.

(168) 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.

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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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §330.66

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability that interprets law or policy; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

§330.66. Liquid Waste Transfer Facility Design and Operation.

(a) Applicability.

(1) This section shall apply to a municipal solid waste (MSW) management facility that handles only liquid waste and which is exempt from permit requirements under §330.4(r) of this title (relating to Permit Required). This section shall not apply to transfer facilities that handle only liquid wastes that contain recyclable used oil from oil/water separators or any other similar waste management unit designated to collect oil which are regulated under Chapter 324 of this title (relating to Used Oil Standards).

(2) New liquid waste transfer facilities with permanent holding vessels (fixed facilities) must comply with all requirements of this section prior to operation.

(3) New liquid waste transfer facilities that only transfer from vehicle to vehicle must comply with applicable requirements of this section prior to operation.

(4) Existing liquid waste transfer facilities must comply with applicable requirements of this section and must notify the Texas Commission on Environmental Quality (TCEQ) of their operation within 30 days of the effective date of these regulations.

(5) Temporary storage facilities as defined in §312.147 of this title (relating to Temporary Storage) that store 8,000 gallons or less for a period of four days or less in mobile containers are not required to follow the liquid waste transfer station rules in this section. Owners and operators of temporary storage facilities that store 8,000 gallons or less for a period of four days or less must follow the notification rules in this section.

(6) Secondary transporters of liquid wastes as defined in §312.148 of this title (relating to Secondary Transportation of Waste) are subject to all applicable requirements in this section.

(7) This section is applicable to liquid waste transfer facilities located on or at other TCEQ authorized facilities.

(b) Public meeting. The owner or operator of each liquid waste transfer facility shall conduct a public meeting in the local area within 30 days of facility operation, or as determined by the executive director, to describe the proposed action to the general public. A onetime notice of the public meeting shall be provided by the facility owner or operator two weeks prior to the meeting in the format prescribed in Texas Health and Safety Code (THSC), §361.0791(d) and (e) (relating to Public Meeting and Notice Requirements). Evidence that the meeting was held shall be submitted to the TCEQ in the form of a copy of the meeting notice as published and a notarized statement from the facility owner or operator stating that the meeting was held and stating the meeting date and location. This meeting requirement is applicable to all liquid waste transfer facilities.

(c) Notification. The owner or operator shall notify the executive director in writing of the intent to operate a liquid waste transfer facility 30 days prior to the operation of the facility by completing a TCEQ form entitled "Notice of Intent to Operate a Liquid Waste Transfer Facility," available from the TCEQ. The facility will be issued a registration number by the TCEQ upon receipt of the form. Documentation of the facility design and operation shall be maintained as follows.

(1) Waste data. For all liquid waste transfer facilities, documentation of the incoming and outgoing liquid waste rate shall be maintained at the facility or at the facility headquarters, as applicable. The incoming liquid waste rate shall be supported by trip ticket receipts and annual reports. Random sampling and analysis of the incoming waste should be conducted and records maintained.

(2) Site plan. For fixed facilities only, a site layout plan, signed and sealed by a registered professional engineer, and a location map must be maintained at the facility.

(3) Land-use. For all liquid waste transfer facilities, the owner or operator shall maintain documentation at the facility of local government approval/acceptance of the site location, e.g., conformity with local zoning restrictions, a building permit, license, nonconforming use authorization, deed restrictions, etc. These regulations do not grant authorization for any activities of the facility that are not in compliance with local government ordinances and regulations.

(4) Site operating plan.

(A) A site operating plan shall be maintained at the facility or at the facility headquarters for all liquid waste transfer facilities. The site operating plan shall include, at a minimum, a description of the general liquid waste data, the facility operation, facility maintenance, safety provisions, emergency procedures, fire protection, operating hours, spill control procedures, and vector control procedures.

(B) For each facility, the plan shall also address alternate procedures in the event that the facility becomes inoperable for periods longer than 24 hours.

(C) For all liquid waste transfer facilities, the liquid waste data shall be maintained to include an estimate of the amount of liquid waste to be received daily, the maximum amount of liquid waste to be stored, the maximum and average lengths of time that liquid waste is to remain on the site, and the intended destination of the liquid waste received. The data shall be maintained either at the facility or at the facility headquarters.

(D) The plan shall address emergency procedures for catastrophic vessel failure, for accidental discharges, and for spills of liquid waste. For fixed storage facilities, a plan shall be maintained on site that addresses yearly vessel inspection and procedures to repair leaks, if found. In the event of a discharge or spill of waste at the transfer facility the owner or operator of the facility must take appropriate action to protect human health and the environment, e.g., notify local law enforcement and health authorities; dike the discharge area; clean up any waste discharge that occurs; or take such action as may be required or approved by federal, state, or local officials having jurisdiction so that the waste discharge no longer presents a public health or environmental problem.

(5) Legal description. For all liquid waste transfer facilities, a legal description of the property, including the book and page number of the county deed records of the current property owner, shall be maintained at the site or at the facility headquarters. If the property is platted, the book and page number of the final plat record and a copy of the final plat shall be maintained on site or at the facility headquarters.

(6) Evidence of financial assurance. For fixed facilities only, evidence of assurance shall be submitted to the TCEQ in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). A cost estimate of the cost to close the facility shall be submitted with the notice. The financial assurance document shall be submitted prior to facility operation. The financial assurance instrument will be released upon approval of the executive director.

(7) Statement of owner or operator. The following document shall be signed, notarized, and submitted with the notification form.

Figure: 30 TAC §330.66(c)(7)

(d) Design criteria.

(1) Facility design. The facility shall be designed in accordance with all local building codes, land development code requirements, and deed restrictions, if applicable. Building setback lines shall be followed, if applicable. Vehicle parking shall be provided on-site for equipment and employees. Necessary water connections for facility cleaning shall be provided.

(2) Water pollution control. Lagoons, opentop storage facilities, and open vessels are prohibited. Underground storage facilities are prohibited. Provisions for the handling of spilled liquids and any washdown waters from the facility shall be provided. Normally, at fixed facilities, concrete pads with raised curbs around the perimeter, asphalt-paved areas with berms, or the equivalent containment facilities should be utilized to control spills of waste and any other contaminated water. Other spill control methods are acceptable.

(3) Odor control. All liquid waste transfer facilities shall be designed to transfer liquids with a minimal time exposure of liquid waste to the air. The owner or operator shall consider all necessary measures to prevent or eliminate nuisance odors. All liquid waste shall be stored in odor retaining containers and vessels. The applicant should consider additional on-site buffer zones for odor control. The facility shall be designed and operated to prevent nuisance odors from leaving the property boundary of the facility. If nuisance odors are found to be passing the facility property boundary, the facility owner or operator may be required to suspend operations until the nuisance is abated.

(4) Visual screening. Screening or other measures to minimize adverse visual impacts should be considered where appropriate.

(5) Site drainage. For fixed facilities only, drainage provisions for controlling surface water on or near the site shall be provided. The locations of any proposed dikes, berms, storm sewers, levees, detention ponds, and the outfall point shall be identified in the site plan.

(6) 100-year flood. If the fixed facility is located in a 100-year floodplain, the facility shall be designed to prevent washout of contaminants. Such designs normally include levees and other flood control structures.

(7) Site access. The site access road from a publicly owned roadway to each facility shall be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for waste transporter vehicles shall be provided. The access road design shall include adequate turning radii according to the vehicles that will utilize the site and shall avoid disruption of normal traffic patterns. A positive means to control dust and mud shall be provided.

(8) Access control. Access to each site should be controlled by a perimeter fence, four-foot barbed wire or six-foot chain-link, or equivalent, with lockable gates. A sign shall be provided that gives the site name, owner or operator's name, facility registration number, operating hours, telephone number, and site rules.

(e) General prohibitions. A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of liquid waste, or the use or operation of a liquid waste facility to store, process, or dispose of liquid waste, in violation of THSC, Chapter 361, or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause:

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

(2) the creation and maintenance of a nuisance; or

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

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 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (commission) adopts amendments to §§331.2, 331.62, 331.65, 331.144, 331.163 and new §331.21. Sections 331.2, 331.62, 331.65, 331.144, and 331.163 are adopted *with changes* to the proposed text as published in the May 30, 2003 issue of the *Texas Register* (28 TexReg 4259). Section 331.21 is adopted *without change* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED 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 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

Adopted §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 added as new paragraph (51). The remaining paragraphs are renumbered accordingly. A change from proposal in paragraph (23) spells out the acronym "UIC."

Adopted 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.

Adopted §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. In addition, "as appropriate" has been added to §331.62(9) after the phrase "a licensed professional engineer or licensed professional geoscientist."

Adopted §331.65, Reporting Requirements, adds a licensed professional geoscientist as a person qualified to prepare and seal completion reports. A change from proposal in subsection (a)(1) adds the word "licensed" before "professional engineer."

Adopted §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. A change from proposal replaces the word "registered" with "licensed."

Adopted §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. A change from proposal in subsections (h) and (i) adds the word "licensed" before "professional engineer." In addition, "as appropriate" has been added to §331.163(h) after the phrase "supervised by a licensed professional engineer or licensed professional geoscientist."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as 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 adopted 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 Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. The adopted rules are not specifically intended to protect the environment or reduce risks to human health. The adopted 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 adopted 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 adopted rules do not meet the definition of a major environmental rule.

Furthermore, even if the adopted 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 adopted amendments to Chapter 331 do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the adopted rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these adopted rules. Fourth, the commission adopts these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not adopt the rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed a preliminary assessment of whether these rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The 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 rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the 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 adopted 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. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. 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 reviewed the adopted rulemaking and found that the adoption 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 prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the 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 adopted 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 adopted rule changes do not modify or alter standards set forth in existing rules, and will not have a substantive effect on commission actions subject to the CMP. The adopted rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act.

PUBLIC COMMENT

A public hearing was not held on this rulemaking and no comments were received during the comment period, which closed June 30, 2003.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.2, §331.21

STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Water Code, §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; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code, §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.

§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, have the following meanings.

(1) Abandoned well - A well which has been permanently discontinued from use or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

(2) Activity - The construction or operation of an injection well for disposal of waste, or of pre-injection units for processing or storage of waste.

(3) Affected person - Any person whose legal rights, duties, or privileges may be adversely affected by the proposed injection operation for which a permit is sought.

(4) Annulus - The space in the wellbore between the injection tubing and the long string casing and/or liner.

(5) Annulus pressure differential - The difference between the annulus pressure and the injection pressure in an injection well.

(6) Aquifer - A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(7) Aquifer restoration - The process used to achieve or exceed water quality levels established by the commission for a permit/production area.

(8) Aquifer storage well - A Class V injection well used for the injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(9) Area of review - The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either one fourth of a mile or a number calculated according to the criteria set forth in §331.42 of this title.

(10) Area permit - An injection well permit which authorizes the construction and operation of two or more similar injection wells within a specified area.

(11) Artificial liner - The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

(12) Baseline quality - The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection activities.

(13) Baseline well - A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

(14) Buffer area - The area between any mine area boundary and the permit area boundary.

(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 ($CaCO_3$), anhydrite ($CaSO_4$), and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(16) Captured facility - A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(17) Casing - Material lining used to seal off strata at and below the earth's surface.

(18) Cement - A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent movement of fluids within, or adjacent to, a borehole, or a similar substance used in plugging a well.

(19) Cementing - The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

(20) Cesspool - A drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(21) Commercial facility - A Class I permitted facility, where one or more commercial wells are operated.

(22) Commercial 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) Commercial well - An underground injection control Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person.

(24) Conductor casing or conductor pipe - A short string of large-diameter casing used to keep the top of the wellbore open during drilling operations.

(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 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 or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(27) Contaminant - Any physical, biological, chemical, or radiological substance or matter in water.

(28) Control parameter - Any chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well.

(29) Disposal well - A well that is used for the disposal of waste into a subsurface stratum.

(30) Disturbed salt zone - Zone of salt enveloping a salt cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt cavern, and is the result of mining activities during salt cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(31) Drilling mud - A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(32) Drywell - A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(33) Excursion - The movement of mining solutions into a designated monitor well.

(34) Existing injection well - A Class I well which was authorized by an approved state or EPA- administered program before August 25, 1988 or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(35) Fluid - Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(36) Formation - A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(37) Formation fluid - Fluid present in a formation under natural conditions.

(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) it is used as drinking water for human consumption; or

(ii) the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

(iii) it is not an exempted aquifer.

(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 total dissolved solids can be put to a beneficial use.

(39) Groundwater - Water below the land surface in a zone of saturation.

(40) Groundwater protection area - A geographic area (delineated by the state under the Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(41) Hazardous waste - Hazardous waste as defined in §335.1 of this title (relating to Purpose, Scope, and Applicability).

(42) Improved sinkhole - A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(43) Injection interval - That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(44) Injection operations - The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(45) Injection well - A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(46) Injection zone - A formation, a group of formations, or part of a formation that receives fluid through a well.

(47) In service - The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(48) Intermediate casing - A string of casing with diameter intermediate between that of the surface casing and that of the smaller 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 or production casing.

(49) Large capacity cesspool - A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(50) Large capacity septic system - A septic system that is designed for a flow of greater than 5,000 gallons per day.

(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) 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) 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) 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) Mine area - The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(56) 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) 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) 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) New injection well - Any well, or group of wells, not an existing injection well.

(60) New waste stream - A waste stream not permitted.

(61) Non-commercial facility - A Class I permitted facility which operates only non-commercial wells.

(62) Non-commercial underground injection control (UIC) Class I well facility - A UIC Class I permitted facility where only non-commercial wells are operated.

(63) Non-commercial well - An underground injection control 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) Off-site - Property which cannot be characterized as on-site.

(65) 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) 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) Permit area - The area owned, or under lease by, the permittee which may include buffer areas, mine areas, and production areas.

(68) 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) Point of injection - For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(70) 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) Pre-injection units - The on-site aboveground 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) Production area - The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(73) 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) Production zone - The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced. .

(75) Radioactive waste - Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, as amended.

(76) 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) 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) 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) Salt cavern confining zone - A zone between the salt cavern injection zone and all underground sources of drinking water 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) 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) 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) 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) Salt cavern solid waste disposal well or salt cavern disposal well - For the purposes of this chapter, regulations of the commission, and not to underground injection control (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) Salt dome - A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(84) 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) 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) 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) Stratum - A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(88) 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) Surface casing - The first string of casing (after the conductor casing, if any) that is set in a well.

(90) 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.

(91) Total dissolved solids (TDS) - The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(92) Transmissive fault or fracture - A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(93) Underground injection - The subsurface emplacement of fluids through a well.

(94) Underground injection control (UIC) - The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(95) 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 total dissolved solids; and

(C) which is not an exempted aquifer.

(96) 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) 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) 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) Well injection - The subsurface emplacement of fluids through a well.

(100) 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) Well stimulation - Several processes used to clean the wellbore, 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) 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.

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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Stephanie Bergeron
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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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 adopted under Texas Water Code, §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; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code, §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.

§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 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) Casing design. Surface casing shall be set to a minimum subsurface depth, as determined by the executive director, which extends into the confining bed below the lowest formation containing a USDW or freshwater aquifer. At least one long string casing, using a sufficient number of centralizers, shall extend to the injection interval. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(i) depth of lowermost USDW or freshwater aquifer;

(ii) depth to the injection interval;

(iii) injection pressure, external pressure, internal pressure, and axial loading;

(iv) hole size;

(v) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(vi) the maximum burst and collapse pressures, and tensile stresses which may be experienced at any point along the length of the casings at any time during the construction, operation, and closure of the well;

(vii) corrosive effects of injected fluids, formation fluids, and temperatures;

(viii) lithology of injection and confining intervals;

(ix) presence of lost circulation zones or other subsurface conditions that could affect the casing and cementing program;

(x) types and grades of cement; and

(xi) quantity and chemical composition of the injected fluid.

(B) Tubing and packer design. All Class I injection wells shall inject fluids through tubing with a packer, set at a depth specified by the executive director. Fluid seal systems will not be approved by the commission. The annulus system shall be designed and constructed to prevent the leak of injection fluids into any unauthorized zones. In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) depth to the injection zone;

(ii) characteristics of injection fluid (chemical content, corrosiveness, temperature, and density);

(iii) injection pressure;

(iv) annular pressure;

(v) rate (intermittent or continuous), temperature, and volume of injected fluid;

(vi) size of casing; and

(vii) tensile, burst, and collapse strengths of the tubing.

(2) Plans and specifications. Except as specifically required in the terms of the disposal well permit, the drilling and completion of the well shall be done in accordance with the requirements of this chapter and all permit application plans and specifications.

(3) Changes to plans and specifications. Any proposed changes to the plans and specifications must be approved in writing by the executive director that said changes provide protection standards equivalent to or greater than the original design criteria.

(A) If during the drilling and/or completion of the well, the operator proposes to change the cementing of the surface casing, the executive director shall require a written description of the proposed change, including any additional data necessary to evaluate the request. The operator may not execute the change until the executive director gives written approval. The operator may change the setting depth of the surface casing to a depth greater than that specified in the permit, either during drilling and/or completion, without approval from the executive director. Approval for setting depths shallower than specified in the permit will not be authorized.

(B) If the operator proposes to change the injection interval to one not reviewed during the permit application process, the operator shall submit an application to amend the permit. The operator may not inject into any unauthorized zone.

(C) Any other changes, including but not limited to the number of casing strings, changes in the size or material of intermediate and production casings, changes in the completion of the well, changes in the exact setting of screens or injection intervals within the permitted injection zone, and changes in the type of cement used, or method of cementing shall be considered minor changes. If minor changes are requested, the executive director may give immediate oral and subsequent written approval or written approval for those changes. The operator is required to submit a detailed written description of all minor changes, along with the information required in §331.65 of this title (relating to Reporting Requirements), before approval for operation of the well may be granted.

(4) Drilling requirements.

(A) The well shall be drilled according to sound engineering practices to minimize problems which may jeopardize completion attempts, such as deviated holes, washouts and stuck pipe.

(B) As much as technically practicable and feasible, the hole should be drilled under laminar flow conditions, with appropriate fluid loss control, to minimize hole washouts.

(C) Immediately prior to running casing, the drilling fluid in the hole is to be circulated and conditioned to establish rheological properties commensurate with proper cementing practices.

(5) Construction performance standard. All Class I wells shall be cased and all casings shall be cemented to prevent the movement of fluids along the borehole into or between USDWs or freshwater aquifers, and to prevent movement of fluids along the borehole out of the injection zone.

(6) Cementing requirements, for all Class I wells constructed after the promulgation of this rule, including wells converting to Class I status.

(A) Cementing shall be by the pump and plug or other method approved by the executive director. Cementing may be accomplished by staging. Cement pumped shall be of a volume equivalent to at least 120% of the volume calculated necessary to fill the annular space between the hole and casing and between casing strings to the surface of the ground. The executive director may require more than 120% when the geology or other circumstances warrant it. A two-dimensional caliper shall be used to measure the hole diameter. If the two-dimensional caliper can not measure the diameter of the hole over an interval, then the minimum amount of cement needed for that interval shall be a volume calculated to be equivalent to or greater than 150% of the space between the casing and the maximum measurable diameter of the caliper.

(B) If lost circulation zones or other subsurface conditions are anticipated and/or encountered, which could result in less than 100% filling of the annular space between the casing and the borehole or the casings, the owner/operator shall implement the approved contingency plan submitted according to §331.121(a)(2)(O) of this title (relating to Class I Wells).

(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) deviation checks on all holes, conducted at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(ii) for surface casing;

(I) spontaneous potential, resistivity, natural gamma, and caliper logs before the casing is installed;

(II) cement bond with variable density log, and temperature logs after casing is set and cemented; and

(III) any other test required by the executive director;

(IV) the executive director may allow the use of an alternate to subclauses (I) and (II) of this clause when an alternative will provide equivalent or better information; and

(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;

(II) a cement bond with variable density log, casing inspection, and temperature logs after casing is set and cemented, and an inclination survey; and

(III) any other test required by the executive director; and

(iv) a mechanical integrity test consisting of:

(I) a pressure test with liquid or gas;

(II) a radioactive tracer survey;

(III) a temperature or noise log;

(IV) a casing inspection log, if required by the executive director; and

(V) any other test required by the executive director.

(B) Pressure tests. Surface casing shall be pressure tested to 1,000 pounds per square inch, gauge (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) Core samples. Full-hole cores shall be taken from selected intervals of the injection zone and lowermost overlying confining zone; or, if full-hole coring is not feasible or adequate core recovery is not achieved, sidewall cores shall be taken at sufficient intervals to yield representative data for selected parts of the injection zone and lowermost overlying confining zone. Core analysis shall include a determination of permeability, porosity, bulk density, and other necessary tests.

(8) Injectivity tests. After completion of the well, injectivity tests shall be performed to determine the well capacity and reservoir characteristics. Surveys shall be performed to establish preferred injection intervals. Prior to performing injectivity tests, the bottom hole pressure, bottom hole temperature, and static fluid level shall be determined, and a representative sample of formation fluid shall be obtained for chemical analysis. Information concerning the fluid pressure, temperature, fracture pressure and other physical and chemical characteristics of the injection and confining zones shall be determined or calculated.

(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, as appropriate, with current registration under 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) The executive director shall have the opportunity to witness all cementing of casing strings, logging and testing. The owner or operator shall submit a schedule of such activities to the executive director at least 30 days prior to commencing drilling of the well. The executive director shall be given at least 24 hour notice before each activity in order that a representative of the executive director may be present.

§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 include a surveyor's plat showing the exact location and giving the latitude and longitude of the well. The report must 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 licensed professional engineer or licensed professional geoscientist with current registration under the Texas Engineering Practice Act or Texas Geoscience Practice Act:

(A) actual as-built drilling and completion data on the well;

(B) all logging and testing data on the well;

(C) a demonstration of mechanical integrity;

(D) anticipated maximum pressure and flow rate at which the permittee will operate;

(E) results of the injection zone and confining zone testing program as required in §331.62 of this title (relating to Construction Standards) and this subsection;

(F) adjusted formation pressure increase calculations, fluid front calculations and updated cross- sections of the confining and injection zones, based on the data obtained during construction and testing;

(G) the actual injection procedure;

(H) the compatibility of injected wastes with fluids in the injection zone and minerals in both the injection zone and the confining zone and materials used to construct the well;

(I) the calculated area of review and cone of influence based on data obtained during logging and testing of the well and the formation, and where necessary, revisions to the information submitted under §331.121 of this title (relating to Class I Wells);

(J) the status of corrective action required for defective wells in the area of review;

(K) a Well Data Report on forms provided by the executive director;

(L) compliance with the casing and cementing performance standard in §331.62(5) of this title; and

(M) compliance with the cementing requirements in §331.62(6) of this title.

(2) Local authorities. The permittee shall provide written notice to the executive director, in a manner specified by the executive director, that a copy of the permit has been properly filed with the health and pollution control authorities of the county, city, and town where the well is located.

(3) Start-up date and time. The permittee shall notify the executive director in writing of the anticipated well start-up date. Compliance with all pre-operation terms of the permit must occur prior to beginning injection operations. The permittee shall notify the executive director at least 24 hours prior to beginning drilling operations.

(4) Approval of construction and completion. Prior to beginning operations, the permittee must obtain written approval from the executive director, according to §331.45 of this title (relating to Executive Director Approval of Construction and Completion).

(b) Operating reports.

(1) Injection operation quarterly report. For non-commercial 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 facilities shall meet the following requirements.

(A) The permittee shall submit within 30 days after the last day of each month a report to the commission including the following information for wastes received and injected during the month:

(i) names and locations of the companies and plants generating the wastes;

(ii) chemical and physical characteristics and volume of waste received from each company including pH;

(iii) names of companies transporting the wastes; and

(iv) a log of injection operations for each injection episode including but not limited to time of injection, injection rate, injection pressures, injection fluid volume, injection fluid pH, and injection fluid density.

(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). 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 Monitoring and Testing Requirements). To the extent this information is reasonably available, the report must also include:

(A) locations of newly constructed or newly discovered wells that penetrate the confining and/or injection zone within the area of review if those wells were not included in the technical report accompanying the permit application or in later reports;

(B) a tabulation of data as required by §331.121(2)(B) of this title for wells within the area of review that penetrate the injection zone or confining zone;

(C) the condition of the wells identified in subparagraph (A) of this paragraph and their effect on the injection activities;

(D) the protocol followed to identify, locate, and ascertain the condition of the wells identified in subparagraph (A) of this paragraph;

(E) a corrective action plan for wells not adequately constructed, completed, or plugged; and

(F) for non-commercial facilities only, a current injection fluid analysis.

(4) Mechanical integrity and other reports. The permittee shall submit within 30 days after test completion, a report including both data and interpretation on the results of:

(A) periodic tests of mechanical integrity; and

(B) any other test of the injection well or injection zone if required by the executive director.

(5) Emergency report of leak or other failure. The permittee shall notify the Underground Injection Control (UIC) Unit of the Austin office of the commission within 24 hours of any significant change in monitoring parameters or of any other observations which could reasonably be attributed to a leak or other failure of the well equipment or injection zone integrity.

(c) Workover reports. Within 30 days after the completion of the workover, a report shall be filed with the executive director including the reason for well workover and the details of all work performed.

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-200305941
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: May 30, 2003
For further information, please call: (512) 239-0348

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SUBCHAPTER I. FINANCIAL RESPONSIBILITY

30 TAC §331.144

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §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; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code, §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.

§331.144. Approval of Plugging and Abandonment.

Within 60 days after receiving certifications from the owner or operator and an independent licensed 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. STANDARDS FOR CLASS I SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.163

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §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; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code, §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.

§331.163. Well Construction Standards.

(a) Plans and specifications. Except as specifically required in the terms of the disposal well permit, drilling and completion of the well shall be done in accordance with all permit application plans and specifications. Any proposed changes to the plans and specifications must be approved in writing by the executive director that said changes provide protection standards equivalent to or greater than the original design criteria.

(b) Casing and cementing.

(1) All Class I salt cavern disposal wells shall be cased and all casings which extend to the surface shall be cemented to the surface to prevent the movement of fluids and waste into or between underground sources of drinking water (USDWs) or freshwater aquifers, and to prevent potential leaks of fluids and waste from the well. Cementing shall be by the pump and plug or other method approved by the commission, and cement circulated shall be of a volume equivalent to at least 120% of the calculated volume needed to fill the annular space between the hole and casing and between casing strings to the surface of the ground. Circulation of cement may be accomplished by staging. The executive director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous or does not allow any fluid and waste movement behind the well casings. 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 care period.

(A) Surface casing shall be set to a minimum subsurface depth, as determined by the executive director, which extends into a confining bed below the lowest formation containing a USDW or freshwater aquifer.

(B) At least one string of intermediate casing, using a sufficient number of centralizers, shall extend at least 100 feet into the salt stock.

(C) At least one long string casing, using a sufficient number of centralizers, shall extend into the salt stock, to the following depths, whichever is greater:

(i) 500 feet into the salt stock; or

(ii) 500 feet below any rock type of recognizable thickness as determined by logging, which is different from salt, and that is hydraulically connected to formations outside the salt stock. For the purposes of this rule, all rock types of recognizable thickness on logs which are different from salt shall be assumed to be in hydraulic connection unless demonstrated otherwise.

(2) In determining and specifying casing and cementing requirements, the following factors shall be considered:

(A) depth of lowermost USDW or freshwater aquifer;

(B) depth to the injection zone;

(C) injection pressure, external pressure, internal pressure, and axial loading;

(D) hole size;

(E) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(F) the maximum burst and collapse pressures, and tensile stresses which may be experienced at any point along the length of the casings at any time during the construction, operation, and closure of the well;

(G) corrosive effects of injected materials, formation fluids, and temperatures;

(H) lithology of injection and confining zones;

(I) types and grades of cement;

(J) quantity and chemical composition of the injected fluid; and

(K) cement and cement additives which must, at a minimum, be of sufficient quality and quantity to maintain integrity over the design life of the well.

(c) Injection tubings. Except for circulation of drilling fluids during well construction, all injection activities for salt cavern construction and waste disposal in a salt cavern shall be performed using two concentric and removable injection tubings suspended from the wellhead.

(1) All injection activities during cavern construction shall be performed with the annulus between the tubing and long string casing filled with a noncorrosive fluid sufficient to protect the bond between salt, cement, and the long string casing seat.

(2) All injection of waste into a salt cavern shall be performed through the inner tubing with a packer to seal the annulus between the tubing and long string casing near the bottom of the long string casing.

(d) Well annulus system factors for consideration. All elements of the design of the well's tubing-long string casing annulus system, including the outer tubing and packer, shall be approved by permit or by the executive director's approval that any proposed modifications to the plans and specifications in the permit application will provide protection equivalent to or greater than the original plans and specifications. In determining and specifying requirements for a tubing and packer system, the following factors shall be considered:

(1) depth of setting;

(2) characteristics of injection fluid and waste;

(3) injection pressure;

(4) annular pressure;

(5) rate, temperature, and volume of injected fluid;

(6) size of casing; and

(7) tensile, burst, and collapse strengths of the tubing.

(e) Logs and tests.

(1) Geophysical logging. Appropriate logs and other tests shall be conducted during the drilling and construction phases of the well including drilling into the salt. 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:

(A) deviation checks on all holes, conducted at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(B) a spontaneous potential and resistivity log for all formations overlying the caprock;

(C) from the ground surface or from the base of conductor casing to the total investigated depth including all core hole or pilot hole:

(i) natural gamma ray log;

(ii) compensated density and neutron porosity logs;

(iii) acoustic or sonic log;

(iv) inclination (directional) survey; and

(v) caliper log (open hole);

(D) from the ground surface or from the base of conductor casing to the lowermost casing seat:

(i) cement bond with variable density log;

(ii) temperature log (cased hole); and

(iii) casing inspection log;

(E) fracture detector log from the base of the surface casing to the total investigated depth including all core hole or pilot hole; and

(F) a vertical seismic profile.

(2) Pressure tests.

(A) After installation and cementing of casings, and prior to drilling out the cemented casing shoe, surface casing shall be pressure tested at mill test pressure or 80% of the calculated internal pressure at minimum yield strength, and the intermediate and long string casing shall be tested to 1,500 pounds per square inch (psi) for 30 minutes, unless otherwise specified by the executive director.

(B) After drilling out the cemented long string casing shoe, and prior to drilling more than 100 feet of core hole or pilot hole below the long string casing shoe, the bond between the salt, cement, and casing shall be tested at a pressure of 0.8 psi per foot of depth.

(C) The pilot hole and/or core hole shall be tested between the long string casing shoe and the total investigated depth, at a casing seat pressure of 0.8 psi per foot of depth.

(3) Coring.

(A) Full-hole continuous cores shall be taken beginning at the top of the caprock, or if caprock is not encountered, from the top of the salt stock, to a total investigated depth of 1,000 feet below the intended cavern floor. Cores shall be analyzed at sufficient frequency to provide representative data for the caprock, salt cavern confining zone, and the salt cavern injection zone, including permeability, porosity, bulk density, compressive strength (uniaxial), shear strength (triaxial), water content, and compatibility with permitted waste material. The full-hole, continuous cores shall be photographed for permanent records. The photographs of the cores shall be submitted to the commission as a part of the well completion report as required by §331.167(a)(1) of this title (relating to Reporting Requirements). The cores shall be archived at a facility approved by the executive director. The photos and cores will be maintained as public records.

(B) In situ permeability, lithostatic gradients, and fracture pressure gradients shall be determined in the core hole for the salt, within the cavern injection interval.

(C) Prior to commencement of injection for cavern construction, the pilot hole or core hole shall be filled with salt-saturated cement from total investigated depth back to the designed depth of the salt cavern floor.

(4) Well integrity testing. The mechanical integrity of a well must be demonstrated prior to initiation of injection activities. A mechanical integrity test shall consist of:

(A) a pressure test with liquid or gas;

(B) a temperature, noise log, or oxygen activation log;

(C) a casing inspection log, if required by the executive director; and

(D) any other test required by the executive director.

(f) Compatibility. All well materials must be compatible with formations and 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 (API), the American Society for Testing Materials (ASTM), or comparable standards acceptable to the executive director.

(g) Pre-injection units.

(1) The injection pump system shall be designed to assure that the surface injection pressure limitations authorized by the well permit shall not be exceeded.

(2) Instrumentation shall be installed to continuously monitor changes in annulus pressure and annulus fluid volume for the purpose of detecting well malfunctions.

(3) Pre-injection units, while allowing for pressure release, shall be designed to prevent the release of unauthorized cavern contents to the atmosphere.

(4) To protect the ground surface from spills and releases, the wellhead will have secondary containment in the form of a diked, impermeable pad or sump.

(h) Construction supervision. All phases of well construction and all phases of any well workover shall be supervised by a licensed professional engineer or licensed professional geoscientist, as appropriate, with current registration under 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 licensed professional engineer or licensed professional geoscientist with current registration under the Texas Engineering Practice Act or Texas Geoscience Practice Act:

(1) final construction, "as-built" plans and specifications, reservoir data, and an evaluation of the considerations set out in §331.45(2) of this title (relating to Executive Director Approval of Construction and Completion);

(2) certification that construction of the well has been completed in accordance with the provisions of the disposal well permit and with the design and construction specifications of the permittee's application; and

(3) certification that actual reservoir data obtained will not result in the need for a change in the operating parameters specified in the permit.

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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Stephanie Bergeron
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 104. DUE PROCESS HEARINGS AND MEDIATION BY APPLICANTS/CLIENTS CONCERNING DETERMINATIONS BY AGENCY PERSONNEL THAT AFFECT THE PROVISION OF VOCATIONAL REHABILITATION SERVICES

The Texas Rehabilitation Commission (TRC) adopts the repeal and new of Chapter 104, §§104.1 - 104.8 of Title 40, Texas Administrative Code, concerning appeals and mediation, without changes to the proposed text as published in the June 20, 2003, issue of the *Texas Register* (28 TexReg 4622) and will not be republished.

The repeal and new sections are adopted to conform the rules to the final rules effective January 22, 2001 issued by the Office of Special Education and Rehabilitative Services, US Department of Education, published at 34 CFR §361.57.

TRC received one comment suggesting that proposed §104.4(a)(2)(C) of the TRC rules be changed by requiring mediators to be selected from a list of qualified and impartial mediators maintained by the state, on a random basis. TRC considered this suggestion and decided to adopt the section as proposed, because the underlying federal regulation, 34 CFR §361.57(d)(2)(iii)(A) does not require that mediators be selected on a random basis so long as there is agreement between the Commission and the applicant or eligible individual as to selection of the mediator. Section 104.4(a)(2)(C) of the TRC rules as proposed provides that the mediator must be selected by agreement, and therefore the federal regulation does not require in addition that the mediator be selected on a random basis.

40 TAC §§104.1 - 104.8

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
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For further information, please call: (512) 424-4050

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40 TAC §§104.1 - 104.8

The new rules are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Rehabilitation Commission
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CHAPTER 106. PURCHASE OF GOODS AND SERVICES BY TEXAS REHABILITATION COMMISSION

SUBCHAPTER A. GENERAL

40 TAC §106.3

The Texas Rehabilitation Commission (TRC) adopts an amendment to §106.3 of Title 40, Chapter 106, Texas Administrative Code, authority for purchasing administrative goods and services, without changes to the proposed text as published in the August 1, 2003, issue of the *Texas Register* (28 TexReg 5982) and will not be republished.

The change is adopted to clarify TRC's authority for purchase of administrative goods and services.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
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Texas Rehabilitation Commission
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For further information, please call: (512) 424-4050

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CHAPTER 117. SPECIAL RULES AND POLICIES

40 TAC §117.10

The Texas Rehabilitation Commission (TRC) adopts a new §117.10 of Title 40, Texas Administrative Code, concerning complaints, without changes to the proposed text as published in the August 1, 2003, issue of the *Texas Register* (28 TexReg 5982) and will not be republished.

The rule is adopted to comply with the requirements of Human Resources Code §111.026(b).

No comments were received regarding adoption of the rule.

The new rule is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-4050

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER D. INCENTIVE AWARD RULES

The Texas Workforce Commission (Commission) adopts the repeal of §800.101, §800.102, §§800.112-800.115 and §§800.118-800.121 without changes, and new §§800.101-800.108, to Chapter 800, General Administration, Subchapter D, Incentive Awards Rules, with changes as proposed in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5125).

The Texas Labor Code Chapter 302 gives the Commission the authority and responsibility for overseeing twenty-eight Local Workforce Development Boards (Boards) in Texas. In order to meet that responsibility, the Commission has replaced various Incentive Award rules to enhance the Commission's ability to encourage and reward high levels of performance, particularly in those areas that the Commission wishes to prioritize. In addition, the Commission has made changes to the language to reflect enhancements to the rules and to better integrate the concepts in the subchapter.

The Commission's mission is to promote and support a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity. The Commission's strategy for pursuing this mission has evolved as the Commission continues further delegation of service delivery duties to the Boards. As Boards assume responsibility for additional programs, the Commission's role shifts in many ways from being the provider of services to being the regulator and supporter of the Boards who are responsible for ensuring service delivery.

The transition process presents many opportunities for both the Boards and the Commission. By transferring programs to the Boards, the Commission expects enhanced service delivery. Improving services to employers is particularly important because by improving these services, employers will increase their use of the Texas workforce system, which will enhance the Commission's ability to meet its mission.

One of the key methods for assisting individuals with their employment needs is to market workforce system services to employers. To succeed, the system must match and enhance the skills and abilities that workers have to offer with the needs of employers. To do this, the Boards need to continue engaging with, partnering with, and delivering excellent services to employers as well as workers.

Historically, the Commission's primary method of ensuring that the Boards meet the Commission's expectations has been to focus on performance measures contained in Agency-Board Agreements and other contracts. Boards failing to meet expectations are addressed through performance-based actions, up to and including sanctions. One of the key issues in this rule is that not all areas in which the Commission wants to encourage stronger performance are addressed in a contract or agreement. In particular, direct and indirect services to employers are not covered by contracted measures. Under the new rules, the Commission will have the ability to encourage improved performance to these areas. Indeed, it may well be that the Commission chooses to concentrate on newer or non-contracted measures since the Boards are already required to meet the other targets by their contracts.

Adopted Repeals

Sections 800.101 and 800.102 are repealed and replaced with new sections due to the number of changes to the provisions.

Section 800.112 is deleted because new rules provide the Commission with greater flexibility to encourage high performance.

Section 800.113 addresses non-monetary incentive awards and is deleted. Most applicable provisions of this rule have been replaced by language in §800.103.

Section 800.114 addresses monetary incentive awards and is deleted. The rule is being replaced by 800.106.

Section 800.115 is deleted. The Commission has authority outside this rule to adjust performance standards as circumstances make it appropriate; therefore, this rule is not necessary for the administration of awards.

Sections 800.118 through 800.121 are deleted as the new rules make them redundant.

Adopted New Rules

Section 800.101 states that the purpose of the incentive award rules is to recognize Boards which have achieved a high level of performance. The new rule differs from the one it replaces in that the Commission clarified the language and deleted language, which is no longer required by current state or federal statute.

Section 800.102 defines terms used in the incentive award rules. The new rule differs from the one which it replaces in that the Commission has added several new definitions related to the other new rules in the chapter and deleted several that are no longer needed or that are redundant to definitions in chapter 800.

Section 800.103 provides an overview of the different types of incentive awards. The Commission may bestow either monetary or non-monetary awards (or both). In outlining non-monetary awards, this rule replaces §800.113, which specifically addressed non-monetary awards. The new rule provides the Commission with more flexibility in giving non-monetary awards than the current rule. This flexibility will enable the Commission to encourage and reward positive performance consistent with the Commission's priorities.

Regarding monetary awards, there are currently three types of monetary awards and they are described in individual rules. However, the subsection also references "other awards designated by the Commission" in order to ensure the Commission has the flexibility to offer other monetary awards. For example, the Commission might receive a special grant designed to encourage or reward performance in an area not covered by one of the other awards.

Section 800.104 is designed to ensure that the Boards understand the importance of timely and accurately data submission. The rule provides that data submitted after the deadline may be omitted from consideration when evaluating Boards for awards.

Section 800.105 explains that the Commission may choose to group Boards into classifications for evaluation purposes. When evaluating Boards to determine whether one or more deserve an award, the Commission may find that it is appropriate to evaluate all Boards against one another. However, the Commission may find it appropriate to assign Boards to different classifications and then evaluate each Board within its classification.

The rule explains that the Commission is permitted to group boards based on similarities or differences in allocations of funds, prior performance, demographic, economic or other characteristics of the individual local workforce development area that the Board serves. The factors used may be based in part on the type of performance being evaluated when assigning Boards to different classifications. For example, the Commission could consider the initial allocation of funds made available to each Board when evaluating for Performance Awards; then the Commission could consider only the initial allocation of funds under the Workforce Investment Act for the Workforce Investment Act Local Incentive Awards. This rule provides the Commission with the flexibility to do either or both when evaluating the Boards.

Section 800.106 outlines the process for giving Performance Awards. This rule replaces provisions of several rules that have been repealed. The rule is divided into two main parts. Subsections (a) through (d) overview the award criteria and the method the Commission will use to notify the Boards of that criteria. Subsection (e) though (g) address the specific mechanism that the Commission will use to aggregate Board performance and determine which Boards may receive awards.

The Commission initially considered a concept in which all the performance measures that were the basis for evaluating performance for the purpose of giving the award would be contained in the rule. The Commission discussed this concept at a public meeting on February 4, 2003. Several Board Executive Directors were at the public meeting and took part in the discussion. In addition, the concept was shared with all the Boards and the Workforce Leadership of Texas (an organization of the Board Chairs and Executive Directors). The agency received comments and input on this concept from the Boards. In concert with the comments and input, the Commission ultimately developed and now adopts a rule that provides significantly more flexibility for evaluating performance while maintaining the framework of an objective methodology.

The Commission will identify the performance measures to be used to evaluate performance for award purposes annually. This approach provides the Commission with the flexibility it needs to encourage and reward performance now and to be responsive to changing priorities and situations in the future. The Commission's intention is to make the annual identification regarding the performance measures including the subsequent notification to the Boards prior to the beginning of the rating period.

The annual identification of performance measures will prevent the necessity for amendments each time the Commission wants to change the award criteria. The Texas workforce system operates in a very dynamic environment in which programs and services (and thus the way they are measured) may be changed due to actions at the federal, state, or local levels. Further, the Commission is continually updating its data systems allowing it to capture more service and program information. As such, the Commission's options for evaluating performance will grow as well. Considering the continually evolving nature of the system, a flexible rule will produce the most efficient method for administering an awards system.

The Commission has opted not to administer an "eligibility gate" based on the Boards' common contracted performance measures to qualify for an award, primarily because it had the potential of distorting the "value" of each measure. The rule allows the Commission to consider any, all, or none of the contracted performance measures allows the Commission to add to the contracted measures when appropriate. A performance gate that focused exclusively on contracted measures could result in a Board being excluded from consideration for any award solely because it did not perform sufficiently in only one of several dozen performance measures - even if the contracted measure was one which was not otherwise to be included in evaluation criteria for that year. Therefore, such an eligibility gate would over-inflate the importance of the contracted performance measures and defeat the Commission's goal of establishing a flexible performance evaluation process.

The provisions of the rule are generally self-explanatory, but some merit additional explanation.

Subsection (b) specifies that awards may be given in each classification. Because the number of Boards in a classification may be different and could change from year to year, the subsection allows the Commission to vary the number of awards per classification.

Subsection (c) explains that the Commission may use existing performance measures or may develop new ones and identifies options the Commission has in developing measures. When developing new measures, the Commission may opt to assign an incentive target. Incentive targets are used solely for the purposes of this rule, and failing to meet an incentive target does not subject a Board to sanction.

Wherever possible, the Commission will develop incentive measures that are "Board-neutral." For example, if the Commission wishes to measure performance and size is a factor in success (such as a count), the Commission may choose to set individual incentive targets. If the Commission doesn't set a target, it may compare either raw performance or each Board's relative improvement from the prior year. The Commission's goal under this rule is to award the best performing Boards and encourage continuous improvement. So "relative improvement" will be used as an evaluation method sparingly.

Subsection (c) and (d) provide the Commission with the flexibility it needs to evolve its evaluation and awards process over time to reflect shifting priorities and changing expectations. Under this subsection, the Commission will notify the Boards each year of the method by which performance will be evaluated and awards will be given. Under subsection (c), the Commission has the option to include any objective measure for which data is available. Under subsection (d), the Commission shall assign each measure a separate weight. This flexibility will assist the Commission in establishing priorities for the upcoming year and keeping pace with changing economic factors that influence priorities over time. As previously stated, the Commission intends to make the identification regarding the performance measures prior to the beginning of the rating period. The identification and notification will include the weightings to be used to aggregate the performance measures in determining each Board's overall performance ranking. The Commission will encourage an emphasis on employer-focused measures. In response to comments and discussed further in that section of the preamble, the adopted rule specifies that the criteria will be provided to the Boards concurrent with the provision of their annual contracts.

Subsection (e) addresses the method by which each measure will be evaluated. When a target exists, each Board's performance will be compared to its target to determine how "successful" the board was in achieving its target. Then each Board's success will be ranked against other Boards in its classification. When a target does not exist, the Commission will calculate and rank actual performance.

The Board with the best success or achievement is ranked "1." Scores will be converted to ranks to allow different performance measures to be aggregated. In some measures, a "high" score is good while in others a "low" score is good; therefore, an average score would not reflect overall performance. Further, not all performance measures are in common units (like percentages). Converting performance to rankings allows different measures to be combined at the aggregation stage of the process.

The Commission anticipates that if a measure or target were to change in the middle of the evaluation period that it would simply address the change by prorating the evaluation of the performance.

Subsection (f) describes the manner in which performance is aggregated based on relative weighting of each measure (as identified by the Commission in subsection (e)). After the ranks for the measures are combined, the weighted rank is converted to an overall rank within the classification.

Subsection (g) explains the manner in which awards are given and makes it clear that if the Commission finds that extraordinary circumstances exist (as defined in §800.102), it may modify

the assignment of awards. For example, if after evaluating and ranking under the rule, it is determined that a "winning" Board has a significant unresolved monitoring finding, the Commission has the discretion not to give that board an award. Similarly, if a Board's performance on one or two key performance measures was so deficient that the system failed to meet its performance requirements primarily because of that Board's poor performance, the Commission may choose not to give that Board an award. This provision reminds Boards that they cannot afford to ignore their contracted measures that are not included in the incentive evaluation.

Subsection (h) addresses what the Boards are permitted to spend their awards on.

Section 800.107 is a replacement of §800.120 which outlines the Workforce Investment Act Local Incentive Awards - one of the three monetary incentive awards identified in §800.103. The new rule differs from the one it replaces in that the subsection of the new rule addressing how applications for Workforce Investment Act Local Incentive Awards are considered has been broadened to serve as examples of the types of things that can be considered rather than required factors.

Finally, the original rule contained language that addressed the differences between how the rule would be implemented for program year 2000 versus following years. This language is not applicable to the new rule.

Section 800.108 is a replacement of §800.121, which outlines the Job Placement Incentive Awards - one of the three monetary incentive awards identified in §800.103. The new rule is functionally identical to the rule it replaces.

Comments and Responses

The Commission received comments from the North Central Texas Workforce Development Board and the Workforce Leadership of Texas, as well as an individual.

Comment: One commenter suggested that measures related to the child care program be included in the rule noting that this program had "the lion's share of TWC's budget and being such a complex program that does support parents and employers, it should also be recognized in this rule."

Response: The Commission agrees in part. While the Commission agrees that the child care program is an important part of the workforce system and does represent a significant percentage of the system's budget, the Commission does not believe that child care measures should be embedded in §800.106 as measures that will always be considered as incentive award criteria. As noted in the preamble proposing the rule, the Commission believes that it is important that the incentive rule maximize its flexibility. Embedding any one measure in the rule would remove that flexibility.

Comment: One commenter commented on language in the proposal preamble, which noted that the Commission has not historically had contracted performance measures that address all areas in which the Commission wants to encourage stronger performance. The commenter suggested that if the Commission wants to develop award performance areas not addressed in contracts, that it start with the system-wide goals found in the Texas Council on Workforce and Economic Competitiveness (TCWEC) Integrated Strategic Plan. The commenter opined that the TCWEC measures were system-wide measures that encompass the State's other workforce development agencies and that using these measures will "have a compound positive effect on the system." The commenter suggested that the Commission might even want to weight the TCWEC measures more heavily than its own measures.

Response: The Commission agrees that the Commission historically has not had contracted performance measures in all of the areas which the Commission wants to encourage stronger performance and agrees that TCWEC measures may be an important component in measuring performance. The proposed rules currently incorporate a reference in §800.106(c) that permits the Commission to use the TCWEC measures if selected by the Commission for the award; however, the Commission does not agree with removing the flexibility to include other criteria that measure performance. While the Commission may consider using the TCWEC measures as criteria for incentive awards under §800.106, it might choose not to do so, in part because those measures are too broad and may not be applicable to producing the performance gains in the areas that the Commission is most concerned about at a given point in time.

Comment: Two commenters suggested that the rule needed to specify when the Commission would notify the Boards of the specific criteria that would be used to evaluate performance under §800.106. One of the commenters suggested that it be at the beginning of the Boards' annual planning process.

Response: The Commission agrees that the award criteria needs to be communicated to the Boards as soon as possible. The sooner the Boards are aware of the criteria, the sooner they can focus on their performance relative to that criteria and thus the purpose of the rule is better met. Therefore, the Commission has added new language to §800.106(d), which requires the award criteria to be sent to the Boards concurrent with the annual Board contacts. The exception is in the first year of implementation. Since the rule will not be effective until after the contracts were sent to the Boards, the notice for the first year will be provided shortly after adoption of the rule.

The Commission chose to tie the notification to the date the Board contracts are provided because it is not until the Commission votes on the Board targets for the contracted measures that the Commission is in a better position to evaluate what criteria should be used for the incentive awards.

Comment: One commenter suggested that the Boards be notified of the anticipated amounts of incentives to be offered.

Response: The Commission generally agrees that offering this information will make the rule more effective. Therefore, the Commission has added language to §800.106(d) to that effect. However, the Commission notes that because incentive award funds are largely discretionary and because all levels of government are in tight fiscal times, the Commission may adjust the actual award amounts depending on available funds at the time.

40 TAC §§800.101, 800.102, 800.112 - 800.115, 800.118 - 800.121

The repealed rules are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repealed rules affect Texas Labor Code Chapter 302.

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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40 TAC §§800.101 - 800.108

The new rules are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code Chapter 302. SUBCHAPTER D. INCENTIVE AWARD RULES

§800.101. Scope and Purpose.

The purpose of the incentive award is to reward Local Workforce Development Boards (Boards) that meet or exceed the performance benchmarks identified in each incentive award and accomplish the goals of the Texas Workforce Commission (Commission) to fulfill the workforce needs of employers and to put Texans to work. The Board is responsible for providing strategic and operational planning for its local workforce development area. The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards for achieving high performance as a system, as well as high performance on behalf of employers and the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, and continuous improvement and support the state in achieving workforce development goals.

§800.102. Definitions.

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

(1) Allocation of Funds--The total yearly funds initially identified for allocation to a Board for all programs. This does not include consideration of adjustments in funding made to a specific program(s) by the Commission for purposes of reallocating or redistributing those funds. This may include new allocations or distributions made during a year that result from changes in law or new funding made available to the Boards during a year.

(2) Classification--Grouping of Boards with one or more common characteristics (i.e., size) for the purpose of evaluating performance and giving incentive awards.

(3) Extraordinary Circumstances--conditions that may have an impact on the determination of which Boards may receive or be excluded from receiving incentive awards which may include, but is not limited to, matters such as serious unforeseen events, unresolved audit or monitoring findings, sanctions, unanticipated changes in economic conditions, the occurrence of a disaster, or legislative changes having a direct impact on the Commission or Boards.

(4) Local coordination--Boards fostering leadership and cooperation to achieve the most effective customer service results for its employers and residents through one or more of the following:

(A) Memoranda of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memoranda of Understanding with partners required by WIA §121(b)(1) but not required by §801.27(b) of this title that include active implementation and integration of related services;

(C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, such as by demonstrating coordination with demonstration grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(5) Regional cooperation--Boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(6) Workforce development programs--Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§800.103. Types of Awards.

(a) There are two types of awards: non-monetary and monetary.

(b) Non-monetary awards may be awarded annually based on high-performance achievement and/or continuous improvement in meeting performance measures and may include plaques, certificates of achievement, or other formalized recognition accolades.

(c) Monetary awards include:

(1) Best Overall Performance Awards issued under §800.106 of this subchapter;

(2) WIA Local Incentive Awards issued under §800.107 of this subchapter;

(3) Job Placement Incentive Awards issued under §800.108 of this subchapter; and

(4) other awards designated by the Commission.

§800.104. Data Collection.

(a) Boards are responsible for complete and accurate data entry prior to Commission established deadlines.

(b) The Commission reserves the right not to consider data submitted after the deadline or data that it finds to be inaccurate in its evaluation of performance for awards.

§800.105. Board Classification.

(a) The Commission may group Boards in classifications for comparison purposes such as for awarding incentives.

(b) In classifying Boards, the Commission may group Boards based on similarities or differences among the Boards relating to:

(1) allocations of funds;

(2) prior performance; or

(3) demographic, economic, or other characteristics of the individual local workforce development areas.

§800.106. Performance Awards.

(a) The Commission may determine the amount of funds for use to reward performance annually.

(b) Incentive Awards for performance may be given in each classification and the Commission may give more than one award in each classification.

(c) The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.

(1) If the Commission includes a measure, which does not already have a target, the Commission may:

(A) set an incentive target for the sole purpose of evaluating eligible Boards for the incentive awards (failure to meet an incentive target would not subject the Board to sanction);

(B) rate performance based on each Board's "relative improvement" in performance from the prior year; or

(C) compare exhibited performance among the Boards in a classification if the measure allows comparability across Boards of different sizes. (For example, the "percent of job orders timely posted" would allow performance to be measured across Boards of different sizes, but the "number of job orders timely posted" would not.)

(2) The Commission may use a measure and a subset of a measure in the same year. For example, the Commission could include one measure that considers employers with job postings in the job matching system and another measure that considers employers with job postings in targeted occupations.

(d) If the Commission is considering issuing awards under this section, the Commission shall notify Boards of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.

(1) Other than in the first year of the implementation of this rule, the notice required under this subsection shall be provided to the Boards concurrent with their yearly contracts.

(2) The notice may include:

(A) a listing of the Boards assigned to each classification;

(B) a listing of the performance measures to be included in each evaluation category including:

(i) the period of evaluation for each performance measure; and

(ii) the method of evaluation for each performance measure;

(C) the weightings to be used to aggregate the performance measures to allow each Board's overall performance to be ranked and also encourage an emphasis on employer-focused measures;

(D) the anticipated amount of funds available to be awarded; and

(E) other criteria to be used to identify superior performance.

(e) The Commission shall rank a Board's performance for each performance measure as follows.

(1) For measures that have performance targets, the Commission shall determine each Board's "success rate" by dividing the Board's actual performance by its target for the measure.

(2) For measures that have no performance targets, the Commission shall determine each Board's actual performance (or change in performance if that was the method identified as the method for evaluation) and call this the "performance rate."

(3) For each measure, the Commission shall replace the "success rate" or the "performance rate" with a ranking. The Board with the "best" rating in its classification shall be ranked "1," the second best ranked "2," etc. If two Boards in a classification are tied for a position, such as second place, both shall be ranked "2" and the Board with the next "best" rate shall be ranked "4."

(f) The Commission shall assign each Board a final rank as follows.

(1) The Commission shall use the weightings identified in subsection (d)(3) of this section to determine the weighted rank of the performance rankings assigned under subsection (e) of this section.

(2) Each Board's weighted rank shall be converted to an overall ranking within the Board's classification. That is, the Board with the lowest weighted rank in a classification is ranked "1," the second lowest ranked "2," etc. If two Boards are tied for a position such as second place, both shall be ranked "2" and the next "best" Board will be ranked "4."

(g) The award for each classification shall be given to the Board in the classification with the best overall ranking. If the Commission is assigning more than one award in a classification, the Boards with the highest rankings shall receive the award. However, the Commission may modify assignments of awards based on factors that the Commission identifies as extraordinary circumstances.

(h) Boards that receive the performance award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.

§800.107. Workforce Investment Act Local Incentive Awards.

(a) The Commission shall determine annually the total amount of funds to be awarded from funds available through the Workforce Investment Act (WIA) §128(a) and §133(a)(1) for local incentive awards.

(b) WIA Local Incentive Awards may be awarded for one or more of the following:

(1) regional cooperation among local workforce development areas;

(2) local coordination of activities carried out under WIA; and

(3) exemplary performance on performance measures.

(c) The application for WIA Local Incentive Awards shall be as follows.

(1) Only those Boards submitting a written application shall be eligible for WIA Local Incentive Awards (other than awards for exemplary performance, which shall not require a written application).

(2) The Commission shall issue instructions annually identifying the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for WIA Local Incentive Awards.

(d) Awards may be made based on consideration of various factors consistent with goals of WIA such as:

(1) identified changes in economic conditions, population characteristics, and the service delivery system in the local workforce development area;

(2) reported performance for each contract performance measure relative to other Boards;

(3) demonstrated performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §800.108(b) of this subchapter;

(4) improved performance relative to the preceding year;

(5) demonstrated compliance with all expenditure requirements as required by §800.63(h) of this chapter; and

(6) finalized monitoring reports and resolution activities.

(e) Boards that receive a Workforce Investment Act Local Incentive Award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.

§800.108. Job Placement Incentive Awards.

(a) The Commission may set aside an amount of funds for job placement incentive awards during the annual budget process or at other times during the year as deemed appropriate by the Commission based on the funds available to meet the objectives of the Commission. For the purposes of this rule, the term "Choices individuals" shall have the same meaning as set forth in §811.2 of this title.

(b) Administration through Boards shall be as follows.

(1) The Commission shall administer the job placement incentive awards through the Boards by distributing funds to Boards that demonstrate the highest percentage of increase in employment of Choices individuals in higher wage jobs. Awards may be given in each classification and the Commission may give more than one award in each classification.

(2) Boards receiving a distribution of funds shall establish policies and procedures to create incentives for their contractors. The Boards shall determine how the local awards of funds are expended to provide incentives to contractors within the local workforce development area for effective employment of Choices individuals in higher wage jobs. The Boards shall ensure that contractor(s) receiving the job placement incentive awards use the funds for expenses relating to education, training and support services as necessary to prepare, place, and maintain Choices individuals in employment leading to self-sufficiency.

(c) The criteria for distributing award funds to Boards shall be the same as the measure of higher wage jobs. The measure of higher wage jobs shall use the most recent available Unemployment Insurance (UI) wages reported quarterly by employers for Choices individuals in employment and be determined by:

(1) each local workforce development area's baseline average quarterly reported UI wages for all Choices individuals in employment during a twelve-month period designated by the Commission;

(2) each local workforce development area's average quarterly UI wages for all Choices individuals in employment during the twelve-month period subsequent to the baseline measurement period; and

(3) comparing the average quarterly UI wages for all Choices individuals in employment for the two measurement periods to determine Boards that have achieved the highest percent increase in overall wages to Choices individuals.

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 835. SELF-SUFFICIENCY FUND SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SELF-SUFFICIENCY FUND

40 TAC §835.2

The Texas Workforce Commission (Commission) adopts the amendment to Chapter 835, Subchapter A, General Provisions Regarding the Self-Sufficiency Fund, §835.2 Definitions, without changes as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5847). The text will not be republished.

The purpose of the adopted rules is to expand the eligibility criteria for the population to be trained through the Self-Sufficiency Fund (SSF) program.

Background. Employers have expressed the need for increased job training for lower level incumbent workers. Currently, the SSF rules limit eligibility to Temporary Assistance for Needy Families (TANF) recipients, TANF applicants who have been referred by the Texas Department of Human Services to attend a Workforce Orientation for Applicants (WOA), and food stamp households with dependent children.

Federal TANF law and regulations give states broad flexibility to make program and funding decisions that they believe will best support the goals of the program and their individual circumstances. The U.S. Department of Health and Human Services has indicated that states may set different financial eligibility criteria for different types of benefits in order to increase the number of families they help to become self-sufficient. For example, states may set higher income standards to establish eligibility for transitional benefits (i.e., for those no longer receiving cash assistance) in order to provide those families child care, transportation, and other job retention and advancement services. Therefore, the Commission will establish a new income level for Self-Sufficiency eligibility to promote and provide employer-driven training opportunities.

In order to maximize the flexibility of the eligibility criteria, needy parents, both custodial and non-custodial, will be considered eligible if their annual income is equal to or below $37,000. The Commission is proposing this annual income limit because it approximates 200 percent of the Federal Poverty Guidelines for a family of four. Utilizing the wages of the incumbent worker will allow for a simplified identification of individuals who are eligible for SSF training.

If an employee is earning an hourly wage, the wage earned at the time eligibility is being determined must be converted to an annual wage to see if it is below the income threshold. Therefore, the employee's hourly wage is multiplied by 2,080 hours (2,080 hours is calculated based on 52 weeks per year multiplied by 40 hours per week) and a monthly wage by 12 months. For example, if a worker is earning $12/hour, the wage is multiplied by 2,080, which equates to an annual income of $24,960. If a worker is earning $2,400/month, the wage is multiplied by 12, which equates to an annual income of $28,800. Under both of these scenarios, the worker is eligible for SSF training.

In Subchapter A, Section 835.2, the rule contains a revised definition for "individual at risk of becoming dependent on public assistance."

Coordination with Stakeholders: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members, and executive directors, and the Workforce Leadership of Texas (WLT) Policy Committee. In addition, Commission staff, during a conference call with the Board executive directors, and at a WLT Policy Committee meeting, reviewed the policy concept paper and requested feedback from the Boards, on the draft policy changes.

Public comments on the proposed rules were received from the Permian Basin Workforce Development Board and the West Central Texas Workforce Development Board.

The comment summaries and responses are as follows.

Comment: One commenter supported the proposed rule changes because of the flexibility it provides.

Response: The Commission appreciates the commenter taking the time to express support for the proposed rule changes.

Comment: Regarding §835.2(6), one commenter believes that establishing a single wage criteria based on annual income, rather than on family size, is inconsistent with other Commission-funded programs. The commenter further suggested that the formula presented in the preamble for calculating income based an individual's hourly wage multiplied by 2,080 hours is not as accurate as a calculation based on actual, verified wages.

Response: The Commission recognizes the need to promote consistency, particularly with Board-administered programs. However, because this is a state-administered program, which partners directly with employers, the Commission's intent was to lessen the burden on employers who are applying for these training services. Therefore, the Commission proposed a simplified method, as allowed under federal law and regulations, to identify TANF-eligible parents who qualify for job retention services.

With regard to the concern that an individual's hourly wage multiplied by 2,080 hours is not as accurate as a calculation based on actual, verified wages, the Commission clarifies that the hourly wage that is used in any calculation must be verified by the employer. In addition, the 2,080 hour figure is based upon a standard figure used to translate an hourly wage into an annual wage.

In order to simplify the income eligibility determination process, the Commission proposes utilizing the wages of the trainee. This supports an employer friendly system that allows the easy identification of eligible trainees.

The amendments are adopted under Texas Labor Code, §301.061 and §309.004, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301, Chapter 302, and Chapter 309 will be affected by the amendments as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

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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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 295, Water Rights, Procedural, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 295 is proposed in accordance with the requirements of 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.

CHAPTER SUMMARY

Chapter 295, Subchapter A, Requirements of Water Rights Applications General Provisions, contains general requirements on the contents of an application. In addition, the subchapter contains requirements for applications regarding: the storage of appropriated surface water in aquifers; agriculture use authorizations; dams and reservoirs; permits under Texas Water Code, §11.143; temporary permits; amendments to water use permits and extensions of time; diversion for domestic or livestock use from unsponsored and storage limited projects; and an emergency water use permit. Also included are requirements for filing water supply contracts and amendments; requirements for applications to use bed and banks; and specifications for maps, plats, and drawings accompanying an application for a water use permit. Subchapter B, Water Use Permit Fees, contains the requirements for water use permit fees. Subchapter C, Notice Requirements for Water Right Applications, contains notice requirements for water use permit applications. Subchapter D, Public Hearing, contains the requirements for a public hearing. Subchapter E, Special Actions of the Commission, contains requirements on special actions of the commission, and Subchapter F, Miscellaneous, contains requirements on filing of instruments and reports.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 295 continue to exist. The rules are necessary to provide details of the procedural requirements, including filing and fee requirements, to implement Texas Water Code, Chapter 11. The rules also include descriptions of the public notices required for each application, information related to public hearings, and define special actions that may be taken by the commission related to specific types of water rights. The rules are necessary for the regulation of state waters by the commission. Chapter 295 was adopted in accordance with Texas Water Code, Chapter 11, Water Rights.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 295. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-049-295-WT. Comments must be received in writing by 5:00 p.m., October 27, 2003. For further information or questions concerning this proposal, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

TRD-200306014
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 16, 2003

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Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission files this notice of intent to review 16 TAC Chapter 402, concerning Bingo Regulation and Tax. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

Comments on the review may be submitted in writing to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments must be received no later than December 1, 2003 in order to be considered. The Commission will conduct a public hearing to receive comment on the rule review on November 5, 2003 at 1:30 p.m. at Texas Lottery Commission, First Floor Auditorium, 611 East 6th Street, Austin, Texas 78701.

TRD-200306023
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 2003

♦ ♦ ♦

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning September 2003, will review and consider for readoption, revision, or repeal Chapters 107, Terminology; 127, Miscellaneous; and 131, Guidelines for Confidentiality of Information, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200305915
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: September 10, 2003

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (the board) files this notice of intent to review 31 TAC, Part 10, Chapter 379, Advisory Committees, in accordance with the Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist. The board concurrently proposes amendments to §379.1, Definitions, and §379.3, Groundwater Availability Modeling (GAM) Technical Advisory Group. The amendments are proposed to delete extraneous definitions and to extend the expiration date of advisory committee.

As required by §2001.039 of the Texas Government Code, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 379 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200306063
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 17, 2003

♦ ♦ ♦

The Texas Water Development Board (the board) files this notice of intent to review 31 TAC, Part 10, Chapter 363, Financial Assistance Programs, in accordance with the Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist. The board concurrently proposes amendments to §§363.1, 363.2, 363.33, 363.801, and 363.904. The amendments will implement recent changes to Texas Water Code, §17.904, by the 78th Legislature and cure an oversight during the initial adoption of Subchapter I.

As required by the Texas Government Code §2001.039, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 363 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Srin Surapanani, Attorney, General Counsel Office, 512/475-3065, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200306070
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 17, 2003

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Adopted Rule Review

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission has completed its rule review of Title 16, Chapter 403, concerning General Administration in accordance with Texas Government Code, §2001.039, which requires each state agency to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for initially adopting the rules continue to exist.

The proposed notice of intention to review 16 TAC Chapter 403 was published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6309). No comments were received regarding the review of this chapter.

Upon review of the rules set out in Exhibit "A" and contained within 16 TAC Chapter 403, the agency's reasons for adopting the rules continue to exist. Specifically, the rules set out in Exhibit "A" are required to be adopted pursuant to the statutory framework related to each of the rules. The adoption of §403.101 was required in order for the agency to comply with House Bill 1009, 73rd Legislature, Regular Session, 1993. The adoption of §§403.201 - 403.223 was required by Texas Government Code, Chapter 2260. The adoption of §403.301 was required by Texas Government Code, §2161.003. The adoption of §403.401 was required by Texas Government Code, §2171.1045. The adoption of §403.402 was required by Texas Transportation Code, §721.003 in order to exempt Commission vehicles from bearing the inscription required by Texas Transportation Code, §721.002.

Therefore, the Texas Lottery Commission readopts the rules set out in Exhibit "A" and contained within 16 TAC Chapter 403.

Exhibit "A"

Title 16. Economic Regulation

Part 9. Texas Lottery Commission

Chapter 403. General Administration

§403.101. Open Records

§403.201. Definitions

§403.202. Prerequisites to Suit

§403.203. Sovereign Immunity

§403.204. Notice of Claim of Breach of Contract

§403.205. Agency Counterclaim

§403.206. Request for Voluntary Disclosure of Additional Information

§403.207. Duty to Negotiate

§403.208. Timetable

§403.209. Conduct of Negotiation

§403.210. Settlement Approval Procedures

§403.211. Settlement Agreement

§403.212. Costs of Negotiation

§403.213. Request for Contested Case Hearing

§403.214. Mediation Timetable

§403.215. Conduct of Mediation

§403.216. Qualifications and Immunity of the Mediator

§403.217. Confidentiality of Mediation and Final Settlement Agreement

§403.218. Costs of Mediation

§403.219. Settlement Approval Procedures

§403.220. Initial Settlement Agreement

§403.221. Final Settlement Agreement

§403.222. Referral to the State Office of Administrative Hearings

§403.223. Use of Assisted Negotiation Processes

§403.301. Historically Underutilized Businesses

§403.401. Use of Commission Motor Vehicles

§403.402. Exemption from Vehicle Inscription Requirements

TRD-200306024
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 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 §81.114(b)

	1st Degree	2nd Degree	3rd Degree
Consanguinity Blood Relation	Father Mother Son Daughter	Grandfather Grandmother Grandson Granddaughter Brother Sister	Aunt Uncle Great-grandson Great-granddaughter Great-grandfather Great-grandmother Niece Nephew
Affinity Relation by Marriage	Father Mother Daughter Son	Spouse's Grandfather Spouse's Grandmother Spouse's Granddaughter Spouse's Grandson Spouse's Sister Spouse's Brother	

Figure: 1 TAC §81.116(a)

The formula for estimating turnout for the 2004 primary elections is:

$$A \times B + C = D$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 2002 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 2002 primary divided by the number of registered voters).
B = the number of registered voters as of October 2003.
C = 25% of the number resulting when you multiply A x B.
D = Preliminary Estimated 2004 Turnout.

Figure: 1 TAC §81.117(a)

Number of Election Workers
Per Voting Precinct
(Includes one judge and one alternate judge who serves as a clerk)

Estimated Turnout per Polling Location	Paper Ballot	Punch Card, Optical Tabulators and Voting Machine
200 or fewer	3	3
201 - 400	5	4
401 - 700	6	5
701 - 1,100	8	6
1,101 or more	12	8

Figure: 1 TAC §81.123(g)

Administrative Personnel

# of Polls	Costs Allowed Thru March 31	Additional Month For Runoff
10 or less	$300	$75
11-25	$1,500	$375
26-50	$3,000	$750
51-140	$12,000	$3,000
141-325	$24,000	$6,000
326-500	$40,000	$10,000
Over 501	$52,000	$13,000

Figure: 1 TAC §81.125(a)

Number of Voting Machines, Devices, and/or Precinct Ballot Counters

Estimated Voter Turnout Per Voting Precinct	Voting Machines	Punch Card Devices
300 or fewer	2	2
301 - 600	2	4
601 - 900	2	6
For each additional: 300 voters	1	2

Figure: 1 TAC §81.149(c)

Number of Election Workers
Per Joint-Voting Precinct
(Includes two co-judges and two alternate judges who serve as a clerk)

Estimated Turnout per Joint-Polling Location	Paper Ballot	Punch Card, Optical Tabulators and Voting Machine
200 or fewer	4	4
201-400	6	5
401-700	7	6
701-1,100	9	7
1,101 or more	13	9

Figure: 1 TAC §81.152(a)

The formula for estimating turnout for the 2004 joint primary elections is:

$$(A \times B) + C + D = E$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 2002 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 2002 primary divided by the number of registered voters).
B = the number of registered voters as of October 2003.
C = 25% of the number resulting when you multiply A x B.
D = Other party's estimated turnout figure.
E = Preliminary Estimated 2004 Turnout for Joint-Primary Election.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction Deadline
1	after February 1	September 1
2 - Area 1	No dates set	September 21 [~~September 14~~]
2 - Area 2	No dates set	September 21 [~~September 14~~]
2 - Area 3	No dates set	September 21 [~~September 14~~]
2 - Area 4	No dates set	October 1
3 - Area 1	after February 1	October 1
3 - Area 2	after February 1	October 15
4	No dates set	October 10
5	No dates set	October 20
6	No dates set	October 31
7	after February 1	November 30
8 - Area 1	after February 1	October 31
8 - Area 2	after February 1	November 30
9	No dates set	No date set
10	No dates set	February 1

Figure: 16 TAC §9.403(a)

Affected NFPA 58 Section	Specific Action	Commission rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
1.3	additional requirement	See Commission rule §9.114, Odorizing and Reports.
1.4.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
1.4.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas Installations, and §9.102(c), Notice of Stationary LP-Gas Installations.
1.5	additional requirement	See Commission rules §§9.51, General Requirements for Training and Continuing Education, and 9.52, Training and Continuing Education Courses.
1.7.11	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
1.7.40	not adopted	The Commission does not adopt the definition of Low Emission Transfer.
2.2.1.4	additional requirement	See Commission rule §9.135, Unsafe or Unapproved Containers, Cylinders, or Piping.
2.2.2.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.2.6.1	additional requirement	See Commission rules §9.140 table 1, Uniform Protection Standards, and §9.141, Uniform Safety Requirements.
2.2.6.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
2.2.6.4	with changes	A warning label shall be applied to all cylinders of 4.2 lb (1.9 kg) to 100 lb (45.4 kg) LP-Gas capacity or less and not filled on site. The label shall include information on the potential hazards of LP-Gas.
2.2.6.5	not adopted	See Commission rule §9.140 table, Uniform Protection Standards.
2.3.1.5	with changes	Cylinders with 4.2 lb (1.9 kg) ~~4 lb (1.8 kg)~~ through 40-lb (18-kg) propane capacity for vapor service shall comply with the following: (a) - (d) (No change.)

2.3.1.6	errata	~~Container appurtenances shall be maintained in operating condition.~~
2.3.2.3	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.3.3.2(a)(5)	with changes	Overfilling prevention devices shall be required on cylinders having 4.2 lb ~~4 lb~~ through 40 lb (1.9 ~~1.8~~ kg through 18 kg) propane capacity for vapor service. *(See 2.3.1.5.)*
Table 2.3.3.2(a)	with changes	Column 1 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Vapor Service Column 2 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Liquid Service Column 3 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Liquid and Vapor Service
2.3.3.2(b)(3) - 2.3.3.2(b)(4)	not adopted	See Commission rule §9.403(a), Exception 2.3.3.2(b)(2).
2.3.3.2(b)(1)	with changes	For ~~vapor withdrawal~~ all openings less than 1 ¼ inches in size, either of the following: a. A positive shutoff valve that is located as close to the container as practical in combination with **either** an excess-flow valve **or a back flow check valve** installed in the container, or b. A ~~An~~ pneumatically operated internal valve with an integral excess-flow valve or excess-flow protection, or c. A double back flow check filler valve.

2.3.3.2(b)(2)	with changes	(2) For all ~~liquid withdrawal~~ openings 1 1/4 inches or greater in size, any of the following: a. A ~~An~~ pneumatically operated internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within 5 ft (1.5 m) of the internal valve**, or a double back flow check filler valve** ~~b. Internal valves installed in containers equipped for remote closure and automatic shutoff using thermal (fire) actuation as described in 2.3.3.2(b)(2)(a) by July 1, 2003~~ bc. Containers equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve and retrofitted by February 1, 2006 ~~July 1, 2003~~, with one of the following: 1. A ~~An~~ pneumatically operated internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation 2. A ~~An~~ pneumatically operated emergency shutoff valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed in the line downstream as close as practical to the existing positive shutoff valve. 3. A double back flow check filler valve 4. A positive shutoff valve in combination with a back flow check valve *Exception 1: Any vapor or liquid withdrawal opening 1 1/4 inch or larger with piping attached that exclusively provides service to stationary appliances or equipment. In lieu of an internal valve or emergency shutoff valve, this opening may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container.*
2.4.4	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
2.4.4.3	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.

2.4.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
2.4.6.3(b)	errata	(b) Hose assemblies, after the application of connections, shall have a design capability of not less than 700 psig (4.8 MPag). If a test is performed, such assemblies shall be leak tested at ~~120 percent of the~~ pressures between the operating pressure and 120 percent of the maximum working pressure {350 psig (24 MPag) minimum} of the hose.
2.5.1.3(a)	errata	Materials equivalent to 2.5.1.3(a)(1) through 2.5.1.3(a)(5) in melting point, corrosion resistance, toughness and strength.
2.6.2.1	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
3.2.2.1	with changes	LP-Gas containers shall be located outside of buildings. *Exception No. 1: (no change.)* *Exception No. 2: Containers from 1 gal (3.785 l) to ~~of less than~~ 125 gal (0.5 m^3) water capacity for the purposes of being filled in buildings or structures complying with Chapter 7.* [remainder: no changes]
3.2.2.2	additional requirement	In addition to Table 1, see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements.
3.2.2.2	errata	Revise paragraph 3.2.2.2 Exception No. 4 to read: *Exception No. 4: The separation distances specified in Table 3.2.2.2 between containers and of buildings of other than wood-frame construction devoted exclusively to gas manufacturing and distribution operations shall be reduced to 10 ft (3m).*
3.2.2.2(g)	errata	Revise paragraph 3.2.2.2(g) Exception No. 2 to read: *Exception No. 2: Where the distance from a 2001 to 30,000 gal water capacity container to a building is in accordance with 3.11.2 and 3.11.4.*
Table 3.2.2.2 Note (a)	errata	Revise Table 3.2.2.2 Note (a) to read: See 3.2.2.2 Exception No. 3.

Table 3.2.2.2 Note (e)	errata	Revise Table 3.2.2.2 Note (e) to read: See 3.2.2.2(b), (c) and (e)
Table 3.2.2.2	errata	(a) Add a superscript "f" after 25 in the column Aboveground Containers (ft), (b) Add a new Note "f" to read: see 3.2.2.2 Exception No. 2.
3.2.2.3	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-gas Installations.
3.2.2.8	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
3.2.4.2	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.4.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
3.2.5	with changes	Cylinders shall be installed only aboveground, and shall be set upon a firm foundation of concrete, masonry, **or metal** or be otherwise firmly secured. Flexibility shall be provided in the connecting piping. The requirements of 3.2.17 shall apply.
3.2.9.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.9.2(d)	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.10.2(j)	errata	~~The location of the container shall have fixed stairs or another safe method to reach it.~~
3.2.12.1	with changes	A two-stage regulator system, an integral two-stage regulator, or a two-psi regulator system shall be required on all fixed piping systems that serve ½-psig (3.4-kPag) appliance systems [normally operated at 11 in. w.c. (2.7 kPag) pressure]. The regulators utilized in these systems shall meet the requirements of 2.5.7. This requirement includes fixed piping systems for appliances on RVs (recreational vehicles), mobile home installations, manufactured home installations, catering vehicles, and food service vehicle installations. Single-stage regulators shall not be installed in fixed piping systems after February 1, 2001 ~~June 30,1997~~. **Single-stage regulators in good working order installed prior to February 1, 2001, may remain in service.**
3.2.17	additional requirement	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

3.2.18.1	with changes	All of the following shall be required for internal valves in liquid or vapor service installed on containers over 4000-gal(15.2-m^3) water capacity by July 1, 2003.
3.2.18.2	with changes	Automatic shutdown of internal valves in liquid or vapor service shall be provided using thermal (fire) actuation. The thermal element shall be within 5 ft (1.5 m) of the internal valve.
3.2.18.3	with changes	At least one remote shutdown station for internal valves in liquid or vapor service shall be installed not less than 25 ft (7.6 m) or more than 100 ft (30 m) from the liquid transfer point.
3.2.19.1	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.2	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.3	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.6	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.24	with changes	All metallic equipment and components that are buried or mounded shall be coated or protected and maintained to minimize corrosion. ~~Corrosion protection of all other materials shall be in accordance with accepted engineering practice.~~
3.3.3.6	not adopted	For containers at Bulk Plants and Industrial Plants refer to 2.3.3.2.
3.3.6.1	not adopted	See Commission rule §9.140, Uniform Protection Standards (fencing and guardrailing requirements).
3.4.2.1	with changes	Cylinders shall be in accordance with the following requirements: (a) - (d) (no change.) (e) Cylinders with propane capacities greater than 4.2 lb (1.9 kg) ~~2 lb (0.9 kg)~~ shall be equipped as provided in Table 2.3.3.2(a), and an excess-flow valve shall be provided for vapor service. (f) (no change.) (g) Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ and connected for use shall stand on a firm and substantially level surface. If necessary, they shall be secured in an upright position. (h) (no change.)

3.4.2.4	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.4.2.7	with changes	Transportation (movement) of cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ within a building shall be restricted to movement directly associated with the uses covered by this section and in accordance with the following: (a) Valve outlets on cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall be tightly plugged, capped, or sealed with a listed quick-closing coupling or a listed quick-connect coupling. (b) (no change.)
3.4.4.1(b)	with changes	Cylinders having a water capacity greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall not be left unattended.
3.4.8.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.8.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.9.2	with changes	Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1 kg) [nominal 1 lb (0.5 kg)]~~ LP-Gas capacity shall not be located on balconies above the first floor that are attached to a multiple family dwelling of three or more living units located one above the other.
3.7.2.2	with changes	Fixed electrical equipment and wiring installed within classified areas specified in Table 3.7.2.2 shall comply with Table 3.7.2.2 and shall be installed in accordance with NFPA 70, *National Electrical Code*. The provision shall apply to vehicle fuel operations. (*See Figure 3.7.2.2.*) *Exception: This provision shall not apply to fixed electrical equipment at residential ~~or commercial~~ installations of LP-Gas systems or to systems covered by Section 3.8.*
3.8.2.8(e)	with changes	The piping system shall be ~~designed,~~ installed, supported, and secured in such a manner to minimize the possibility of damage due to vibration, strains, or wear, and to preclude any loosening while in transit.
3.9.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.9.3.10	additional requirements	See Commission rule §9.140, Table 1 (relating to uniform protection standards).

3.11.3	with changes	The following provisions shall be required for ASME containers of greater than 4000 gal ~~2001 gal~~ through 30,000 gals.(15.2m^3 ~~7.6m3~~ through 114m^3) water capacity referenced in Section 3.11.
3.11.3.1	with changes	All liquid ~~withdrawal~~ openings and all vapor ~~withdrawal~~ openings that are 1 ¼ in. (3.2 cm) or larger shall meet the requirements of 2.3.3.2(b)(2) ~~be equipped with an internal valve with an integral excess flow valve or excess flow protection~~. The ~~internal~~ valves shall remain closed except during periods of operation. As required, the ~~internal~~ valves shall be equipped for remote closure and automatic shutoff through thermal (fire) actuation.
3.11.3.3	with changes	All liquid and vapor ~~inlet~~ openings of less than 1 ¼ inch shall be equipped in accordance with 2.3.3.2(b)(1) ~~3.11.3(a) and 3.11.3(b) or shall be equipped with a backflow check valve and a positive manual shutoff valve installed as close as practical to the backflow check valve~~.
3.11.4.3(c)	additional requirements	See Commission rule §9.140, Table 1 (relating to uniform protection standards).
3.11.5	not adopted	No applicable Commission language.
4.2.1.1	with changes	~~Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1-5.~~ At least one qualified person shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected.
4.2.1.2	not adopted	See Commission rules in Chapter 9, Subchapter A.
4.2.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
4.2.3.8(i)	errata	Provision for anchorage and breakaway ~~breaking~~ shall be provided on the cargo tank vehicle side for transfer from a railroad tank car directly into a cargo tank vehicle. *(See A.3.2.19.6)*
Tables 4.4.2.2(a) and (b)	errata	Revise the note to tables 4.4.2.2(a) and (b) to read: See 4.4.3.3(a)

4.4.3.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
4.4.3.2	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: ~~(1) Cylinders of less than 220-lb (91-kg) water capacity that are not subject to DOT jurisdiction~~ (1~~2~~) Cylinders of 101 lb LP-Gas capacity ~~200-lb (91-kg)~~ water capacity or more (2~~3~~) Cargo tanks or portable tank containers complying with DOT specifications MC-330, MC-331, or DOT 51 (3~~4~~) ASME and API-ASME containers complying with 2.2.1.3 or 2.2.2.2
5.2.1.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.3.1	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
5.4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
5.4.2.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
Table 6.2.2.7	errata	In table 6.2.2.7 change the heading of the first column from "lb w.c." to "lb".
6.3.6	with changes	Painting and Marking Liquid Cargo Vehicles. Painting of cargo vehicles shall comply with ~~*Code of Federal Regulations*, Title 49, Part 195~~ 49 Code of Federal Regulations, Section 178.337-1. Placarding and marking shall comply with ~~CFR 49~~ 49 CFR, Section 172, Subparts D and F, respectively.
6.5.2.1	with changes	*Exception (b): Valves and fittings shall be protected by a method ~~approved by the authority having jurisdiction~~ to minimize the possibility of damage.*
8.1.3	not adopted	See Commission rules §§9.51, General Requirements for Training and Continuing Education, and 9.52, Training and Continuing Education Courses.
8.2.2.1(e)(1)	errata	250 psig (1.7 MPag) or 312.5 psig (2.2 MPag) where required if constructed prior to April 1, 2001.

8.2.3(l)	with changes	Where an overfilling prevention device is installed on an engine fuel container, venting of gas through a fixed maximum liquid level gauge shall not be required provided: 1. The OPD is verified by the owner of the vehicle to be working properly; 2. The verification of the valve is documented yearly and clearly marked on the container in a visible location; and 3. The OPD is replaced every two years, documentation is kept by the owner of the vehicle, and the container is marked in a visible location verifying its replacement.
8.2.6.6	with changes	Fuel containers shall be securely mounted to prevent jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to with stand without permanent visible deformation static loading in any direction equal to four times the weight of the container filled with fuel. This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer, original vehicle manufacturer, or the authorized representative of either. Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.
8.2.8.1	with changes	The piping system shall be ~~designed~~, installed, supported, and secured in such a manner to minimize damage due to expansion, contraction, vibration, strains, and wear.
8.2.10	with changes	Each over-the-road general-purpose vehicle powered by LP-Gas shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (on the truck lid of a vehicle so equipped, but not on the bumper of any vehicle) inboard from any other markings. The label shall be approximately 4 3/4 in. (120 mm) long by 3 1/4 in (83 mm) high. The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black or Pantone 2945 C Royal Blue or equivalent background. (See Figure 8.2.10.)
Chapter 10	not adopted	Commission authority does not extend to marine shipping and receiving activities.
13.1.2.8	errata	In paragraph 13.1.2.8 delete "ICC, Rules for Construction of Unifired Pressure Vessels"
Appendix A	additional requirement	See Commission rule §9.137, Inspection of Cylinders at Each Filling, and CGA Publication C-6 or C-6.3 for further information regarding cylinder inspection.

A.3.2.12.8	errata	Revise paragraph A.3.2.12.8 to read: A.3.2.12.8 Two-psi regulator systems operate with 2 psi (13.8 kPa) downstream of the 2-psi service regulators to the line pressure regulator, which reduces the pressure to anappropriate inches-of-water-column pressure.
A.3.10.2.2	errata	In paragraph A.3.20.2.2 substitute "exposures" for expenses in (5) and substitute "designated" for "designed" in (6).
A.5.5	errata	Revise paragraph A.5.5 to read: See 3.10.2.5
F.5.2.3	errata	Revise paragraph F.5.2.3 to read: F.5.2.3 Percentage values, such as in the example in F.5.2.2, are rounded off to the next lower full percentage point, or to 80 percent in this example.
Figure I.1(a) Note 2	errata	In Figure I.1(a) Note 2, substitute "3.2.2.2(e)" for 3.2.2.2(d)
Figure I.1(b) Note 2	errata	In Figure I.1(b) Note 2 substitute "3.2.2.2(d)" for 3.2.2.2(c)
Figure I.1(b) Note 3	errata	In Figure I.1(b) Note 3 substitute "3.2.2.2 Exception No. 2 for "3.2.2.2(e)"
Figure I.1(c) Note 1 & 2	errata	In Figure I.1(c) Note 1 & 2 substitute "3.2.2.2 Exception No. 3" for "3.2.2.2(f)"

Figure: 30 TAC Chapter 115--Preamble

Product Category	**VOC Content Limit (in percent by weight, except as noted)**	
	State	**Federal**
Windshield washer fluid	23.5	35
Non-aerosol glass cleaners	6[1]	8
Nail polish removers	75[1]	85
Household adhesives - structural waterproof	---	15
Antiperspirant/deodorant - nonaerosol products	0 % by weight high volatility VOC[1]	---

[1] consistent with California Air Resources Board standards in effect as of January 1, 1996

Figure: 30 TAC §115.600(10)

$$\text{Percent by weight} = \frac{(B - C)}{A} * 100$$

Where:

A = net weight of unit (excluding container and packaging)
B = weight of VOCs, per unit
C = weight of VOCs exempted under 30 TAC §115.617, per unit

Figure: 30 TAC §330.66(c)(7)

(A) I, _____, state that I have knowledge of the facts set forth in the plans and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project does not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the facility owner or operator or am authorized to act for the owner or operator.

_____
(Signature)

_____
(Type Name and Title)

_____
(Date)

(B) Notary public's certificate: Subscribed and sworn to before me, by the said _____,

this _____ day of _____ 20 ___, to certify which witness my hand and seal of office.

_____ Notary Public in and for _____ County, Texas.

My commission expires on _____.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing on the proposed judgment. The Attorney 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 Act.

Case Title and Court: State of Texas v. Leslie Simon, Jr., et al.; Civil Action No. C-88-04, in the U.S. District Court for the Southern District of Texas, Corpus Christ Division.

Background: The State of Texas filed an enforcement action alleging that unauthorized discharges of hazardous waste and hazardous substances had occurred at a site in Corpus Christi, Texas, and seeking remedial action, cost recovery and attorneys' fees. The site consists of two tracts: a 3.3 acre tract at 3000 Agnes Street, known as the Industrial Metals Site, and an adjoining 5 acre tract with access from Industrial Road, known as the Industrial Road Site. The site was contaminated with various substances, including lead and PCB's. Site remediation was substantially completed in 1990 by agreement with some defendants, and a cost recovery action was pursued against the rest. The remediation removed PCB-contaminated soil and disposed of it in an approved landfill, placed the lead contamination under a clay or concrete cap, and provided for groundwater monitoring.

Nature of the Settlement: The case is to be settled by a consent decree.

Proposed Settlement: The consent decree approves previous and current settlements and provides for an injunction to control access to the site. The injunction allows the Texas Commission on Environmental Quality to have access to conduct future remediation, oversight and monitoring, while prohibiting other access without State approval.

The Office of the Attorney General will accept written comments relating to the proposed settlement for thirty (30) days from the date of publication of this notice. Copies of the proposed agreed final judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed agreed final judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at 512-463-2110.

TRD-200306019

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 16, 2003

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Texas Cancer Council

Request for Applications

Introduction:

The Texas Cancer Council (the Council) announces the availability of state funds to be awarded to support the Texas Cancer Plan. Funds will be awarded to the selected applicant (entity or individual) that develops an effective 'Fund Enhancement Program' that enables the Council and its cancer projects to increase and enhance funds for cancer control in Texas. This will expand the Council's ability to implement all four goals of the Texas Cancer Plan.

Initial funding will be awarded from January 1, 2004 through August 31, 2004 and the maximum amount will be $50,000 for that time period. If the selected applicant is successful, the 'Fund Enhancement Program' may be a multi-year project; however, the selected applicant must reapply each year for continuation funds. Future funding beyond year one will be contingent upon selected applicant's success. Success will be measured by the overall effectiveness of the Fund Enhancement Program in securing additional funds for the Council and its cancer projects.

Purpose:

The purpose of this Request for Applications (RFA) is to solicit statewide applications to assist the Council in identifying, seeking, and securing public or private funds that enhance cancer control efforts and further the goals of the Texas Cancer Plan.

Eligibility requirements:

To be considered for funding, a Letter of Intent must include a Fund Enhancement Program outline and proposed budget, and must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Letters of Intent must be received in the Council office by 5:00 p.m. October 15, 2003. The Council will acknowledge receipt of Letters of Intent in writing. Letters of Intent may be mailed to P.O. Box 12097, Austin, Texas 78711, or sent by facsimile machine: (512) 475-2563. Applicants are encouraged to contact the Council immediately upon sending a Letter of Intent to ensure that the letter is received. Contact the Council at (512) 463-3190.

Letter of intent requirements:

Letters of Intent should identify the lead contractor and concisely describe previous experience and success in the area of developing funds for nonprofits, governmental entities and community based programs; familiarity with private, local, state, and federal grant writing rules and

regulations; and strategic planning and project management experience. A program outline and proposed budget to provide the service is also required. Letters of Intent, program outline and proposed budget should not exceed five (5) pages total and must be submitted in a font-size no smaller than 12 point.

Semi-finalist selection :

Council staff will review all Letters of Intent and select semi-finalists based on the criteria outlined in this funding announcement. No later than October 22, 2003, semi-finalists will be notified by telephone of their selection as a semi-finalist, and mailed a funding application packet. Applicants should become familiar with the Texas Cancer Plan and the mission and projects of the Texas Cancer Council (see the agency website at www.tcc.state.tx.us).

Application requirements:

An original application and three copies from the semi-finalists are due at the Council office by 5 p.m. on November 12, 2003. Applications must be submitted according to the Council's application instructions and forms. Applications sent by facsimile machine will not be accepted. Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials and a copy of the Texas Cancer Plan can be obtained by calling (512) 463-3190 or on the web at www.tcc.state.tx.us.

Applicant qualifications:

The applicant should demonstrate:

* 5 years of successful experience in seeking and securing supplemental, enhancement or continuation funds for non-profits, governmental entities or community-based organizations;

* Knowledge and skills in strategic planning and program and budget development;

* Significant project management and organizational skills;

* The ability to work well within time constraints

* Strong computer skills;

* Excellent written, oral and interpersonal skills; and

* Evidence of the ability to work collaboratively with partners to secure funding.

Success in securing health related grants or funds for programs that serve underserved populations is desirable, since the Council emphasizes services to underserved Texans.

Program requirements:

The 'Fund Enhancement Program' funded under this RFA must establish a program that successfully secures additional cancer control funds for the Texas Cancer Council and its projects. This program will create an innovative, effective process to identify and acquire potential cancer prevention and control funding sources (public and private). Other elements include the design and update of a resource list of potential funding sources; a 'how to' guide that teaches Council projects how to seek and secure additional funding; quarterly progress reports to the Council that address efforts and successes in identifying funding opportunities and applications submitted; a system to monitor progress; and a formal annual report that describes the program's effectiveness. The report is due to the Council on June 1, 2004. Implementation phase will include informing the Council and its projects of funding opportunities, developing letters of intent and cancer grant applications on behalf of the Council and its projects, and providing ongoing development assistance to the Council and its projects. Program staff will work closely with Council staff, Council cancer project staff, and potential funders to coordinate grant and other funding activities. Coordination with the Council may include visits to Council headquarters in Austin 2-3 times per year. Applicant is expected to have at least one full time staff dedicated to the successful implementation of this program.

Funding awards:

TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on or about December 5, 2003. Written notification of approval will be sent on or about December 9, 2003. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the project;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Evidence of a sound and effective program for accomplishing the project; and

* Completeness and clarity of the application.

All Council projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project.

It is anticipated that one project will be selected under this initiative to receive Council funding. Council funding is based on the merit of the application received and the availability of funding.

All Council funded projects must submit annual continuation applications. The Council will award annual continuation contracts based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding. Future year funding for this project is projected to be up to $75,000 per year.

The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

Additional information:

For additional information about this funding announcement, contact Mickey Jacobs, Executive Director, or Jane Osmond, Program Specialist, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200306073
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Filed: September 17, 2003

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Central Texas Regional Mobility Authority

Public Notice - Bond Counseling Services

Public Notice Request for Qualifications (RFQ) from Bond Counseling Firms

The Central Texas Regional Mobility Authority (CTRMA) is seeking professional legal services firms to provide bond counseling services for the CTRMA, including the proposed financing of the CTRMA priority project, the US 183-A turnpike project in Williamson County, Texas. A Scope of Services has been prepared for interested bond counseling firms.

To obtain copies of this RFQ and the CTRMA's procurement policies, please contact C. Brian Cassidy, Locke, Liddell, & Sapp, 100 Congress Ave, Ste. 300, Austin, Texas 78701, or www.ctrma.org.

TRD-200306055
Michael Weaver
Interim Executive Director
Central Texas Regional Mobility Authority
Filed: September 17, 2003

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 5, 2003, through September 11, 2003. The public comment period for these projects will close at 5:00 p.m. on October 17, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation (TxDOT); Location: The proposed project is located along the shoreline of the Gulf of Mexico on the Bolivar Peninsula, approximately 0.85 mile east of the Bolivar/Galveston Ferry Landing. The proposed project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas, at the approximate UTM Coordinates Zone 15, 328421E 3249576N. Project Description: TxDOT proposes to place granite blocks, rock and/or clean concrete riprap, four 2-foot by 6-foot concrete box culverts, and clean fill material into 0.5874 acre of jurisdictional waters of the United States, specifically the Gulf of Mexico, for the purpose of extending two previously authorized breakwater structures and related inter-tidal marsh creation.

The proposed project involves the modification of an existing permit. The previous permit authorized the construction of a revetment along the State Highway (SH) 87 right-of-way and the construction of a breakwater 150 feet from, and parallel to, the shoreline. The section between the two structures will be used for marsh creation. The breakwater is currently designed with four southerly-facing 28-foot openings leading to four separate channels that are cut back into the created marsh. These openings are to be constructed to allow for the exchange of water during daily tidal events and to provide for the ingress and egress of large fishes. These openings are to remain plugged until such time that the wetland vegetation is well established within the area between the breakwater and the revetment. However, during construction of this project, TxDOT found that there is considerable wave energy and tidal action along this section of shoreline. The energy and erosional forces are great enough to have removed large amounts of recently placed material in just a couple of days. Additionally, the primary purpose for the construction of this project is to protect SH 87 and prevent its decimation during a storm event, as it is a hurricane evacuation route and the main arterial for travel along the Bolivar Peninsula. The aforementioned energy and erosional forces, together with subsidence, are the primary causes of the loss of this area over the past few decades. It is likely that once the plugs are removed from the four 28-foot openings and the area becomes subject to the hydrological dynamics within the permit area, the newly created marsh will begin to erode, even with the presence of established vegetation. Therefore, TxDOT proposes to modify the previously authorized design in an effort to curtail this from happening. The overall purpose of this permit modification is to provide for the integrity of SH 87 as well as the long-term function of the newly created inter-tidal marsh.

TxDOT proposes to extend the previously-authorized breakwater 128 feet on the western end, and 471 feet on the eastern end. Each extension would be constructed in a manner similar to what was previously authorized. Each extension would be constructed with two openings comprised of 2-foot by 6-foot concrete box culverts surrounded by rock and/or clean broken concrete riprap. The four 28-foot openings would be closed by continuing the breakwater through these areas. The large granite blocks located from the east end of the previously-authorized structure, to the point where the proposed extension would intersect it, would be removed and used in the construction of the extension. The proposed west extension would permanently impact 0.0816 acre of unvegetated bottom, open water of the Gulf of Mexico. Construction of the east extension would permanently impact 0.2988 acre of unvegetated bottom, open water of the Gulf of Mexico. Construction of the proposed extension on the east end of the breakwater would provide 0.207 acre of area that would be used for additional marsh creation. This area would be filled with the same material that is being used for the previously-authorized marsh creation to the top of the revetment where the granite blocks are to be removed. The area would be planted to the same specifications as the previously authorized structure. This change would result in the permanent loss of 0.207 acre of unvegetated bottom, open water of the Gulf of Mexico. However, the change would result in a more productive habitat type. The closure of the 28-foot openings would render the previously authorized canals non-functional. Therefore, the applicant proposes to reconfigure the marsh to several irregularly shaped mounds rather than a solid area with four canals. The tops of the proposed mounds would be constructed to elevation 2.11 feet. The total area of the mound tops would equal two-thirds of the total mitigation area. The remaining one-third of the mitigation area would be constructed to 0.00 feet. The mounds are conceptual and may vary in shape and size so long as the total surface area is equal to two-thirds of the mitigation area. CCC Project No.: 03-0304-F1; Type of Application: U.S.A.C.E. permit application #22536(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §125-1387).

Applicant: Sabine Offshore Services; Location: The project is located adjacent to the Sabine Pass Channel, at 7266 S. 1st Avenue, Sabine Pass, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415909; Northing: 3288518. Project Description: The applicant proposes to amend Department

of the Army Permit 22036(01) to include mechanical dredging of their dock facility. The previous Permit 22036 and amendment authorized the applicant to dredge the facility to -36 feet mean low tide (MLT) and place up to 222,000 cubic yards of hydraulically dredged material at Corps of Engineers Dredged Material Placement area No. 5 in Cameron Parish, Louisiana. Currently, the applicant seeks authorization to dredge the dock to -25 feet MLT and place the approximately 40,000 cubic yards of mechanically dredged material at their 23-acre upland placement site north of Texas Bayou and east of Mud Lake. This placement area has been previously authorized for dredged material placement under Permits 10253 and 12949. CCC Project No.: 03-0312-F1; Type of Application: U.S.A.C.E. permit application #22036(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200306062
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 17, 2003

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020 Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #158a) was published in the July 11, 2003, issue of the *Texas Register* at 28 TexReg 5559.

The consultant will assist Comptroller in conducting a management and performance review of the Tatum Independent School District.

The contract was awarded to Valiente Hernandez, P.A., 1715 N. Westshore Blvd., Suite 950, Tampa, Florida 33607-3920. The total amount of this contract is not to exceed $75,000.00.

The term of the contract is September 4, 2003 through May 31, 2004. The final report is due on or before December 8, 2003.

TRD-200305935
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 12, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 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 09/22/03 - 09/28/03 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 09/22/03 - 09/28/03 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 10/01/03 - 10/31/03 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 10/01/03 - 10/31/03 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200306052
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 17, 2003

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Credit Union Department

Application for a Merger or Consolidation.

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from THD District 4 Credit Union (Amarillo) seeking approval to merge with The Education Credit Union (Amarillo) with the latter being the surviving 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-200306041
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2003

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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 Lone Star Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of Sonny Bryan's Smokehouse of Dallas, 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 of Altivia Corporation, Houston, Texas, to be eligible for membership in the credit union.

An application was received from Texas Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of Janet Collinsworth, P.C. who work in Plano, Texas, to be eligible for membership in the credit union. An application was received from Community Credit Union, Plano, Texas (#1) to expand its field of membership. The proposal would permit the Community Credit Union Foundation and members and employees of the Community Credit Union Foundation, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#2) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Fannin County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#3) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Hunt County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#4) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Denton County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#5) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Johnson County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#6) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Hood County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#7) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Ellis County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#8) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Tarrant County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#9) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Wise County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#10) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Kaufman County, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas (#11) to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations and associations within Parker County, to be eligible for membership in the credit union.

An application was received from 1st University Credit Union, Waco, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school within the following geographic area: (a) East of I-35 bounded by I-35, University Parks Drive, Route 340 and Robinson Drive; (b) West of I-35 bounded by I-35, Valley Mills Drive, Waco Drive, and University Parks Drive; and (c) West of I-35 bounded by 18th Street, Herring Avenue, Gholson Road, U.S. Highway 84, and I-35.

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-200306050
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2003

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Denton Area Teachers Credit Union, Denton, Texas (Amended) - Members of the Friends of the Texas Credit Union Foundation who live, work, or attend school in Collin, Dallas, Denton, Tarrant and Wise County, Texas.

Associates Mutual Credit Union, Houston, Texas - See *Texas Register* issue dated July 25, 2003.

TruWest Credit Union, Scottsdale, Arizona - See *Texas Register* issue dated July 25, 2003.

TRD-200306042
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2003

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Texas Education Agency

Request for Applications Concerning Texas High School Completion and Success Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-03-033 to implement programs that target 9th through 12th grade students from school districts and open-enrollment charter schools. A shared services arrangement of school districts also may apply. A district must serve as the fiscal agent. A local education agency that meets one or both of the following criteria is eligible to apply for grant funds: (1) one or more high schools that were identified under the Texas accountability

rating system as *Low-performing* in 2002; and/or (2) one or more high schools identified as under-performing (a passing rate of 50% or lower for all tests taken on the 10th grade Texas Assessment of Knowledge and Skills during the spring 2003 administration).

Description. The purpose of this program is to support the establishment and implementation of comprehensive high school completion and success initiatives. The grant program will target low- performing and under-performing high schools through student-focused competitive intervention grants that will provide direct and indirect (support) services to students in Grades 9-12. Grants will be awarded to programs that demonstrate the most potential to improve high school success and completion and encourage students toward post-secondary education and training, including basic skills grants to districts implementing special programs for high school students who have not earned sufficient credit to advance to the next grade; after-school programs designed to prevent high school dropouts; and middle-college programs that encourage at-risk students and students who wish to accelerate their education by undertaking courses of study that allow both high school and college level credit.

Dates of Project. The Texas High School Completion and Success grant will be implemented during the 2003-2004 and 2004-2005 school years. Applicants should plan for a starting date of no earlier than February 1, 2003, and an ending date of no later than August 31, 2005. The grant period will be 19 months.

Project Amount. Approximately $20 million is available for funding approximately 70 projects. The grant request may not be less than $15,000 or greater than $600,000 per district.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA will not award a grant to an applicant receiving an average score of below 70. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-033 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e- mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division of Discretionary Grants, Texas Education Agency, (512) 463-9068.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, November 25, 2003, to be considered for funding.

TRD-200306049

Cristina De La Fuente-Valadez
Manager, Accountability and Data Quality
Texas Education Agency
Filed: September 17, 2003

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 2003**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Matt Dietz dba Matt Dietz Company; DOCKET NUMBER: 2001-0714-AIR-E; TCEQ ID NUMBER: ZA-0177-P; LOCATION: 25 miles south of Laredo on Highway 83, Zapata County, Texas; TYPE OF FACILITY: ranch; RULES VIOLATED: 30 TAC §111.201, and Texas Health and Safety Code (THSC), §382.085(b), by conducting unauthorized burning of plastic; and 30 TAC §330.5(a), by failing to dispose of solid waste properly; PENALTY: $15,625; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041, (956) 791-6611.

(2) COMPANY: Rainbow Oils of San Angelo, Inc.; DOCKET NUMBER: 2002-0283-PST-E; TCEQ ID NUMBER: 27405; LOCATION: 3618 West Farm-to-Market Road 2105, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: truck stop with retail sales of gasoline and diesel; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of a regulated underground storage tank (UST) system has a valid, current delivery certificate issued by the agency prior to depositing any regulated substance into the UST; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475, by

failing to provide the proper release detection for UST systems; and 30 TAC §334.72, and §334.74, by failing to investigate a suspected release; PENALTY: $43,750; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Shekhani Enterprises, Inc. dba Westview Texaco; DOCKET NUMBER: 2002-0720-PST-E; TCEQ ID NUMBER: 0006746; LOCATION: 1330 Antoine, Houston, Harris County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control at a retail fuel facility regardless of the chosen method of release detection; and 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at least once per month; PENALTY: $10,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Woody's Superettes, Incorporated; DOCKET NUMBER: 2002-1218-PST-E; TCEQ ID NUMBERS: 0020750, 0020999, 0020747, and 0020895; LOCATIONS: 3805 Lee Street, Greenville; 4101 Oneal Street, Greenville; 2809 US Highway 66, Caddo Mills; and 900 Wolfe City Drive, Greenville, Hunt County, Texas; TYPE OF FACILITY: gasoline retail stores; RULES VIOLATED: 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475, by failing to ensure that all tanks are monitored for releases at a frequency of at least once every month not to exceed 35 days between each monitoring; 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 30 TAC §334.51(b)(2)(C), and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to prevent the overfill during a transfer of regulated substances into the UST system; and 30 TAC §334.50(b)(2)(A)(i)(III), and TWC, §26.3475, by failing to test line leak detector at least once per year for performance and operational liability; PENALTY: $59,325; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200306028
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2003

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 2003**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Gloria Dean; DOCKET NUMBER: 2001-1158-PST-E; TCEQ ID NUMBER: 21930; LOCATION: 722 East Market, Rockport, Aransas County, Texas; TYPE OF FACILITY: out-of-service gasoline station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475, by failing to monitor USTs for releases at least once per month and by failing to monitor the piping of the UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.49(a), and TWC, §26.3475, by failing to provide corrosion protection for the UST system; 30 TAC §334.54(b)(2), by failing to ensure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment were capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to submit a self- certification form as required; PENALTY: $10,500; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Thoroughbred Properties, Inc. dba Douglass General Store; DOCKET NUMBER: 2002-0307-PST-E; TCEQ ID NUMBER: 0002202; LOCATION: Route 1, Box 2275 on Farm-to-Market Road 21 West, Douglass, Nacogdoches County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate prior to delivery of a regulated substance into the UST systems; 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, and submitted to the agency in a timely manner; 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to have corrosion protection for the UST system; and 30 TAC §334.10(b), by

failing to maintain records relating to the operation and maintenance of the UST system for at least five years; PENALTY: $600; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200306027
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2003

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 115, *Control of Air Pollution from Volatile Organic Compounds*, amended §§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, and 115.619; repeal of §115.614; and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed rulemaking would remove volatile organic compound standards for all consumer products except automotive windshield washer fluid.

A public hearing on this proposal will be held in Austin on October 20, 2003, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2003-039-115-AI, and must be received by 5:00 p.m., October 27, 2003. For further information, please contact Emily Barrett, Policy and Regulations Division at (512) 239-3546.

TRD-200305949
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 12, 2003

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 27, 2003**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 27, 2003**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 8524 Gulf, LLC dba First Stop Food Store No. 16; DOCKET NUMBER: 2003-0252-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0046831; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(I) and the Code, §26.3475(a), by failing to equip each of the four pressurized lines with automatic line leak detectors; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(2) COMPANY: Bryan Anderson dba Anderson Lawn and Landscape Services; DOCKET NUMBER: 2003-0542-LII-E; IDENTIFIER: Regulated Entity Reference Number RN103099438; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(b) and §334.4(a) and the Code, §34.007(a) and §37.003, by allegedly having sold and installed an extension to an existing landscape irrigation system without an irrigator license; PENALTY: $500; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Balmorhea; DOCKET NUMBER: 2003-0311-WR-E; IDENTIFIER: Public Water Supply (PWS) Number 1950002; LOCATION: Balmorhea, Reeves County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §288.22(a) and §288.30(4), by failing to submit a drought contingency plan; PENALTY: $485; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Mike Barker dba Mike Barker Construction; DOCKET NUMBER: 2003-0516- OSI-E; IDENTIFIER: Regulated Entity Reference Number RN103142147; LOCATION: Coleman, Coleman County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.50(b) and THSC, §366.071(a), by

failing to possess a current installer license; PENALTY: $200; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: City of Center; DOCKET NUMBER: 2003-0313-WR-E; IDENTIFIER: PWS Number 2100001; LOCATION: Center, Shelby County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §§288.2(a), 288.5(a), 288.20(a), and 288.30(1) and (4), by failing to submit a water conservation plan and submit a drought contingency plan; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2003-0118-AIR-E; IDENTIFIER: Air Account Number CZ-0014-G; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: gas processing; RULE VIOLATED: 30 TAC §101.6(a)(1)(B) and (b), (now 30 TAC §101.201(a)(1)(B) and (b)) and THSC, §382.085(b), by failing to notify the Region 8 office after the discovery of a reportable upset and failing to maintain complete records of upsets and emissions events; 30 TAC §101.7(c) (now 30 TAC §101.211(b)) and THSC, §382.085(b), by failing to maintain complete records of maintenance, startup, and shutdown activities; THSC, §382.085(a), by failing to comply with the prohibition on unauthorized emissions; 30 TAC §106.512(2)(C)(ii)/Standard Exemption Six Condition (b)(3)(B), §122.143(4), General Operating Permit Number 514 Condition (b)(4)(A), and THSC, §382.085(b), by failing to document the proper operation of Engine 5R, Engine Nine, and Engine Ten within seven days after the replacement of the oxygen sensors; 30 TAC §122.143(4) and General Operating Permit Number 514 Condition (b)(17)(A), and THSC, §382.085(b), by failing to properly monitor the sulfur feed rate to the flare; and 30 TAC §122.145(2)(A) and General Operating Permit Number 514 Condition (b)(2), and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Philip Lopez, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(7) COMPANY: City of The Colony; DOCKET NUMBER: 2003-0170-MLM-E; IDENTIFIER: PWS Number 101278943 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11570-001; LOCATION: The Colony, Denton County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §288.20(a) and §288.30(3), by failing to submit a drought contingency plan; and 30 TAC §305.125(1), TPDES Permit Number 11570-001, and the Code, §26.121(a), by failing to comply with permitted limits for ammonia nitrogen and five-day biochemical oxygen demand; PENALTY: $16,535; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(8) COMPANY: Comal County; DOCKET NUMBER: 2003-0344-EAQ-E; IDENTIFIER: Regulated Entity Identification Number RN102835006; LOCATION: near Bergheim, Comal County, Texas; TYPE OF FACILITY: Edwards Aquifer; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to submit a water pollution abatement plan and obtain prior construction of a new road; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: COPC International (USA), Incorporated dba Country Club Beverage # 2; DOCKET NUMBER: 2003-0172-PST-E; IDENTIFIER: PST Facility Identification Number 0044493; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c), by failing to have a release detection method and by failing to test a line leak detector; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the full Stage II vapor recovery system testing; PENALTY: $3,380; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(10) COMPANY: Harris County WCID Number 1; DOCKET NUMBER: 2003-0065-MWD-E; IDENTIFIER: TPDES Permit Number 10104-001; LOCATION: Highlands, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10104-001, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater and failing to comply with permitted effluent limits; PENALTY: $66,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Kinder Morgan CO2 Company, L.P.; DOCKET NUMBER: 2003-059-AIR- E; IDENTIFIER: Air Account Number SG-0029-C and Regulated Entity Identification Number RN102170966; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §112.31 and THSC, §382.085(b), by failing to prevent emissions of hydrogen sulfide; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: Millennium Polymers, Ltd.; DOCKET NUMBER: 2002-0852-AIR-E; IDENTIFIER: Air Account Number HG-3371-D; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: resin manufacturing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to control odors from a resin manufacturing operation; and 30 TAC §101.6(b) and THSC, §382.085(b), by failing to prepare a complete final record; PENALTY: $600; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Penske Truck Leasing Co., L.P.; DOCKET NUMBER: 2003-0550-AIR-E; IDENTIFIER: Air Account Number EE-1312-O; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $900; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: Post Oak Special Utility District; DOCKET NUMBER: 2003-0582-PWS-E; IDENTIFIER: PWS Number 1090030; LOCATION: Coolidge, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.26(d)(2)(B) and §290.110(b)(4), by failing to maintain the minimum disinfectant concentration residual of 0.5 milligrams per liter total chlorine; PENALTY: $360; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710- 7826, (254) 751-0335.

(15) COMPANY: San Antonio Water System; DOCKET NUMBER: 2003-0085-PWS-E; IDENTIFIER: PWS Number 0150018; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j), (k),

and (q), and THSC, §341.0315(c), by failing to perform an adequate customer service inspection and failing to issue a boil water notice; PENALTY: $624; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(16) COMPANY: Tapia Dairy, Inc.; DOCKET NUMBER: 2003-0294-MWD-E; IDENTIFIER: TPDES Registration Number 02966-000, Regulated Entity Identification Numbers RN102078649 and CN600724116; LOCATION: Miles, Runnels County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a), TPDES Registration Number 02966-000, and the Code, §26.121(a), by failing to prevent the discharge of wastewater; and 30 TAC §321.42(a), by failing to submit documentation in writing within 14 days of the unauthorized wastewater discharge; PENALTY: $2,240; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: V & S Petroleum, Ltd. dba Bill's Exxon Truck Stop; DOCKET NUMBER: 2003-0402-PST-E; IDENTIFIER: PST facility Identification Number 0037648; LOCATION: Jarrell, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c), by failing to ensure that all tanks are monitored for release at a frequency of at least once every month; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: Watertown Soles, Inc.; DOCKET NUMBER: 2003-0093-AIR-E; IDENTIFIER: Air Account Number VA-0016-Q; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: shoe sole manufacturing facility; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain commission authorization prior to modifying a plant which emits contaminants into the air; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611. (19) COMPANY: Wisebuy, Incorporated dba Uncle Sam's Convenience Store and Travel Center; DOCKET NUMBER: 2003-0201-PST-E; IDENTIFIER: PST Facility Identification Number 73380; LOCATION: Caddo Mills, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain a record of the underground storage tank tests performed by automatic tank gauge; 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(a), by failing to monitor the pressurized underground product piping for releases, failing to test a line leak detector, failing to conduct reconciliation of detailed inventory control records, and failing to record inventory volume measurement for regulated substance inputs; and 30 TAC §334.48(c), by failing to conduct inventory control procedures and maintain complete and accurate inventory control records; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200306015
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 16, 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.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	81	9/05/03
Abilene	Abilene Imaging Center LLC	L05687	Abilene	01	9/10/03
Arlington	General Electric Medical Systems	L05693	Arlington	01	9/12/03
Austin	Austin Radiological Association	L00545	Austin	99	9/03/03
Austin	Daughters of Charity Health Svs of Austi	L00268	Austin	80	9/05/03
Austin	Austin Radiological Association	L00545	Austin	100	90/8/03
Brownsville	Brownsville Medical Center	L01526	Brownsville	33	9/09/03
College Station	Texas A&M University	L00448	College Station	116	9/11/03
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	17	8/29/03
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	28	9/04/03
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	37	8/22/03
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	12	9/12/03
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	38	9/15/03
Dallas	North Texas Heart Center PA	L04608	Dallas	24	9/09/03
Dallas	The Univ of TX SW Med Center at Dallas	L00384	Dallas	79	9/12/03
El Paso	Philips Lighting Company	L03823	El Paso	13	9/05/03
El Paso	Ediberto Soto-Cora MD	L05535	El Paso	02	9/09/03
Ft Worth	Healthsouth of Texas Inc	L05473	Ft Worth	08	9/02/03
Ft Worth	Baylor Medical Center Cityview	L04105	Ft Worth	18	9/03/03
Ft Worth	Baylor All Saints Medical Center	L02212	Ft Worth	63	9/08/03
Ft Worth	All Saints Advanced Imaging Center	L05251	Ft Worth	07	9/08/03
Ft Worth	Baylor Medical Center Cityview	L04105	Ft Worth	19	9/08/03
Harlingen	Valley Diagnostic Clinic PA	L02933	Harlingen	30	9/12/03
Houston	Integrated Diagnostic Centers of N Houston	L05432	Houston	05	9/05/03
Houston	Northwest Houston Heart Center PLLC	L04253	Houston	15	9/08/03
Houston	Lyondell-Citgo Refining LP	L00187	Houston	53	9/09/03
Houston	Kihei Industries Inc	L05677	Houston	01	9/09/03
Houston	Houston Cardiovascular Consultants LLP	L05350	Houston	07	9/10/03
Jacksonville	Regional Health Care Center	L05362	Jacksonville	11	9/04/03
Jasper	Numed Imaging Centers Inc	L05202	Jasper	01	9/11/03
Lewisville	Columbia Medical Center of Lewisville	L02739	Lewisville	37	9/11/03
Lubbock	Covenant Medical Center	L00483	Lubbock	122	9/09/03
McAllen	Advanced Nuclear Imaging Inc	L05467	McAllen	02	9/02/03
Mercedes	L & G Engineering Laboratory LLC	L05647	Mercedes	02	9/10/03
N Richland Hills	Columbia N Hills Hospital Subsidiary LP	L02271	N Richland Hills	42	9/10/03
Nederland	Beaumont Hospital Holdings Inc	L01756	Nederland	43	9/03/03
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	35	8/29/03
Odessa	Suresh N Gadasalli MD PA	L05156	Odessa	08	9/05/03
Plainview	Methodist Hospital Plainview	L02493	Plainview	24	9/03/03
San Antonio	Cardiovascular Associates of San Antonio P	L04996	San Antonio	06	9/04/03
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	124	9/04/03
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	180	9/05/03
San Antonio	Univ of TX at SA	L01962	San Antonio	48	9/09/03
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	73	9/11/03

(CONTINUED) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Texarkana	New Hope Enterprises LTD	L05560	Texarkana	02	9/09/03
Texas City	Valero Refining Company	L02578	Texas City	23	8/29/03
Texas City	CHCA Mainland LP	L02577	Texas City	26	9/05/03
Three Rivers	Diamond Shamrock Refining Co LP	L03699	Three Rivers	13	9/09/03
Throughout TX	City of Abilene	L05254	Abilene	02	9/10/03
Throughout TX	N-Spec Quality Services Inc	L05113	Corpus Christi	19	9/04/03
Throughout TX	Terracon Inc	L05268	Dallas	11	8/29/03
Throughout TX	Western Refining Company	L02669	El Paso	13	9/09/03
Throughout TX	METCO	L03018	Houston	139	9/08/03
Throughout TX	Mandes Inspection & Testing Services Inc	L05220	Houston	34	9/05/03
Throughout TX	Material Inspection Technology	L05672	Houston	04	9/09/03
Throughout TX	H & G Inspection Company Inc	L02181	Houston	167	9/11/03
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	27	9/06/03
Throughout TX	GCT Inspection Inc	L02378	South Houston	74	9/03/03
Throughout TX	IRISNDT Inc	L04769	Tulsa	10	9/05/03
Tyler	Trinity Mother Frances Health System	L01670	Tyler	103	9/08/03
Tyler	Nutech Inc	L04274	Tyler	42	9/08/03
Tyler	East Texas Medical Center	L00977	Tyler	98	9/08/03
Tyler	East Texas Medical Center	L00977	Tyler	98	9/12/03
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	43	9/03/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	HTS Inc Consultants	L02757	Houston	13	9/10/03
Texas City	Sterling Chemical Inc	L03952	Texas City	17	9/05/03
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	62	9/12/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	PET Imaging LTD	L05365	Austin	10	8/28/03
Bryan	City of Bryan	L03002	Bryan	11	8/29/03
DFW Airport	Delta Airlines Inc	L03967	DFW Airport	24	8/29/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Brownsville	Physician Reliance Network Inc	L04985	Brownsville		9/3/03
Houston	Angiocardiac Care of Texas PA	L05011	Houston		9/5/03
Midland	B & R Inspection & Equipment Co Inc	L02564	Midland		9/2/03

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-200306040
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2003

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Notice of Default Order on Michael L. Crow, dba Crow Inspection

A default order was entered regarding Michael L. Crow, doing business as Crow Inspection, of Sunland Park, New Mexico; Texas Department of Health (department) Radioactive Material License Number-(none); Escalated Enforcement Number EL00-084 on August 29, 2003, assessing $160,000 in administrative penalties for violations of 25 Texas Administrative Code, Chapter 289.

Information concerning this order is available for public inspection, by appointment, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building at 8407 Wall Street, Austin, Texas.

TRD-200306039
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2003

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Notice of Default Order on Rafael Flores

A default order was entered regarding Rafael Flores, of Highlands; Texas Department of Health (department) Industrial Radiographer Identification Number 001052; Card Audit Number 13048; Compliance Number R030202 on September 8, 2003, assessing $1,000 in administrative penalties for violations of 25 Texas Administrative Code, Chapter 289.

Information concerning this order is available for public inspection, by appointment, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building at 8407 Wall Street, Austin, Texas.

TRD-200306037
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2003

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Notice of Emergency Cease and Desist Order on J.B. Stowers, D.P.M., dba South Texas Podiatry

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered J. B. Stowers, D.P.M., doing business as South Texas Podiatry (registrant-R13657) of McAllen to cease and desist performing Foot (DP) x-ray procedures with the X-cel unit (Model Number AP75; Serial Number 7681) located at its Weslaco facility until the exposure at skin entrance is within regulatory limits. The order will remain in effect until the bureau authorizes the registrant to perform the procedure with the referenced x-ray unit.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200306038
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2003

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Notice of Maximum Fees Charged for Providing Health Care Information

This notice supercedes the "Notice of Fees Charged for Health Care Information" that was published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7843) because it was published with incorrect information.

The Texas Department of Health licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with §241.154(e) of the Health and Safety Code, the fee for providing a patient's health care information has been adjusted 2.0% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

With the adjustment, the fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $36.01; and

(A) a charge for each page of:

(i) $1.20 for the 11th through the 60th page of provided copies;

(ii) $.60 for the 61st through the 400th page of provided copies;

(iii) $.31 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $54.02; and

(A) $1.20 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

If you have any questions, please contact the Health Facility and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone (512) 834-6648.

TRD-200305931
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 11, 2003

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Arias and Associates, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Arias and Associates, Inc. (licensee-L04964) of San Antonio. A total penalty of $4,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200306036
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2003

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Reimbursement Rate

A rate hearing on Reimbursement for State Schools-Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program operated by the Texas Department of Mental Health Mental Retardation was held on August 29, 2003 at 10:30 a.m. in the Public Hearing Conference Room of the Riata Building III, 1st Floor.

Adopted Rate effective September 1, 2003--$279.86

Methodology and Justification:

The adopted rates were determined in accordance with 1 TAC §355.706(1) and (2).

TRD-200306026
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: September 16, 2003

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Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 03-22, Amendment Number 657, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment provides for a supplemental payment for non-state government-owned or operated nursing facilities (that is, all government nursing facilities that are neither owned nor operated by the state). The supplemental payment shall not exceed the difference between the Medicaid payment and the federal upper payment limit established in 42 CFR 447.272. The purpose of the supplemental payment is to recognize the unique role these facilities play in the Texas healthcare delivery system for the Medicaid population. As a result, the State seeks to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

The proposed amendment is to be effective October 1, 2003 and is expected to increase the amount of federal matching funds to the state. The proposed amendment is estimated to result in increased annual aggregate expenditures of $16,716,019 with increased federal matching funds of $10,559,509 for state fiscal year 2004, and $17,846,902 with increased federal matching funds of $10,747,404 for state fiscal year 2005.

To obtain copies of the proposed amendment, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, 1100 W. 49th Street, H-400, Austin, Texas 78756-3199 or by telephone at (512) 685-3134. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Human Services.

TRD-200306054

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: September 17, 2003

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Texas Medicaid Vendor Drug Program Dispensing Fees

Notice of Adjustment of Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Health and Human Services Commission (HHSC) proposes an adjustment to provider payment rates for the Texas Medicaid Vendor Drug Program operated by HHSC. Payment rates for dispensing fees are proposed as follows:

(1) The estimated dispensing expense of $5.27 under 1 TAC §355.8551(2) is reduced to $5.14.

(2) The inventory management factor of 2.0% under 1 TAC §355.8551(4) is reduced to 1.95%

Effective date and duration of adjustment. The proposed adjustment to provider payment rates is anticipated to be effective October 16, 2003, and remain in effect until August 31, 2005.

Legal and factual basis. The proposed adjustment to provider payment rates is authorized under Section 531. 0121(d) and (e), Government Code, and is published in accordance with the requirements of 1 TAC §355.201(f). This action is proposed as a result of the passage in HB 1 (General Appropriations Act), 78th Legislature, Regular Session, in which funds necessary to operate the Texas Medicaid Vendor Drug Program were appropriated. Such appropriations are insufficient to meet the projected costs of this program. Consequently, HHSC proposes to reduce the dispensing fees paid to providers in order to lower the cost of this program for State Fiscal Years 2004 and 2005. These circumstances prevent HHSC from implementing the rate that would otherwise result from the reimbursement methodology codified at 1 TAC §355.8551. Accordingly, HHSC proposes to adjust payment rates to reflect such conditions.

Comments on proposed rate adjustment. Written comments on the proposed rate adjustment may be submitted to:

Merle L. Moden, Manager

HHSC Rate Analysis, Mail Code H-410

P.O. Box 13347

Austin, Texas 78711-3347

Fax: 512-338-6544

Physical deliveries:

12555 Riata Vista Circle, MC H-410, Austin, Texas 78727-6404

Public hearing. A public hearing regarding the proposed adjustment will be conducted by HHSC in accordance with §32.0282, Human Resources Code on October 7, 2003, from 9:00 am to 12:00 pm, in the Public Hearing Room in Riata Building III, 12555 Riata Vista Circle, with entry required through Security at the entrance of 12545 Riata Vista Circle, Austin, Texas 78727-6404. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or assistance should contact Mr. Moden at (512) 794-6870 no later than October 3, 2003 to make appropriate arrangements.

TRD-200306065
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: September 17, 2003

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Livonia, Michigan.

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-200306056
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 17, 2003

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Glens Falls Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages of -87 to +100 by coverage and territory for all classes, within various other criteria. This overall rate change is +0.5%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701, by October 10, 2003.

TRD-200306018
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 16, 2003

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Novus Management Systems, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of Advanced Benefit Resources Corp., a foreign third party administrator. The home office is Dover, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200306061
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 17, 2003

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Texas Lottery Commission

Instant Game No. 404 "Diamond Mine"

1.0 Name and Style of Game.

A. The name of Instant Game No. 404 is "DIAMOND MINE". The play style is "key number match with 10X win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 404 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 404.

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, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, PICK SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $25,000.

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. 404 - 1.2D

PLAY SYMBOL	CAPTION
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
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY

$200	TWO HUND
$2,000	TWO THOU
$25,000	25 THOU

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. 404 - 1.2E

CODE	PRIZE
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 $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $2,000 or $25,000.

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 (404), 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: 404-0000001-000.

L. Pack - A pack of "DIAMOND MINE" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page; tickets 002 and 003 will be on the next page, and so on, and tickets 248 and 249 will be on the last page. Please note the books will be in an A - B configuration.

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 "DIAMOND MINE" Instant Game No. 404 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 "DIAMOND MINE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If the player matches any of YOUR NUMBERS to either of the WINNING NUMBERS, the player will win the prize shown for that number. If the player gets a pick symbol, the player will win 10 times the prize shown for that symbol. 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 22 (twenty-two) 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 except for dual image games;

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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) 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. No duplicate non-winning Your Number play symbols on a ticket.

B. No more than once pair of duplicate non-winning prize symbols on a ticket.

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. No duplicate Winning Number play symbols on a ticket.

E. The "pick" symbol will only appear on winning tickets according to the prize structure.

F. The "pick" symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND MINE" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $200, 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 or $200 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 "DIAMOND MINE" Instant Game prize of $2,000 or $25,000 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 "DIAMOND MINE" 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 "DIAMOND MINE" 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 "DIAMOND MINE" 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 12,227,500 tickets in the Instant Game No. 404. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 404 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,552,967	7.87
$4	843,569	14.49
$5	146,640	83.38
$10	159,039	76.88
$20	48,910	250.00
$50	48,910	250.00
$200	16,353	747.72
$2,000	49	249,540.82
$25,000	12	1,018,958.33

*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 4.34. 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. 404 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. 404, 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-200306020

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 2003

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Instant Game No. 408 "Club Casino"

1.0 Name and Style of Game.

A. The name of Instant Game No. 408 is "CLUB CASINO". The play style in Game 1 is "yours beats theirs". The play style in Game 2 is "key number match with doubler". The play style in Game 3 is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 408 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 408.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, DBL CARD SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, CHIP SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $250, $500, $1,000, $5,000, $10,000, and $100,000.

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. 408 - 1.2D

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
DOUBLE SYMBOL	DBL
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
16	SXN
17	SVT

18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
CHIP SYMBOL	DBL
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$10,000	10 THOU
$100,000	100 THOU

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. 408 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (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 $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $5,000, $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 13 (thirteen) digit number consisting of the three (3) digit game number (408), 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: 408-0000001-000.

L. Pack - A pack of "CLUB CASINO" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CLUB CASINO" Instant Game No. 408 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 "CLUB CASINO" Instant Game is determined once the latex on the ticket is scratched off to expose 51 (fifty-one) play symbols. In Game 1 (High Card), if the players YOUR CARD is higher than the DEALER'S CARD within the same game, the player will win the prize shown for that game. If the player gets a double card symbol the player will win double the prize for that game. Ace is high. In Game 2 (Roulette), if the player matches the YOUR NUMBER to any WHEEL NUMBER in the same wheel, the player will win the prize for that wheel number. If the player gets a chip symbol, the player will win double the prize for that wheel number. In Game 3 (7-11), if any roll adds up to 7, the player will win the prize for that roll. If any roll adds up to 11, the player will win double the prize for that roll. 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 51 (fifty-one) 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 except for dual image games;

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 51 (fifty-one) 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 51 (fifty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 51 (fifty-one) 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. The doubler feature will only appear as dictated by the prize structure.

C. Game 1: No ties between Your Card and Dealer's Card in a game.

D. Game 1: No duplicate non-winning prize symbols.

E. Game 1: No duplicate games on a ticket.

F. Game 2: No duplicate non-winning wheel numbers.

G. Game 2: No duplicate Your #'s play symbols.

H. Game 2: No duplicate non-winning prize symbols.

I. Game 2: Non-winning wheel numbers will not match any Your #'s play symbols.

J. Game 3: No duplicate non-winning prize symbols.

K. Game 3: No duplicate non-winning rolls in a any order.

2.3 Procedure for Claiming Prizes.

A. To claim a "CLUB CASINO" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CLUB CASINO" Instant Game prize of $5,000, $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 "CLUB CASINO" 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 "CLUB CASINO" 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 "CLUB CASINO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,087,550 tickets in the Instant Game No. 408. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 408 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	542,700	9.37
$10	339,199	15.00
$15	203,506	25.00
$20	84,768	60.02
$50	67,834	75.00
$100	9,814	518.40
$500	1,355	3,754.65
$5,000	16	317,971.88
$10,000	14	363,396.43
$100,000	4	1,271,887.50

*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 4.07. 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. 408 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. 408, 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-200306021

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 2003

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Instant Game No. 411 "Numero Uno"

1.0 Name and Style of Game.

A. The name of Instant Game No. 411 is "NUMERO UNO". The play style is "three in a line with auto-win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 411 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 411.

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, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $1,000, TRY AGAIN and WILD.

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. 411 - 1.2D

PLAY SYMBOL	CAPTION
1	location/1/411
2	location/2/411
3	location/3/411
4	location/4/411
5	location/5/411
6	location/6/411
7	location/7/411
8	location/8/411
9	location/9/411
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU
TRY AGAIN	TRY AGAIN
WILD	WIN $10

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. 411 - 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 (411), 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: 411-0000001-000.

L. Pack - A pack of "NUMERO UNO" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 on the next page; etc.; and tickets 245 to 249 will be 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 "NUMERO UNO" Instant Game No. 411 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 "NUMERO UNO" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If the player gets three 1's in any one row, column or diagonal, the player will win the prize shown in the prize area. If the player gets a 'WILD' symbol in the bonus box, the player will win $10 instantly. 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 11 (eleven) 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 except for dual image games;

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 11 (eleven) 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 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) 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. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No occurrence of three symbols in a row, column or diagonal except the "1" symbol.

C. Every ticket will contain at least three "1" symbols.

D. The "WILD" bonus symbol will only appear on winning tickets according to the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "NUMERO UNO" 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 $40.00 or $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 "NUMERO UNO" 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 "NUMERO UNO" 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 "NUMERO UNO" 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 "NUMERO UNO" 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 20,552,250 tickets in the Instant Game No. 411. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 411 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	2,466,178	8.33
$2	904,330	22.73
$4	575,428	35.72
$5	164,454	124.97
$10	164,419	125.00
$20	82,208	250.00
$40	31,274	657.17
$100	1,285	15,993.97
$1,000	252	81,556.55

*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 4.68. 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. 411 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. 411, 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-200306022
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 2003

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Public Hearing

A public hearing to receive public comments regarding the Commission's intention to review the rules contained in 16 TAC Chapter 402, concerning Bingo Regulation and Tax will be held at 1:30 p.m. on Wednesday, November 5, 2003 at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 East Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200306025
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 16, 2003

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Manufactured Housing Division

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 9:00 a.m. on Tuesday, October 28, 2003 at 507 Sabine Street, 4th Floor Boardroom, Austin, Texas 78701. The public hearing is to accept comments on proposed new §§80.181- 80.184, 80.200, 80.201, 80.204, 80.205, 80.209 and amendments to §§80.11, 80.51, 80.52, 80.55, 80.56, 80.62, 80.64, 80.66, 80.119, 80.121- 80.124, 80.126- 80.128, 80.130, 80.132, 80.135, 80.136, 80.203, 80.206, and 80.207 to Title 10 Texas Administrative Code, Chapter 80 (West 2003) ("Rules"), concerning manufactured housing. The proposed new rules are scheduled for publication in the September 19, 2003 *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at schoate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or emailed to schoate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code (West 2003).

Individuals who require auxiliary aids for this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay

Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200305974
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: September 15, 2003

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Texas State Board of Public Accountancy

Notice of Public Hearing Concerning 22 TAC Sections 523.41, 523.42 and 523.43

Notice is hereby given that the Texas State Board of Public Accountancy will conduct a public hearing to receive testimony regarding revisions to 22 TAC Sections 523.41, proposed 523.42 and 523.43 concerning Board Rules and Ethics Course; Course Content and Board Approval after January 1, 2004; and Course Content and Board Approval.

This rulemaking is limited to language changes that are intended to specify objective criteria for the approval of ethics instructors to ensure a high quality of ethics instruction for the required ethics component of continuing professional education for certified public accountants.

A public hearing on this proposal will be held in Austin, Texas, November 11, 2003 from 10:00 a.m. until 12:00 p.m. at the Hobby Building, 333 Guadalupe, Room 100 (First Floor) Austin, Texas, 78701. The hearing will be structured for the receipt of oral and/or written comments from interested persons. Individuals who wish to present oral comments must submit their comments in writing prior to the public hearing. Individuals who have timely submitted written comments may register to present oral comments and will be called upon to present their oral comments in order of registration. Each oral presentation will be limited to ten minutes. There will be no open discussion during the hearing; however, a Board staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be submitted to Rande K. Herrell, General Counsel at the Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, (512) 305-7848 or via facsimile to (512) 305-7854. Comments must be received by October 27, 2003.

For further information, please contact Rande K. Herrell, General Counsel at (512) 305-7848.

Copies of the proposed rules were printed in the August 8, 2003 issue of the *Texas Register* (28 TexReg 6197) and can be found at http://www.sos.state.tx.us.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Kym Rusch at (512) 305-7842. Requests for special accommodations should be made as far in advance as possible.

TRD-200306053
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Filed: September 17, 2003

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundaries within Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 10, 2003, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of Brownsville Public Utilities Board to Amend Certificate of Convenience and Necessity Service Area Boundaries within Cameron County. Docket Number 28524.

The Application: On September 10, 2003, Brownsville Public Utilities Board (BPUB) filed an application for a service area boundary change in Cameron County. The BPUB received a letter from N.O. Simmons & Associates, Incorporated requesting that BPUB provide electric utility service to a residential subdivision called El Valle Grande Subdivision. The undeveloped area is singly certificated to American Electric Power Company (AEP), formerly Central Power and Light (CP&L). There are no electric distribution facilities within the proposed subdivision. BPUB has electric distribution lines along the west property line of the subdivision and AEP has electric distribution lines along the north property line. Currently there is no electric service being provided to the subdivision area as the area is undeveloped. If the application is granted, the area would be dually certificated to AEP and BPUB.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 3, 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 28524.

TRD-200305934
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 11, 2003

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 8, 2003, TXNet Communications filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60175. Applicant intends to (1) reflect a change in ownership/control to Mr. Jim Shelton and (2) change its name to Southwestern Network Communications.

The Application: Application of TXNet Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 28508.

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 October 1, 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 28508.

TRD-200305929
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 11, 2003

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Notice of Application for Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 4, 2003, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Trizec Holdings, Incorporated for Retail Electric Provider (REP) certification, Docket Number 28480 before the Public Utility Commission of Texas.

Applicant's requested service area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered, is as follows: CenterPoint Energy, Oncor Energy.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 3, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28480.

TRD-200305907
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 8, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Tim Ron Enterprises, LLC for a Service Provider Certificate of Operating Authority, Docket Number 28503 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 1, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28503.

TRD-200305908
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Notice of Application to Amend Certificated Service Area Boundaries within Medina County, Texas

Notice is given to the public of the filing on September 12, 2003, with the Public Utility Commission of Texas (commission) of an application to amend certificated service area boundaries within Medina County, Texas.

Docket Style and Number: Application of the City of Castroville to Amend Certificated Service Area Boundaries Within Medina County, Motion for Approval of Contract Between the City of Castroville and the City of San Antonio (acting by and through the City Public Service Board of San Antonio) to Designate Areas and Customers to be Serviced by Utilities and Motions for Expedited Relief. Docket Number 28541.

The Application: The City of Castroville (Castroville) filed an application to amend service area boundaries within Medina County. Castroville requested that the commission amend service area boundaries in a certain portion of Medina County in which a potential customer has requested that Castroville provide electric service. The area is presently singly certificated to City Public Service of San Antonio (CPS). Castroville also requested the approval of a provision contained in a 1998 Power Supply Agreement between CPS and Castroville that permits Castroville to service customers in areas certificated to CPS but annexed to Castroville if "Legally Permissible." In addition, Castroville has filed certain requests for expedited relief related to this proceeding.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 7, 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 28541.

TRD-200306044
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 9, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Millennium Telcom, LLC doing business as Once Source Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28512. 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 28512. 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 October 10, 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 28512.

TRD-200305910
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 9, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Cypress Telecommunications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28513. 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 28513. 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 October 10, 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 28513.

TRD-200305911
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 9, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Direct Telephone Company, 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 28514. 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 28514. 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 October 10, 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 28514.

TRD-200305912
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 9, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Time Warner Telecom of Texas, LP, 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 28515. 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 28515. 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 October 10, 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 28515.

TRD-200305913
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Time Warner Telecom of Texas, LP, 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 28526. 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 28526. 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 October 14, 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 28526.

TRD-200305999
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and New Edge Network, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28529. 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 28529. 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 October 14, 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 28529.

TRD-200306001
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 11, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Excel Telecommunications, Inc., collectively

referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28534. 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 28534. 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 October 15, 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 28534.

TRD-200306048
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 11, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Vartec Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28535. 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 28535. 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 October 15, 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 28535.

TRD-200306047
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2003

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Public Notice of Amendment to Interconnection Agreement

On September 11, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Sprint Communications Company, LP, 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 28536. 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 28536. 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 October 15, 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 28536.

TRD-200306046
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2003

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Public Notice of Interconnection Agreement

On September 9, 2003, KMC Telecom III, LLC, KMC Telecom V, Incorporated, and Valor Telecommunications of Texas, LP, 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 28519. 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 28519. 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 October 10, 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 28519.

TRD-200305914

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2003

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Public Notice of Interconnection Agreement

On September 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Sprint Spectrum, LP, 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 28525. 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 28525. 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 October 14, 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 28525.

TRD-200305998
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2003

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Public Notice of Interconnection Agreement

On September 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Pager and Cellular Depot, 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 28528. 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 28528. 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 October 14, 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 28528.

TRD-200306000
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2003

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Public Notice of Interconnection Agreement

On September 11, 2003, Guadalupe Valley Telephone Cooperative, Inc. and Southwestern Bell Mobile Systems, LLC doing business as Cingular Wireless, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28538. 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 28538. 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 October 15, 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 28538.

TRD-200306045
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2003

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Texas Rehabilitation Commission

Impartial Hearing Officers Open Enrollment

OCTOBER 1, 2003 - DECEMBER 31, 2003

PURPOSE

The purpose of this Open Enrollment is to contract with qualified individuals to serve as Impartial Hearing Officers for client appeals for the Texas Rehabilitation Commission in compliance with the Rehabilitation Act of 1973, as amended, 29 U.S.C.A., Section 701.

The Texas Rehabilitation Commission is authorized by Human Resources Code, Title 7, Section 111.052, VTCS, to enter into contracts with individuals for the purpose of providing hearing officer services.

DESCRIPTION OF SERVICES

The applicants selected as Impartial Hearing Officers will be required to conduct client administrative hearings. These services may include:

*Review applicant/client appeals;

*Issue orders, as necessary;

*Conduct pre-hearing conferences and administrative hearings;

*Develop the official record of the hearing;

*Hear testimony and review documentary evidence and hearing transcripts;

*Render decisions based on applicable laws, rules and regulations, to include findings of fact and conclusions of law;

*Travel throughout the state of Texas;

*Take other necessary action as required or authorized by the Rehabilitation Act of 1973.

ELIGIBILITY

Proposals will be accepted from any resident of the State of Texas who:

Is not an employee of a public agency. This qualification does not apply:

a. If the individual is paid by a public agency to serve solely as a hearing officer, hearing examiner, or administrative law judge; or

b. If the individual is an employee of an institution of higher education;

Is not a member of the State Rehabilitation Advisory Council;

Has not been involved with previous determinations regarding the vocational rehabilitation of the applicant or eligible individual;

Has knowledge of the delivery of vocational rehabilitation or similar services, the State Plan, and the Federal and State regulations governing the provision of services or be available to receive training;

Has experience and/or training with respect to the performance of his/her official duties;

Is not a client of TRC; and

Has no personal, professional or financial interest that would be in conflict with the objectivity of the impartial hearing officer duties.

APPLICANT MINIMUM QUALIFICATIONS:

All information provided in the attached application is subject to validation. Applications may be modified only to correct technical inaccuracies. All applicants must meet the following minimum requirements:

1. Experience as a mediator, arbitrator, judge or hearing officer/administrative law judge for 2 years with a minimum of 8 mediations, arbitrations and/or hearings; or

Two years of experience in administrative law proceedings including a minimum of 8 hearings; and,

2. Willingness to travel statewide; and

Preferred: demonstrated training or experience with vocational rehabilitation or demonstrated knowledge of issues relating to disabilities.

ADDITIONAL INFORMATION

Any or all applications may be rejected if it is determined to be in the best interest of the Commission.

All applications will be kept confidential until the awards are made.

Multiple awards are anticipated from this procurement.

Contracts issued from this procurement shall be in effect from October 1, 2003 to September 31, 2004.

Contracts issued from this procurement may be renewed on an annual basis contingent on the performance of the contractor and the Commission's continuing need for the services.

Individual contracts issued from this procurement are limited to a maximum expenditure of $14,000.00.

There is no level of participation guaranteed to any vendor who contracts to provide services to the Commission under this procurement.

A secondary interview with applicants may be required at the discretion of the Commission to establish or authenticate vendor qualifications.

APPLICATION TRANSMITTAL INSTRUCTIONS

Applications must be received at TRC at the address below:

Office of Administrative Hearings

Texas Rehabilitation Commission

4900 North Lamar Boulevard, Suite 7300

Austin, Texas 78751-2399

AWARD AND NOTIFICATION PROCEDURES

TRC anticipates that the selection of Impartial Hearing Officers will continue through December 31, 2003. The decisions resulting from the completed application review process will be final.

IMPARTIAL HEARING OFFICER
APPLICATION
(PLEASE PRINT OR TYPE)

Name:	Payee ID # or SSN:
Address:	Telephone:
City/State/Zip:	FAX #:

TYPE OF BUSINESS: (CHECK ONE)		
☐ SOLE PROPRIETORSHIP	☐ PARTNERSHIP	☐ CORPORATION
IS THIS BUSINESS OWNED BY A WOMAN OR A MINORITY GROUP MEMBER?		
☐ NO ☐ YES	YOU MAY ATTACH YOUR RESUME IF YOU WISH	

DESCRIBE YOUR QUALIFICATIONS TO PROVIDE **IMPARTIAL HEARING OFFICER** SERVICES BASED ON THE REQUIREMENTS IN THE OPEN ENROLLMENT (COPY ATTACHED).

INCLUDE ANY ACADEMIC ACHIEVEMENTS, SPECIALIZED TRAINING, WORK OR NON-WORK EXPERIENCE THAT DEMONSTRATES YOUR SKILL OR COMPETENCY IN PROVIDING THESE, OR SIMILAR, SERVICES.

DATES (FROM-TO)	LOCATION	SKILL USED/ACTIVITIES DEMONSTRATING COMPETENCY	REFERENCES

CONTINUED FROM FRONT:			
DATES (FROM-TO)	LOCATION	SKILL USED/ACTIVITIES DEMONSTRATING COMPETENCY	REFERENCES

PLEASE ATTACH A WRITING SAMPLE BASED ON THE FINDINGS OF A PREVIOUS MEDIATION, ARBITRATION, OR HEARING.

CAPACITY ESTIMATE: (INDICATE THE NUMBER OF THE HEARINGS THAT YOU WOULD BE WILLING TO CONDUCT UNDER THE TERMS AND TIME FRAMES (ONE YEAR) IF AWARDED A CONTRACT.)

_____ HEARINGS PER YEAR.

AFFIRMATIONS

A. Conflict of Interest:

Real or apparent conflicts of interest may occur when a Commission employee, officer, or immediate family member has a financial or other interest in the business relationship involving a potential vendor. Financial or other interest includes, but is not limited to:

- employment with a contractor or offeror,
- paid consultation with a contractor or offeror,
- membership on a contractor's or offeror's board of directors, or
- ownership of stock, partnership, or other financial interest in a contract agency.

I affirm that no real or apparent conflict of interest exists between any Commission employee, officer, or their immediate families, and:

- myself or any of my immediate family, including my parents,
- any of my organization's employees,
- any member of an employee's immediate family, including their parents,
- an organization that employs or has plans to employ any of the above.

B. Accuracy of Information:

I affirm that the information provided on this document is true and correct.

_____ _____

Signature Date

TRD-200306059
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Filed: September 17, 2003

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South East Texas Regional Planning Commission

Request for Service and Quotations for Juvenile Justice Personnel Training

The Criminal Justice Division of the South East Texas Regional Planning Commission (SETRPC) has issued a Request for Service and Quotation soliciting training services to be provided to juvenile justice personnel within the Southeast Texas region (Hardin, Jefferson and Orange Counties). Cost for training will be covered by Juvenile Accountability Incentive Block Grant funds.

Interested training service providers may obtain a copy of the request at the South East Texas Regional Planning Commission, 2210 Eastex Freeway, Beaumont, TX 77703. Copies will also be mailed or faxed upon request by contacting Shanna Chance at (409) 899-8444, extension 114.

Complete proposals must be received by 3:00 p.m. Friday, October 10, 2003.

Upon receipt of responses, a Juvenile Crime Enforcement Coalition will meet to choose coarse offerings believed to be most beneficial to the region. SETRPC is an Equal Opportunity Employer.

TRD-200305979
Chester Jourdan
Executive Director
South East Texas Regional Planning Commission
Filed: September 15, 2003

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Texas A&M University, Board of Regents

Notice of Consultant Contract Award

THIS MEMO SERVES AS NOTIFICATION TO LEGISLATIVE COMMITTEES, LBB & GPBO

Description of work to be performed under contract:

RETEC is providing mercury consulting services to assess, plan, oversee, and verify the effectiveness of mercury cleanup and/or control for the Harrington Science Building (HSB) located on the campus of Prairie View A&M University (PVAMU) The work includes office and field work and project deliverables as needed to ensure a "mercury-safe and healthy" indoor environment for future building occupants.

Name and address of the consultant selected:

The RETEC Group, Inc.

1301 West 25th Street, Suite 500

Austin, Texas 78705

512-477-8661

Amount of Contract:

$188,751.00

Dates of award & completion of work to be performed:

Contract Award Date - 07/21/2003

Report-Projected Report Due Date

General Project Work Plan - 09/04/2003

Building inspection / Testing Report - 10/24/2003

Second Floor Occupancy Plan - 10/10/2003

Mercury Abatement Work Plan - 10/31/2003

Request for Bids for Mercury Abatement - l0/24/2003

Mercury Abatement Verification Report - 03/01/2004

Completion of Project - 03/30/2003

TRD-200306043
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: September 17, 2003

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Texas State University-San Marcos

Request for Proposals

Texas State University-San Marcos has created a preliminary university marketing plan and positioning statement and is now seeking a firm with the expertise to provide professional services in the following two areas:

1. Conduct a tuition pricing study that will provide our institution a sound, empirical foundation for making price decisions for student tuition. The study should answer the following questions:

What are the enrollment consequences of various price points in terms of the quality, size, and composition of the applicant and matriculant pools?

How can the impact of a price increase on particular groups of interest (such as high-ability students, low-income families, and underrepresented minorities) be managed?

What is the magnitude of the net revenue gains that can be realized at various price points, taking into account necessary investments in increased financial aid?

2. Use sound qualitative and quantitative measures to evaluate current marketing plan and positioning statement and provide information to position the university as an institution of choice and improve its image as a leading public university by answering the following questions:

How should the university position itself, based on its strengths and directions, to achieve further gains in student markets?

How can the university's name change be used in this effort?

Which university directions and initiatives will do most to strengthen the university's position?

The firm will use this information to frame the basis for an integrated brand-marketing campaign, including creative toolkit, templates, thematic copy, materials and training.

TRD-200305909
William A. Nance
Vice President for Finance and Support Services
Texas State University-San Marcos
Filed: September 10, 2003

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Waco Urban Transportation Study MPO

Request for Proposals

The City of Waco, Texas is seeking qualified firms to provide management and operation services for the Waco Transit System. A Request for Proposal (RFP) package is available online at www.waco-texas.com/mpo.htm and provides details on the submission procedures, proposed scope of services, and regulations that prospective proposers are required to follow.

Proposals will be accepted by the MPO through 5:00PM CST, Friday, October 31, 2003. Copies of the RFP package may be downloaded free of charge online at the MPO's website: www.waco-texas.com/mpo.htm. A paper copy of the RFP Package may be obtained by mailing a request to Christopher Evilia, Acting MPO Director, Waco MPO, P.O. Box 2570, Waco, TX 76702-2570, faxing a request to (254) 750-1605 or by e-mail at mpo@ci.waco.tx.us. Prepayment of $7.00 for copying and postage & handling is required for paper copies.

Proposals will be judged by the City Manager's Office of the City of Waco. Proposals will be evaluated on the technical merits of the proposal, the qualifications of the firm and personnel, and the proposed cost. The City Manager will then negotiate with the firm deemed to be most qualified. Should negotiations be unsuccessful, negotiations will commence with the next most qualified firm. The Waco City Council will make the final decision in awarding a contract.

All inquiries regarding this RFP should be made to Christopher Evilia, Acting MPO Director, Waco MPO, P.O. Box 2570, Waco, TX 76702-2570, (254) 750-5666.

TRD-200306017
Christopher Evilia
Acting Director
Waco Urban Transportation Study MPO
Filed: September 16, 2003

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Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $600,000 has been initially authorized for FY 2004 assistance for flood protection planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., December 16, 2003. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 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.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Ms. Phyllis Thomas at the preceding mailing address, or by email at Phyllis.thomas@TWDB.state.tx.us or by calling (512) 463-7926. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200306058
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 17, 2003

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Request for Applications for Regional Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC), Chapter 355, Subchapter A, (as amended September 11, 2002), the submission of planning applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water TWDF/WS&WQ/CWSRF supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning applications may be submitted by eligible political subdivisions from any area of the State. To be eligible for funding at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans as defined in Senate Bill 1, 75th Session, Texas Legislature are not eligible for funding under this Request for Applications. The purpose of this program is for the State to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater

facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps: Develop Problem Statement; Inventory Existing Conditions and Forecast Future Conditions and Needs; Formulate Planning Alternatives; Evaluate and Compare Each Planning Alternative; and Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to $600,000 has been initially authorized for FY 2004 assistance for regional facility planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10 (a), as amended, as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., November 12, 2003. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 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.

Applications will be evaluated according to 31 TAC §355.5, as amended. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Ms. Phyllis Thomas at the preceding mailing address, or by e-mail at phyllis.thomas@TWDB.state.tx.us or by calling (512) 463-7926. This information can be found on the Internet at the following address: http://www.twdb.state.tx.us

TRD-200306057
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 17, 2003

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee.

The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative positions: 1. Alternate Public Health Care Facility Representative 2. Primary and Alternate Private Health Care Facility 3. Primary and Alternate Osteopath 4. Primary and Alternate Chiropractor 5. Primary and Alternate Dentist Representatives 6. Primary and Alternate Pharmacist 7. Primary and Alternate Occupational Therapist 8. Alternate Medical Equipment Supplier Representative 9. Alternate Employer Representative 10. Primary and Alternate General Public Representatives 11. Primary and Alternate Insurance Carrier Representatives 12. Primary and Alternate Acupuncturist Representatives.

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members, which are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the public.

The purpose and tasks of the Medical Advisory Committee are outlined in the Texas Workers' Compensation Act, §413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings of the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator at 512-804-4855 or Judy Bruce, Director, Medical Review at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical

profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200306016
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 16, 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 (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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