TEXAS REGISTER

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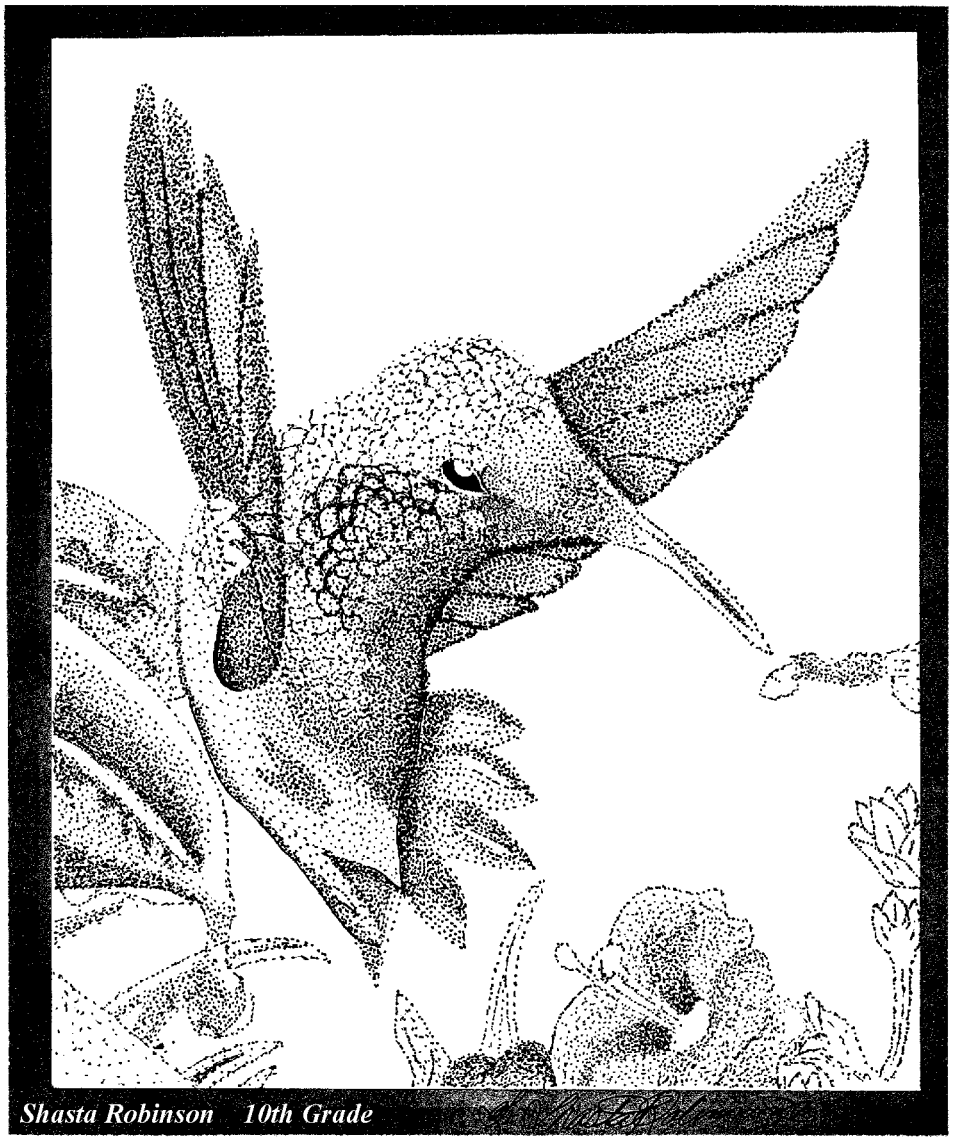

Shasta Robinson 10th Grade

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

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

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IN THIS ISSUE

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 March 23, 2004

Designating Walter G. Diggles, Sr. of Jasper, as Chair of the OneStar National Service Commission for a term at the pleasure of the Governor.

Designating Martha A. Tatum of San Marcos as Vice-Chair of the OneStar National Service Commission for a term at the pleasure of the Governor.

Designating Dr. Charles Lewis Jackson of Houston as Chair of the OneStar Foundation for a term at the pleasure of the Governor.

Appointed to the State Board for Educator Certification for a term to expire February 1, 2007, Judie Zinsser of Houston (replacing Carlen Floyd of Austin who resigned).

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2005, Deborah H. Bell of Tuscola.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2005, Blanca Rosa Garcia, Ph.D. of Corpus Christi.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2005, Beverly Jean Nutall of Bryan.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2005, Linda R. Rounds of Galveston.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2007, Virginia Milam Campbell of Mesquite.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2007, Richard Robert Gibbs of Mesquite.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2007, Frank D. Sandoval, Jr. of San Antonio.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2009, Thomas L. Barton of Pampa.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2009, Rachel Gomez of Harlingen.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2009, Brenda S. Jackson, Ph.D., R.N. of San Antonio.

Appointed to the State Board of Nurse Examiners, pursuant to HB 1483, 78th Legislature, Regular Session, for a term to expire January 31, 2009, Anita Palmer of Olney.

Appointed to the State Board of Examiners of Speech, Language Pathology and Audiology for a term to expire August 31, 2009, Crystal Dawn Perkins of DeSoto (replacing Lee Reeves whose term expired).

Appointed to the State Board of Examiners of Speech, Language Pathology and Audiology for a term to expire August 31, 2009, Kerry Ormson, Ed.D. of Amarillo (replacing Eric Reynolds whose term expired).

Appointed to the State Board of Examiners of Speech, Language Pathology and Audiology for a term to expire August 31, 2009, Richard J. Caldwell of Houston (replacing Judith Chambers whose term expired).

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Christina Ommy Strauch of San Antonio.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Anne C. Crews of Dallas.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Ronald Brandon of Georgetown.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, John R. Castle, Jr. of Dallas.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Nancy L. Lund of Texarkana.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Richard S. Hoffman of Brownsville.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Faith Johnson of DeSoto.

Appointed to the Family and Protective Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Imogen Sherman Papadopoulos of Houston.

Appointed to the OneStar National Service Commission, pursuant to Executive Order RP-30, for a term to expire March 15, 2005, Randi Shade of Austin.

Appointed to the OneStar National Service Commission, pursuant to Executive Order RP-30, for a term to expire March 15, 2006, O. Rene Diaz of San Antonio.

Appointed to the OneStar National Service Commission, pursuant to Executive Order RP-30, for a term to expire March 15, 2007, Diana T. Juarez of Laredo.

Appointed as Criminal District Attorney, Smith County for a term until the next General Election and until his successor shall be duly elected and qualified, Dillion Matt Bingham, III of Tyler. Mr. Bingham will

replace Mr. Jack Skeen who was appointed as Judge of the 241st District Court.

Appointed to the Bexar County Regional Mobility Authority, pursuant to Transportation Code, §361.003; and Title 43; Section 26 of the Texas Administrative Code, for a term to expire March 22, 2006, William E. Thornton of San Antonio. Mr. Thornton will serve as Presiding Officer of the board.

Rick Perry, Governor

TRD-200402112

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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.

Request for Opinions

RQ-0191-GA

Requestor:

Ms. Sandy Smith, Executive Director

Texas Board of Professional Land Surveying

7701 North Lamar, Suite 400

Austin, Texas 78752

Re: Whether the Board of Professional Land Surveying may establish a "retired status" category for its registrants, set a renewal fee, and waive continuing education requirements for those individuals (Request No. 0191-GA)

Briefs requested by April 22, 2004

RQ-0192-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Authority of the Board of Pardons and Paroles to grant applications for pardons based on innocence (Request No. 0192-GA)

Briefs requested by April 22, 2004

RQ-0193-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Whether the Upper Kirby Management District has the power of eminent domain (Request No. 0193-GA)

Briefs requested by April 22, 2004

RQ-0194-GA

Requestor:

The Honorable Mary Denny

Chair, Committee on Elections

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Process of selecting members to the Texas Ethics Commission (Request No. 0194-GA)

Briefs requested by April 22, 2004

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

TRD-200402098
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 24, 2004

♦ ♦ ♦

Opinions

Opinion No. GA-0168

Ms. Helen Quiram, Chair

Texas Cosmetology Commission

Frank Joseph Cosmetology Building

5717 Balcones Drive

Austin, Texas 78731-4203

Re: Implementing section 1602.267 of the Occupations Code, which establishes a one-year shampoo apprentice permit (RQ-0118-GA)

S U M M A R Y

A person practicing within the terms of a shampoo apprentice permit issued under section 1602.267 of the Occupations Code is authorized to perform a limited cosmetological practice under chapter 1602. The Cosmetology Commission must adopt rules to administer the shampoo apprentice permit program and may enforce chapter 1602 against

a shampoo apprentice as it may against any other licensed or certificated cosmetologist. A licensed beauty shop does not violate chapter 1602 by employing a shampoo apprentice.

Section 1602.267 creates an exception to the requirement that cosmetology be taught only by a licensed instructor in a licensed beauty culture school or program. Thus, a shampoo apprentice may be trained by a licensed cosmetologist who is not licensed as an instructor, in a licensed facility that is not a licensed beauty culture school or program, but only in the shampooing and conditioning of hair.

The Commission may not require an applicant for a shampoo apprentice permit to pay a fee for the permit.

Opinion No. GA-0169

The Honorable Troy Fraser

Chair, Business & Commerce Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether the common-law doctrine of incompatibility prohibits a city council member from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality under chapter 311 of the Tax Code (RQ-0120-GA)

S U M M A R Y

A city council member is not prohibited from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality under chapter 311 of the Tax Code.

Opinion No. GA-0170

The Honorable Carlos I. Uresti

Chair, Human Services Committee

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a state representative may represent a criminal defendant in an administrative license revocation hearing (RQ-0126-GA)

S U M M A R Y

If a legislator has previously represented a licensee in a criminal law matter, he or she may continue to represent the licensee in any license revocation hearing that arises out of the same facts as the underlying criminal proceeding.

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-200402110
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 24, 2004

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §95.205

(Editor's note: The text of the following section proposed for repeal will not be published. The section 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 Office of the Secretary of State proposes the repeal of Chapter 95, Subchapter B, §95.205, concerning Acknowledgment.

The purpose of the repeal is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

Randy Moes, Director, has determined that there will be no fiscal implications to state or local government as a result of the repealed section.

Mr. Moes also has determined that the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the repeal may be submitted to Randy Moes, Director, Uniform Commercial Code Division, P.O. Box 13193, Austin, Texas 78711-3193.

The repeal is proposed under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this repeal.

§95.205. Acknowledgment.

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

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402068
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 463-5701

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1 TAC §95.205

The Office of the Secretary of State proposes new Chapter 95, Subchapter B, §95.205, concerning Acknowledgment.

The purpose of a new Uniform Commercial Code rule is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

Randy Moes, Director, has determined that there will be no fiscal implications to the state or local government as a result of adopting the rule.

Mr. Moes also has determined that the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposals may be submitted to Randy Moes, Director, Uniform Commercial Code Division, P.O. Box 13193, Austin, Texas 78711-3193.

The new section is proposed under §§9.501 - 9.527, Texas Business and Commerce Code (effective July 1, 2001), §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5, Texas

Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this proposal.

§95.205. Acknowledgment.

(a) At the request of a filer or remitter who files a paper or paper-based UCC document via mail, the filing officer shall send to the filer or remitter an image of the record of the UCC document, showing the file number assigned to it and the date and time of filing.

(b) If such filer or remitter provides a copy of such UCC document and the document is hand delivered or faxed, the filing officer shall note the date and time of receipt on the copy and return or fax the copy to the filer or remitter. Once the UCC document has been filed, the filing officer shall send to the filer or remitter an image of the record of the UCC document, showing the file number assigned to it and the date and time of filing.

(c) For UCC documents not filed in paper or paper-based form, the filing officer shall communicate to the filer or remitter the information in the filed document, the file number assigned to it and the date and time of filing.

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

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402069
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 463-5701

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52, concerning Definitions.

The amendment to §501.52 will add the Administrative Code citation for the board's rules, place quotation marks around terms to be defined and add limited liability partnerships and limited liability companies to the definition of a CPA firm.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the definitions will be clearer and easier to read.

The probable economic cost to persons required to comply with the amendment will be zero.

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

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments are to the definitions of terms and they do not cause anyone to do or not do anything.

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

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

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

§501.52. Definitions.

The following words and terms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, [~~this chapter,~~] shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the[~~--The~~] Public Accountancy Act, Chapter 901, Occupations Code;[.]

(2) "Advertisement" means a[~~--A~~] message which is transmitted to persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or registration [~~license~~] holder to perform Professional Services;[.]

(3) "Affiliated entity" means an[~~--An~~] entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;[.]

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(B) a review, compilation or other engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;[.]

(5) "Board" means the[--The] Texas State Board of Public Accountancy;[.]

(6) "Certificate or registration holder" the[--The] holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the Act, or pursuant to corresponding provisions of a prior Act;

(B) registrations with the board under §901.355 of the Act; and

(C) firm licenses or registrations;[.]

(7) "Charitable Organization" means an[--An] organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;[.]

(8) "Client" means a[--A] person who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service;[.]

(9) "Client Practice of Public Accountancy" is the offer to perform or the performance by a certificate or registration holder for a client or a potential client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(A) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof;

(B) the furnishing of management or financial advisory or consulting services;

(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters;

(D) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and/or

(E) the performance of litigation support services;[.]

(10) "Commission" means compensation[--Compensation] for recommending or referring any product or service to be supplied by another person;[.]

(11) "Contingent fee" means a[--A] fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a certificate or registration holder's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;[.]

(12) "Financial Statements" means a[--A] presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements or Standards for Attestation [attestation] Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;[.]

(13) "Firm" means a[--A] proprietorship, partnership, limited liability partnership, limited liability company, or professional or other corporation, or other business engaged in the practice of public accountancy;[.]

(14) "Good standing" means compliance[--Compliance] by a certificate [or registration holder] with the board's [Board's] licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must be in compliance with all the provisions of the board order to be considered in good [Good] standing;[.]

(15) "Licensee" means the[--The] holder of a license issued by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior Act;[.]

(16) "Peer review" or "Quality Review" means the[--The] study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;[.]

(17) "Person" means an[--An] individual, partnership, corporation, registered limited liability partnership, or limited liability company;[.]

(18) "Practice unit" means an[--An] office of a firm required to be licensed with the board for the purpose of practicing public accountancy;[.]

(19) "Professional services" or "professional accounting work"[--]means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statements;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; and

(D) providing advice in tax matters;[.]

(20) "Report" means, when[--When] used with reference to financial statements, [means] either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or

other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence;[.]

(21) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402037
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §501.53

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.53, concerning Applicability of Rules of Professional Conduct.

The amendment to §501.53 will add §501.78 (regarding Withdrawal or Resignation) to the list of rules of professional conduct that are applicable to CPAs that do not engage in the client practice of public accountancy.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that this rule will be applicable to all licensed CPAs.

The probable economic cost to persons required to comply with the amendment will be zero.

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

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there are no costs associated with this rule.

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

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

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

§501.53. Applicability of Rules of Professional Conduct.

(a) All of the rules of professional conduct shall apply to and must be observed by a certificate or registration holder engaged in the client practice of public accountancy.

(b) No certificate or registration holder shall issue, or otherwise be associated with, financial statements that do not conform to the accounting principles described in Section 501.61 of this title (relating to Accounting Principles).

(c) The following rules of professional conduct shall apply to and be required to be observed by certificate or registration holders when not employed in the client practice of public accountancy:

(1) Section 501.73 of this title (relating to Integrity and Objectivity);

(2) Section 501.74 of this title (relating to Competence);

(3) Section 501.77 of this title (relating to Acting through Others);

(4) Section 501.78 of this title (relating to Withdrawal or Resignation);

(5) [~~(4)~~] Section 501.90 of this title (relating to Discreditable Acts);

(6) [~~(5)~~] Section 501.91 of this title (relating to Reportable Events);

(7) [~~(6)~~] Section 501.92 of this title (relating to Frivolous Complaints);

(8) [~~(7)~~] Section 501.93 of this title (relating to Responses); and

(9) [~~(8)~~] Section 501.94 of this title (relating to Mandatory Continuing Education Reporting).

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402038
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.80, concerning Practice of Public Accountancy.

The amendment to §501.80 will clearly state that a person must possess both a certificate and a current license in order to represent that they are a Certified Public Accountant.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clear statement that unlicensed persons may not represent that they are CPAs.

The probable economic cost to persons required to comply with the amendment will be zero.

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

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there are no costs associated with this rule.

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

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

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

§501.80. Practice of Public Accountancy.

(a) A certificate or registration holder may not engage in the practice of public accountancy unless he holds a valid license issued by the board. A certificate or registration holder may not use the title or designation "certified public accountant", the abbreviation "CPA", or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless he holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a certified public accountant or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

(c) Interpretive Comment: This section incorporates the definitions of the practice of public accountancy and professional services and accounting work found in §501.52(9) and §501.52(19) of this title (relating to Definitions) as well as §901.003 of the Act (relating to Practice of Public Accountancy).

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

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.6

The Texas State Board of Public Accountancy (Board) proposes new §509.6, concerning Rulemaking Procedures.

The new §509.6 moves, re-names and re-numbers former §519.3.

This new rule is the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code

§2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 509 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

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

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

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the rule will be in a more logical location.

The probable economic cost to persons required to comply with the new rule will be zero.

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

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule only re-names the rule, re-numbers and moves it to a more appropriate location.

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

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§509.6. Rulemaking Procedures.

(a) Notice of a proposed new rule or amendment of any existing rule shall be made in accordance with the provisions of §2001.023 and §2001.024 of the Administrative Procedure Act.

(b) A request for a public hearing to receive comments on a proposed new rule or amendment to an existing rule must be received in the offices of the board no later than 5:00 p.m. of the twentieth calendar day prior to the board meeting scheduled to consider the adoption of the proposed rule.

(c) A person wishing to testify at a public hearing to receive comments on a proposed new rule or amendment to an existing rule must file a written copy of the proposed testimony in the offices of the board by no later than 5:00 p.m. of the fifth calendar day prior to the public hearing unless the board announces a different filing date.

(d) It is the board's policy to encourage negotiated rule making when appropriate.

(e) The executive director shall designate a board employee as the board's Negotiated Rulemaking Director to implement the provisions of the Negotiated Rulemaking Act, Chapter 2008 of the Texas Government Code, and perform the following functions:

(1) maintain necessary agency records of negotiated rulemaking procedures while maintaining the confidentiality of participants;

(2) establish a method of choosing conveners and facilitators as defined by the Negotiated Rulemaking Act, Chapter 2008 of the Texas Government Code;

(3) establish a method of convening negotiated rules committees;

(4) provide information about the negotiated rulemaking process to agency employees, potential users, and users of the negotiated rulemaking program;

(5) arrange training or education necessary to implement the negotiated rulemaking process; and

(6) establish a system to evaluate the negotiated rulemaking program, conveners, facilitators, and committees.

(f) The board or the Rules Committee may request the Negotiated Rulemaking Director to institute negotiated rulemaking proceedings on a specified subject. Upon receipt of such a request, the Negotiated Rulemaking Director shall institute the negotiated rulemaking process pursuant to Chapter 2008 of the 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.

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

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.1, §518.2

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §518.1, concerning Cease and Desist Orders and §518.2, concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The proposed repeal of §518.1 and §518.2 will repeal two rules that are being rewritten and relocated.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeals will be zero.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeals will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeals will be zero.

Mr. Treacy has determined that for the first five-year period the repeals are in effect the public benefits expected as a result of adoption of the proposed repeals will be that these two rules will be rewritten and relocated.

The probable economic cost to persons required to comply with the repeals will be zero.

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

The Board requests comments on the substance and effect of the proposed repeals from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeals will not have an adverse economic effect on small businesses because there are no costs associated with the repeal of these rules.

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

The repeals are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

§518.1. Cease and Desist Orders.

§518.2. Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

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

Filed with the Office of the Secretary of State on March 18, 2004.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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22 TAC §§518.1 - 518.4

The Texas State Board of Public Accountancy (Board) proposes new §518.1, concerning Definitions, §518.2, concerning Cease and Desist Orders, §518.3, concerning Violation of a Cease and Desist Order and §518.4, concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The new §§518.1 - 518.4 will explain that the definitions in Chapter 519 are applicable to Chapter 518, will describe the cease and desist orders, the procedures and the consequences for not complying with cease and desist orders.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero or minimal because the new SOAH issued cease and desist orders replace the previous court issued permanent injunctions.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be from the elimination of court filing fees and service of citation, and these savings are estimated to be about $320 per year.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that SOAH offers faster hearing dates than district courts.

The probable economic cost to persons required to comply with the new rules will be zero because the compliance that is required is with other rules or laws, not these rules.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments

must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the compliance that is required is with other rules or laws, not these rules.

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

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed new rules.

§518.1. Definitions.

The definitions contained in Chapter 519 of this title apply to this chapter.

§518.2. Cease and Desist Orders.

(a) Whenever the board, through its Executive Committee, determines that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license issued under the Act, the board, through its Executive Committee, after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity. The Executive Committee may issue a cease and desist order by agreement or after a hearing in a contested matter. A cease and desist order issued by the Executive Committee must by ratified by the board at its next regularly scheduled meeting.

(b) A hearing under this rule shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that the time limits provided in this rule control.

(c) Upon the filing of a request to docket the case, SOAH shall set the matter for hearing no later than 20 days from the date of the request. The ALJ shall deliver a PFD and recommendation as to whether a cease and desist order should be issued to the Executive Committee no later than five days after the completion of the hearing. The Executive Committee shall make its determination as to whether to issue a cease and desist order no later than five days after receipt of the PFD and recommendation.

(d) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is inconvenient for any member of the Committee.

§518.3. Violation of a Cease and Desist Order.

(a) Whenever the board, through its Executive Committee, determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its Executive Committee, after notice and an opportunity for a hearing, may assess an administrative penalty against the person in violation in accordance with the guidelines contained in §518.4 of this title (relating to Administrative Penalty Guidelines for Violations of Cease and Desist Orders).

(b) The board shall give notice of the assessment of an administrative penalty in accordance with §901.553 of the Act. The person may pay the penalty or request a hearing in accordance with §901.554 of the Act. A hearing under this rule shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that the time limits provided in this rule control.

(c) Upon the filing of a request to docket the case, SOAH shall set the matter for hearing no later than 20 days from the date of the request. The ALJ shall deliver a PFD to the Executive Committee no later than five days after the completion of the hearing. The Executive Committee shall make its determination as to whether to assess an administrative penalty no later than five days after receipt of the PFD. If a penalty is assessed the person may pay or appeal the board's order in accordance with §901.556 of the Act.

(d) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is inconvenient for any member of the Committee.

§518.4. Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The amount of the administrative penalty assessed under this chapter will be in accordance with the following guidelines:

(1) an unlicensed individual who uses terms restricted for use by certified public accountants only in violation of §§901.451, 901.452 and 901.453 of the Act shall pay a penalty of no less than $1,000.00 and no more than $5,000.00;

(2) an unlicensed entity that uses terms restricted for use by licensed firms only in violation of §901.351(a) of the Act shall pay a penalty of no less than $5,000.00 and no more than $10,000.00;

(3) an unlicensed individual who claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms shall pay a penalty of no less than $1,000.00 and no more than $5,000.00;

(4) an unlicensed entity that claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms shall pay a penalty of no less than $5,000.00 and no more than $10,000.00;

(5) an unlicensed individual who claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(6) an unlicensed entity that claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(7) an unlicensed individual who claims to be a certified public accountant shall pay a penalty of no less than $5,000.00 and no more than $25,000.00; and

(8) an unlicensed entity that claims to be a certified public accounting firm shall pay a penalty of no less than $5,000.00 and no more than $25,000.00.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402042
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 519. PRACTICE AND PROCEDURE

22 TAC §§519.1 - 519.14, 519.16, 519.17

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of Chapter 519, §519.1, concerning Purpose and Scope; §519.2, concerning Computation of Time; §519.3, concerning Rulemaking Proceedings; §519.4, concerning Conduct and Decorum; §519.5, concerning Ex Parte Consultations; §519.6, concerning Informal Conferences and Informal Dispositions; §519.7, concerning Administrative Penalties; §519.8, concerning Subpoenas; §519.9, concerning Procedures after Hearing; §519.10, concerning The Record and Assessment of Cost of Preparation; §519.11, concerning Follow-Up; §519.12, concerning Publication of Disciplinary/Administrative Sanctions; §519.13, concerning Mediation and Alternative Dispute Resolution; §519.14, concerning Emergency Suspension; §519.16, concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board; and §519.17, concerning Administrative Penalty Guidelines.

These repeals are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 519 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The proposed repeal of Chapter 519 will remove these rules so they can be replaced by re-written rules.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeals will be zero because the repeals do not affect costs.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeals will be zero because the repeals do not affect costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeals will be zero because the repeals do not affect revenue.

Mr. Treacy has determined that for the first five-year period the repeals are in effect the public benefits expected as a result of adoption of the proposed repeals will be that these rules will be replaced with re-written rules that are current and applicable.

The probable economic cost to persons required to comply with the repeals will be zero because the repeals do not affect economic costs.

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

The Board requests comments on the substance and effect of the proposed repeals from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeals will not have an adverse economic effect on small businesses because the repeals do not have any economic effect.

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

The repeals are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed repeals.

§519.1. Purpose and Scope.
§519.2. Computation of Time.
§519.3. Rulemaking Proceedings.
§519.4. Conduct and Decorum.
§519.5. Ex Parte Consultations.
§519.6. Informal Conferences and Informal Dispositions.
§519.7. Administrative Penalties.
§519.8. Subpoenas.
§519.9. Procedures after Hearing.
§519.10. The Record and Assessment of Cost of Preparation.
§519.11. Follow-Up.
§519.12. Publication of Disciplinary/Administrative Sanctions.

§519.13. Mediation and Alternative Dispute Resolution.

§519.14. Emergency Suspension.

§519.16. Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

§519.17. Administrative Penalty Guidelines.

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

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

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§519.1 - 519.9

The Texas State Board of Public Accountancy (Board) proposes new rules §519.1 concerning Purpose and Scope; §519.2 concerning Definitions; §519.3 Computation of Time; §519.4. concerning Conduct and Decorum; §519.5. concerning Ex Parte Consultations; §519.6 concerning Subpoenas; §519.7 concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board, §519.8 concerning Administrative Penalties and §519.9 concerning Administrative Penalty Guidelines in Subchapter A concerning General Provisions.

New board rule §519.1 describes the purpose and scope of Chapter 519. New board rule §519.2 contains the definitions needed to understand Chapter 519. New board rule §519.3 describes computation of time. New board rule §519.4 describes conduct and decorum in committee and board proceedings. New board rule §519.5 addresses ex parte consultations. New board rule §519.6 describes the board's new subpoena power. New board rule §519.7 lists the criminal offenses that involve dishonesty, fraud, moral turpitude or alcohol abuse or controlled substances that directly relate to the practice of accounting, including recidivism. New Board Rule 519.8, which is former board rule 519.7, recreates the administrative penalties that may be assessed against licenses. New board rule §519.9 contains guidelines for the assessment of administrative penalties in disciplinary matters.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero for board rules §§519.1-519.5. The cost for §519.8 will be zero because the rule is only being renumbered and relocated. Because rules §519.6, §519.7 and §519.9 are only a re-numbering of former rules §519.8, §519.16 and §519.17, there is no additional cost/revenue.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because the rules do not address reduction in costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero loss because the rules do not address revenue loss. Because rules §519.6, §519.7 and §519.9 are only a re-numbering of former rules §519.8, §519.16 and §519.17, there is no additional cost/revenue.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that these rules will be clearer and easier to understand.

The probable economic cost to persons required to comply with the new rules will be zero for board rules §§519.1-519.5. The cost for §519.8 will be zero because the rule is only being renumbered and relocated. Because rules §519.6, §519.7 and §519.9 are only a re-numbering of former rules §519.8, §519.16 and §519.17, there is no additional cost.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses and will be zero.

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

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§519.1. Purpose and Scope.

Chapter 519 will govern the processes followed by the board in the investigation and disposition of matters within the board's jurisdiction. These rules supplement, as appropriate, the Rules of Practice and Procedure of the State Office of Administrative Hearings.

§519.2. Definitions.

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to board rule 501.93 of this title (relating to Responses);

(2) "Administrative costs" means those costs actually incurred by the board through payment to outside vendors and the reasonable value of resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, attorney's fees and expenses, legal assistant's fees and expenses, expert fees and expenses, witness fees and expenses, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, support personnel costs, associated overhead costs and any other cost or fee that can be reasonably be attributed to the matter;

(3) "ALJ" means administrative law judge;

(4) "APA" means the Texas Administrative Procedure Act, chapter 2001 of the Texas Government Code;

(5) "Board staff" means the employees or independent contractors of the board;

(6) "Committee" means an enforcement committee of the board which are the Behavioral Enforcement Committee, the Technical Standards Review Committee and the Major Case Enforcement Committee;

(7) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(8) "Complainant" means the person or entity who initiates a complaint with board against a certificate or registration holder;

(9) "PFD" means the proposal for decision prepared by an administrative law judge;

(10) "Respondent" means a certificate or registration holder against whom a complaint has been filed; and

(11) "SOAH" means the State Office of Administrative Hearings.

§519.3. Computation of Time.

In computing any period of time prescribed or allowed by this chapter, by order of the board, or by any applicable statute, the period shall begin on the day after the act or the event considered, and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal state holiday. If the triggering act or event is a written communication from the board that is sent by registered or certified mail, courier or public delivery service, facsimile transmission, or electronic transmission (such as e-mail), the act or event is deemed to have occurred on the date such communication was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, e-mail address or facsimile number furnished to the board by the recipient.

§519.4. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative appearing before the board, board Committees or board staff shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive director, and all other participants. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(b) Any person engaging in disorderly conduct or communicating with board members in violation of the prohibitions on ex parte communication may be excluded from any board, Committee or staff proceeding and treated as if defaulting on obligations to the board.

§519.5. Ex Parte Consultations

Unless required for the disposition of ex parte matters as authorized by law, board members, committee members, or employees of the board assigned to render a decision or make findings of fact and conclusion of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and with opportunity for all parties to participate.

§519.6. Subpoenas.

(a) The executive director or his designated representative is delegated authority to issue subpoenas to compel the attendance of relevant witnesses or to compel the production of relevant documents, records and other materials, maintained by electronic or other means in the furtherance of the investigation of any matter within the jurisdiction of the board. The executive director or his designated representative may administer oaths and take testimony and other evidence from any person who is the subject of a subpoena issued under this section in the furtherance of the investigation of any matter within the jurisdiction of the board.

(b) The executive director or his designated representative is delegated authority to issue subpoenas authorized by the APA in contested cases and the Act.

§519.7. Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

(a) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve dishonesty or fraud may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving dishonesty or fraud to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve dishonesty or fraud directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve dishonesty or fraud:

(1) Theft;

(2) Theft of Service;

(3) Tampering with Identification Numbers;

(4) Theft of or Tampering with Multichannel Video or Information Services;

(5) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;

(6) Sale or Lease of Multichannel Video or Information Services Device;

(7) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;

(8) Forgery;

(9) Criminal Simulation;

(10) Trademark Counterfeiting;

(11) Stealing or Receiving Stolen Check or Similar Sight Order;

(12) False Statement to Obtain Property or Credit;

(13) Hindering Secured Creditors;

(14) Credit Card Transaction Record Laundering;

(15) Issuance of Bad Check;

(16) Deceptive Business Practices;

(17) Rigging Publicly Exhibited Contest;

(18) Misapplication of Fiduciary Property or Property of Financial Institution;

(19) Securing Execution of Document by Deception;

(20) Fraudulent Destruction, Removal, or Concealment of Writing;

(21) Simulating Legal Process;

(22) Refusal to Execute Release of Fraudulent Lien or Claim;

(23) Breach of Computer Security;

(24) Unauthorized Use of Telecommunications Service;

(25) Theft of Telecommunications Service;

(26) Publication of Telecommunications Access Device;

(27) Insurance Fraud;

(28) False Alarm or Report;

(29) Engaging in Organized Criminal Activity;

(30) Violation of Court Order Enjoining Organized Criminal Activity;

(31) Unlawful Use of Criminal Instrument;

(32) Unlawful Access to Stored Communications;

(33) Burglary of Vehicles;

(34) Burglary of Coin-Operated or Coin Collection Machines;

(35) Coercion of Public Servant or Voter;

(36) Improper Influence;

(37) Gift to Public Servant by Person Subject to His Jurisdiction;

(38) Offering Gift to Public Servant;

(39) Perjury;

(40) False Report to Peace Officer or Law Enforcement Employee;

(41) Tampering With or Fabricating Physical Evidence;

(42) Tampering With Governmental Record;

(43) Fraudulent Filing of Financing Statement;

(44) False Identification as Peace Officer;

(45) Misrepresentation of Property;

(46) Record of a Fraudulent Court; and

(47) Bail Jumping and Failure to Appear.

(b) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve moral turpitude may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving moral turpitude to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve moral turpitude directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve moral turpitude:

(1) Prostitution;

(2) Promotion of Prostitution;

(3) Indecent Exposure;

(4) Public Lewdness;

(5) Obscenity;

(6) Obscene Display or Distribution;

(7) Sale, Distribution, or Display of Harmful Material to Minor;

(8) Employment Harmful to Children; and

(9) Abuse of a Corpse.

(c) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve alcohol abuse or controlled substances may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving alcohol abuse or controlled substances to relate directly to the practice of public accountancy and may subject a certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve alcohol abuse or controlled substances directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve alcohol abuse or controlled substances:

(1) Possession of less than 28 grams of a controlled substance listed in penalty group 3 under the Texas Penal Code;

(2) Possession of less than 28 grams of a controlled substance listed in penalty group 4 under the Texas Penal Code;

(3) Manufacture, delivery or possession of a controlled substance listed in a schedule of controlled substances, but not listed in a penalty group under the Texas Penal Code;

(4) Manufacture, delivery or possession of a controlled substance analogue;

(5) Possession or delivery of marihuana;

(6) Possession or delivery of drug paraphernalia;

(7) Possession or transport of chemicals with the intent to manufacture a controlled substance; and

(8) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.

(d) Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers repeated violations of any criminal law to relate directly to the practice of public accountancy.

(e) A conviction or placement on deferred adjudication or community supervision for a violation of any state or federal law that is equivalent to an offense listed in subsections (a) through (d) of this section is considered to directly relate to the practice of accounting and may subject a certificate or registration holder to discipline by the board.

§519.8. Administrative Penalties.

(a) The board may impose an administrative penalty alone or in addition to other sanctions permitted under the Act. Board committees and the executive director are delegated the authority to determine that any alleged violation warrants an administrative penalty under Subchapter L of the Public Accountancy Act.

(b) The report of any such determination may be included in a notice of hearing.

(c) A request for a hearing under §901.554 of the Public Accountancy Act shall clearly notify the staff that the hearing must address issues relevant to the assessment of an administrative penalty by including the language "RESPONDENT SPECIFICALLY REQUESTS A HEARING ON ADMINISTRATIVE PENALTIES" in capital letters. Failure to include such language shall be a waiver of the right to a hearing within the meaning of §901.554 of the Public Accountancy Act.

(d) Pursuant to §901.551 of the Public Accountancy Act:

(1) the board imposes an administrative penalty on licensees who, in violation of §901.411 of the Public Accountancy Act:

(A) do not complete at least 120 hours of continuing professional education in each three-year license period;

(B) do not complete at least 20 hours in each one-year license period;

(C) do not comply with board rules for the reporting of continuing professional education; or

(D) fail to complete or report sufficient ethics hours as required by board §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance).

(2) considering the seriousness of violation of §901.411 of the Public Accountancy Act, the hazard and potential hazard to the public from CPAs who are not trained in current accounting standards and practices, the amount necessary to deter future violations, and such other matters as the board considers justice may require, the board sets the administrative penalty for the violations described in §519.7(d)(1) of this title (relating to Administrative Penalties) at a minimum of $100 per licensee per license period

(3) the penalty may be assessed only on licensees against whom a final board order is issued.

§519.9. Administrative Penalty Guidelines.

(a) The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. In determining whether a violation is minor, moderate or major, the board will apply the factors to be considered set forth in §901.552(b) of the Public Accountancy Act. In all cases where the board has determined a violation has occurred, administrative costs will be assessed, regardless of any other sanction imposed by the board.
Figure: 22 TAC §519.9(a)

(b) The amounts specified in subsection (a) of this section are guidelines only. The board retains the right to increase or decrease the amount of an administrative penalty based on the circumstances of each case it considers.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402044
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §§519.20 - 519.25

The Texas State Board of Public Accountancy (Board) proposes new rules §519.20 concerning Complaints; §519.21 concerning Investigations; §519.22 concerning Committee Considerations; §519.23 concerning Informal Conferences, §519.24 concerning Committee Recommendations and §519.25 concerning Mediation and Alternative Dispute Resolution in Subchapter B concerning Complaints and Investigations.

The new rules §519.20 through §519.25 will describe the Board's enforcement complaint, investigative, informal conference and committee procedures.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title

22, TAC, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero because the new rules describe current procedures; they do not create any new procedures.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because the new rules describe current procedures; they do not create any new procedures.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because the new rules describe current procedures; they do not create any new procedures.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that the Board's enforcement complaint, investigative, informal conference and committee procedures will be described for anyone to read.

The probable economic cost to persons required to comply with the new rules will be zero because the new rules describe current procedures; they do not create any new procedures.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the new rules describe current procedures; they do not create any new procedures.

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

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§519.20. Complaints.

(a) Written complaints should contain information necessary for the proper processing of the complaint by the board, including:

(1) Complainant's name, address and phone number;

(2) name, address and phone number of the certificate or registration holder against whom the complaint is filed;

(3) description of the alleged violation;

(4) supporting information and factual evidence;

(5) names and addresses of witnesses; and

(6) sources of other pertinent information.

(b) The board has discretion whether or not to open an investigative file. A complaint that does not contain all of the information requested in subsection (a) of this section may be pursued if the missing information can be obtained from another source. For the board to proceed it must have jurisdiction over the person and the subject matter. Once the board has received a complaint, board staff shall conduct an initial screening of the complaint within 30 days. The board staff shall notify the Complainant whether or not the board will proceed with an investigation.

(c) The board may accept anonymous complaints. Anonymous complaints may not be investigated if insufficient information is provided, the allegations are vague, appear to lack factual foundation, or cannot be proved for lack of a witness or other evidence.

§519.21. Investigations.

(a) A board investigative file will be opened when the board determines that there may be a potential violation of the Act, board rules, or board order and the subject matter of the complaint is within the board's jurisdiction.

(b) The board may open an investigative file on its own initiative.

(c) A certificate or registration holder shall cooperate with the board in its investigation of a complaint. The Respondent will receive notice of the investigation by certified mail return receipt requested at the Respondent's mailing address on file with the board. Upon notice of an investigation from the board, the Respondent shall respond to the investigation and any request by the board for information or records concerning the investigation in accordance with §501.93 of this title (relating to Responses).

(d) The Respondent must provide the board with a detailed response to each allegation and the request for background information contained in the notice of investigation. The response must be in writing and delivered to the board within 30 days of the date of the notice of the investigation. The Respondent's response may include any additional information the Respondent wants the board to consider.

(e) The board will provide the Respondent and the Complainant with quarterly notification of the status of an investigation.

(f) The board may request information from a certificate or registration holder who is not the subject of an investigation.

(g) Withdrawal of a complaint by a Complainant does not automatically cease an ongoing investigation.

§519.22. Committee Considerations.

(a) Each investigation shall be submitted to the appropriate Committee for an initial determination as to whether a violation has

occurred. The Committee shall make a recommendation as to the appropriate disposition of the investigation.

(b) The Committee, in its sole discretion, may abate the investigation.

(c) Cases that do not require Committee consideration will not be presented to a Committee.

§519.23. Informal Conferences.

(a) The Committee, at its sole discretion, may invite the Respondent and the Complainant to an informal conference. The purpose of the conference is to assist the Committee in the investigation. An informal conference is voluntary and is not a prerequisite to a hearing in a disciplinary action.

(b) The Committee will request the Respondent to appear at a specified time and place for an informal conference. If the Committee determines that the Complainant's presence will aide in the investigation, then the Committee will invite the Complainant to appear at the informal conference.

(c) The notice of an informal conference will state the date, time and place of the informal conference. The notice will be mailed to the Respondent and Complainant at least 10 days prior to the informal conference.

(d) At an informal conference, the Respondent may appear in person and with counsel.

(e) During an informal conference, each party is given the opportunity to make a brief presentation to the Committee. The Committee may ask questions regarding the matter being investigated and any matter of interest to the Committee. The Committee chair may call upon board staff at any time for assistance during the informal conference.

(f) The Committee may invite a non-party who has relevant information to the investigation to participate in the informal conference.

§519.24. Committee Recommendations.

(a) At the conclusion of its investigation the Committee will make a recommendation to the board regarding the disposition of the investigation.

(b) If the Committee determines the board no longer has jurisdiction, there is insufficient evidence of a violation of the Act or the Rules or the Respondent comes into compliance with the Act or Rules, the Committee will recommend dismissal of the complaint. The Committee will inform the Respondent of its recommendation and may issue a letter of comment stating the Committee's concerns about Respondent's practice and make suggestions that may improve Respondent's practice. The Committee's recommendation of dismissal is not final until it is ratified by the board in an open meeting.

(c) If the Committee determines that there is a violation of the Act or Rules, the Committee will recommend appropriate disciplinary action. The Committee may recommend any disciplinary sanction provided in Section 901.501 of the Act, singularly or any combination. The Respondent will be informed of the Committee's action.

(d) In the appropriate case, the Committee will offer to enter into an agreed consent order with the Respondent. The agreed consent order shall contain the Committee's factual findings and conclusions, and the recommended terms and conditions for final resolution of the matter. The Respondent will have 30 days to accept or reject the agreed consent order in accordance with §519.3 of this title (relating to Computation of Time). A rejection must be made in writing; however, failure to accept or reject the proposed agreed consent order within the 30 day period will be deemed a rejection. An agreed consent order is not final until it has been ratified by the board in an open meeting. If the agreed consent order is rejected the matter will be referred to SOAH for a contested case hearing.

§519.25. Mediation and Alternative Dispute Resolution.

(a) It is the board's policy to encourage the resolution and early settlement of all disputed matters, internal and external, through voluntary settlement procedures.

(b) The executive director shall designate a board employee as the board's Alternative Dispute Resolution Director to perform the following functions:

(1) maintain necessary agency records of alternative dispute resolution procedures while maintaining the confidentiality of participants;

(2) establish a method for the appointment of impartial third party mediators, moderators or arbitrators for alternative dispute resolution proceedings;

(3) provide information about available alternative dispute resolution processes to agency employees, potential users, and users of the alternative dispute resolution program;

(4) arrange training or education necessary to implement alternative dispute resolution processes; and

(5) establish a system to evaluate the alternative dispute resolution program and mediators.

(c) The board, a committee of the board, a respondent in a disciplinary matter pending before the board, the executive director of the board or a board employee engaged in a dispute with the executive director may request that a contested matter be submitted for alternative dispute resolution through mediation as described in §154.023 of the Texas Civil Practice and Remedies Code, moderated settlement conference as described in §154.025 of the Texas Civil Practice and Remedies Code, and non-binding arbitration as described in §154.027 of the Texas Civil Practice and Remedies Code by making a written request for alternative dispute resolution that states the type of alternative dispute resolution requested and sets forth the issues to be submitted for alternative dispute resolution. A respondent in a disciplinary proceeding may not request mediation until a recommendation regarding that disciplinary matter has been made a Committee of the board. The request must be delivered to the Alternative Dispute Resolution Director at the board's office.

(d) The party who requests alternative dispute resolution shall pay the cost of the impartial third party mediator, moderators or arbitrators and shall otherwise bear their own costs of alternative dispute resolution.

(e) Any resolution reached as a result of an alternative dispute resolution procedure is intended to be through the voluntary agreement of all of the parties. The resolution of a contested matter reached as a result of an alternative dispute resolution procedure must be in writing, signed by all of the parties, and is enforceable in the same manner as any other written contract; provided however, that any signed resolution that purports to bind the board must be ratified by the board and may be made public depending upon the terms of the agreed resolution.

(f) A communication relating to the subject matter made by a party in an alternative dispute resolution procedure is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding. Any notes or record made of an alternative dispute resolution procedure are confidential, and parties, including impartial third party mediators, moderators, or arbitrators may not be required

to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute or under consideration. An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to a judge or administrative law judge in Travis County, Texas to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402045
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §§519.40 - 519.53

The Texas State Board of Public Accountancy (Board) proposes new rules §519.40 concerning General Provisions; §519.41 concerning Pleadings in Contested Cases; §519.42 concerning Service in SOAH Proceedings; §519.43 concerning Emergency Suspension; §519.44 concerning Default; §519.45 concerning Discovery; §519.46 concerning Official Notice and Business Records Affidavit; §519.47 concerning Waiver of Privilege/Confidentiality, §519.48 concerning Final Witness List, §519.49 concerning Exhibits, §519.50 concerning Reporter and Transcripts, §519.51 concerning Evidence, §519.52 concerning Motions and §519.53 concerning Dismissal by the Board.

The new rules §519.40 through §519.53 describe the procedures for proceedings at the State Office of Administrative Hearings ("SOAH"). While all of the rules are new, most of them describe the current actual practice and supplement SOAH's procedural rules and the Texas Rules of Civil Procedure. Rule 519.40 appoints SOAH to hear the Board's case. Rule 519.41 describes the contents of pleadings in contested cases, the procedure and applicable time limits and contains language for default proceedings. Rule 519.42 requires service according to SOAH's rules. Rule 519.43 is former rule 519.14, and it describes emergency suspension procedures and the Executive Committee's role. Rule 519.44 describes default proceedings. Rule 519.45 describes the several available discovery procedures and deadlines. Rule 519.46 describes the official notice and business records affidavit procedures and filing schedules. Rule 519.47 describes waiver of privilege and confidentiality in discovery proceedings. Rule 519.48 describes the procedure and deadline for designation of witnesses and final witness list. Rule 519.49 describes the procedure and deadlines for exhibits. Rule 519.50 addresses court reporters and transcripts of the hearings. Rule 519.51 describes the evidentrary rules that are applicable. Rule 519.52 applies SOAH's rules to Motions. Rules 519.53 allows the Board to dismiss a complaint at anytime.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be about $300 per year caused by emergency suspension and additional paperwork in pleadings, discovery and pre-trial filings.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be about $300 per year to the state created by the rules' streamlining of pleadings, discovery, pre-trial filings and default procedure.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because the rules do not address revenue.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that the proceedings at SOAH will be streamlined.

The probable economic cost to persons required to comply with the new rules will be about $10 per year, but only for a very small number of licensees that proceed to a hearing before an Administrative Law Judge of SOAH.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the cost will only be about $10 per year and this cost is applicable to a very small number of licensees that proceed to a hearing before an Administrative Law Judge of SOAH.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost

for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act, §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency and §519.43 is also proposed under §901.5045 of the Act regarding Emergency Suspension.

No other article, statute or code is affected by these proposed new rules.

§519.40. General Provisions.

(a) The board appoints SOAH to be its finder of fact in contested cases pursuant to section 901.508 of the Act. The board does not delegate to the ALJ and retains for itself the right to make the final decision in any contested case.

(b) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when the board staff files a complaint.

§519.41. Pleadings in Contested Cases.

(a) A complaint filed by the board with SOAH shall include information that alleges a certificate or registration holder has committed a violation of the Act. The complaint shall be assigned a docket number and an ALJ and shall be filed before or contemporaneously with the notice of hearing. The complaint shall include:

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

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

(3) a short, plain statement of the matters asserted; and

(4) the following language in at least 12-point bold type: "If you do not file a written answer to this complaint with the State Office of Administrative Hearings within 20 days of the date the complaint was mailed, the board may request the matter be remanded to the board for final disposition and all of the matters alleged in the complaint will be deemed admitted as true. A copy of any response you file with the State Office of Administrative Hearings shall also be provided to the staff attorney for the Texas State Board of Public Accountancy whose name appears on the complaint."

(b) The Notice of Hearing shall include:

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

(2) a statement of the nature of each charge against the Respondent; and

(3) the following language in at least 12 point bold type: "If you fail to attend the hearing, the factual allegations contained in the complaint and any amendments to the complaint will be deemed as true, and the relief sought in the complaint and any amendments to the complaint may be granted by default and a default judgment entered against you, which may include any or all of the requested sanctions, including the revocation of your certificate or registration".

(c) The Respondent shall file a written answer with SOAH within 20 days of the date the complaint or amended complaint was sent to Respondent as computed under §519.3 of this title (relating to Computation of Time). The answer shall include a short, plain statement of the Respondent's defenses to each claim asserted and shall admit or deny each allegation contained in the complaint. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the Respondent shall so state and this has the effect of a denial. When a Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify so much of it as is true and material and shall deny only the remainder.

(d) Factual and legal allegations by the board in a complaint or amended complaint are admitted when not denied in the Respondent's answer or amended answer.

(e) All amended pleadings shall be filed no later than 20 days prior to the hearing date. Any amended pleading filed after that date shall be null and void, and have no effect unless otherwise ordered by the ALJ, upon a showing of good cause and lack of harm to the opposing party.

§519.42. Service in SOAH Proceedings.

A copy of every document filed by a Respondent with SOAH shall also be served on the board's staff attorney assigned to the Respondent's case in accordance with SOAH's rules.

§519.43. Emergency Suspension.

(a) Whenever the board, through its Executive Committee, determines that a certificate or registration holder is engaged in or about to engage in an act of fraud or a violation of the Act and the certificate or registration holder's continued practice constitutes an immediate threat to the public welfare, the board, through its Executive Committee, may issue an order temporarily suspending the certificate or registration holder's license without notice and without a hearing. An order temporarily suspending a license issued by the Executive Committee must be ratified by the board at its next regularly scheduled meeting.

(b) "Immediate threat to the public welfare" means a real and present danger to clients caused through the certificate or registration holder's lack of competence, impaired status, or failure to adequately service clients. A "real and present danger" exists if clients have a likely exposure to or significant risk of loss of funds or records or financial injury and is based on actual actions or inactions of the certificate or registration holder. The Executive Committee may consider information that the certificate or registration holder previously committed similar actions or inactions in determining whether the certificate or registration holder poses an immediate threat to commit such actions or inactions in the future.

(c) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is inconvenient for any member of the Committee. Whenever possible, the Executive Committee will attempt to provide the certificate or registration holder with notice and an opportunity to be present at the emergency suspension proceeding.

(d) The determination of the Executive Committee may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Presentations by the parties may be based on evidence or information and shall not be excluded on objection of a party unless determined by the chair that the evidence or information is clearly irrelevant or unduly inflammatory in nature; however, objections by a party may be noted for the record. Witnesses may provide sworn statements in writing or verbally and may choose to provide statements that are not sworn. However, whether a statement is sworn may be a factor to be considered by the Executive Committee in evaluating the weight to be given to the statement. Questioning of witnesses by board staff,

the Respondent or Executive Committee members is under the control of the Executive Committee chair.

(e) The Executive Committee shall immediately serve notice of the suspension on the certificate or registration holder in accordance with section 901.5045(b) of the Act. The suspended certificate or registration holder shall be provided the opportunity to request a hearing in accordance with §901.5045(c) of the Act. The hearing shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that time limits provided in §901.5045(c) of the Act shall control. At the close of the hearing, the ALJ shall recommend to the Executive Committee whether to uphold, vacate or modify the suspension order. If the ALJ's recommendation is to vacate the emergency suspension order, the Executive Committee shall determine whether to adopt that recommendation no later than the second day after it receives that recommendation.

§519.44. Default.

(a) The failure of the Respondent to timely file a written response as provided in §519.41(c) of this title (relating to Pleadings in Contested Cases) shall constitute a waiver of the right to a hearing and entitles the board to render a final order disposing of the complaint without further hearing. The ALJ shall grant any motion by the board to remand the matter to the board for final disposition. In such instances, the factual and legal allegations contained in the complaint or amended complaint shall be deemed by the board to be true and the board shall act accordingly.

(b) Failure of the Respondent to appear in person or by legal representative on the day and at the time set for a final hearing on the merits of a contested case, regardless of whether a written response has been filed, shall entitle the board to a default judgment.

(c) After remand to the board upon default or entry of a default judgment by the ALJ, the Respondent may file a motion to set aside the remand or default order and reopen the record. The motion to set aside the remand or default judgment shall be granted if the Respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

§519.45. Discovery.

(a) Matters subject to discovery are limited to those that are relevant and material to, or reasonably calculated to lead to the discovery of matters relevant and material to, issues within the board's jurisdiction as set out in the Act.

(b) Not later than 20 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following information:

(1) the correct names of the parties to the lawsuit;

(2) the name, address, and telephone number of any potential parties;

(3) the legal theories and, in general, the factual bases of the responding party's claims or defenses;

(4) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(5) for any testifying expert:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information; and

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(ii) the expert's current resume and bibliography;

(6) any witness statements.

(c) The parties may use the following methods of discovery:

(1) requests for admissions and genuineness of documents as permitted by SOAH's rules:

(2) interrogatories as permitted by SOAH's rules, which must be sworn to in accordance with Texas Rule of Civil Procedure 197.2;

(3) requests for production as permitted by SOAH's rules;

(4) deposition on written questions as provided for in the Texas Rules of Civil Procedure;

(5) oral depositions taken in accordance with the Act and the board's rules; and

(6) other forms of discovery as provided for in the APA and SOAH's rules.

(d) The board may request production of documents and tangible items that are identified in a discovery response, but a copy of which was not provided with the response, in accordance with §501.93 of this title (relating to Responses). The board shall make available requested documents and tangible items which it has no objection to providing for inspection and copying at the board's offices. The board, in its sole discretion, may provide a copy of the requested documents and tangible items for a reasonable charge.

(e) The taking and use of depositions shall be governed by the APA or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives or by order of the ALJ, depositions shall be conducted and completed no later than 30 days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in paragraph (g) of this section.

(f) In the event that, as provided for in the APA, an original deposition transcript is not returned by a deponent or a deponent's counsel, or is not filed by a deponent, a deponent's counsel, or other individual, officer, or entity in possession of or last known to be in possession of the original transcript, a party to the contested case pending before SOAH shall be entitled to have a certified true copy of the deposition transcript filed under seal at the board by the officer or a court reporter who transcribed the deposition testimony or their designee. Such a copy shall be presumed to be authentic unless an objecting party is able to rebut such a presumption by a preponderance of competent evidence.

(g) In the event of a failure by a party to comply with a discovery request, to the extent required by the board's rules, SOAH's rules,

the APA, or as agreed to between the parties in a discovery agreement, the ALJ shall, after notice and hearing, make such orders in regard to the failure as are just, and issue one or more of the following orders:

(1) an order granting a continuance;

(2) an order limiting or restricting the admissibility and use of evidence, to include exclusion of evidence or testimony;

(3) an order requiring the non-compliant party to pay the requesting party's attorney's fees, hearing and court reporter costs, and actual costs for participation in the discovery process, incurred as a result of a failure of the non-compliant party to abide by the discovery requirements;

(4) an order imposing a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under the board's rules;

(5) an order for remedies and sanctions agreed to by the parties in writing or on the record;

(6) an order disallowing further discovery of any kind or of a particular kind by the offending party;

(7) an order holding that designated facts be considered admitted for purposes of the proceeding;

(8) an order refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters into evidence;

(9) an order disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or

(10) an order striking pleadings or testimony, or both, in whole or in part.

(h) A showing of good cause for failure to comply with a discovery request to the extent required by the board's rules, SOAH's rules, the APA, or as agreed to between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(1) lack of knowledge of the existence of the information or material;

(2) lack of access to or control of the information or material; and

(3) act of nature.

(i) The discovery requirements governing SOAH proceedings may be modified by agreement of the parties either on the record or in writing signed by the parties or their representatives without approval of an ALJ.

(j) All discovery shall be completed no later than 30 days before the date set for a final hearing on the merits. All discovery requests shall be served in a timely manner to allow for a timely response prior to the end of the discovery period.

(k) The discovery requirements and time limitations set by the board's rules and SOAH's rules may be modified by the ALJ only upon a showing of good cause and lack of harm to the opposing party made pursuant to the motion of the party seeking the modification.

(l) Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.

§519.46. Official Notice and Business Records Affidavit.

No later than 15 days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing and shall file their business records with accompanying affidavits with SOAH.

§519.47. Waiver of Privilege/Confidentiality.

The provision of any information or material in response to a discovery request which may be the subject of a privilege or confidentiality requirement under the Act or other applicable law, including but not limited to the accountant/client privilege, physician/patient privilege, mental health provider privilege, shall not constitute a waiver of any such privilege or confidentiality requirement for any other purpose.

§519.48. Final Witness List.

(a) A party must designate all expert witnesses within 20 days of receipt of a written request to do so, unless otherwise determined by the ALJ upon motion for good cause. In no event may a party designate an expert witness less than 60 days prior to the date of the final hearing on the merits. The party who designates an expert shall make the designated expert available for deposition within a reasonable time period prior to the end of the discovery period as provided in §519.44(j) of this title (relating to Default).

(b) No later than 60 days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses and phone numbers of all non-expert witnesses each party intends to call to testify in its case-in-chief.

(c) No witness may be included on a list made pursuant to subsections (a) and (b) of this section that has not previously been identified in response to a request for information made pursuant to §519.45(b) of this title (relating to Discovery), if such a request has been made. Any person not timely identified pursuant to subsection (a) and (b) of this section will not be allowed to testify.

(d) For each witness that is to appear by deposition, the party offering the deposition testimony must designate in a list to be filed with SOAH and served on the opposing parties not later than the tenth day before the date scheduled for the final hearing the portions of any deposition to be offered at the final hearing.

§519.49. Exhibits.

(a) All exhibits that a party intends to offer at the final hearing, except those offered solely for impeachment, must be marked with a label that identifies the exhibit by the number under which it will be offered at the final hearing and must be exchanged with the opposing parties not later than the tenth day before the date scheduled for the final hearing. At least ten days before the date scheduled for the final hearing, each party must file with SOAH and deliver to the opposing parties a separate list of the exhibits to be offered at the final hearing, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(b) Objections to the admissibility of exhibits must be made at least five days before the final hearing by filing written objections with SOAH that include copies of the disputed exhibits and authority to support the objection. The opposing parties may file a written response with SOAH that includes authority to support the admission of the disputed exhibits. At the beginning of the final hearing the ALJ shall admit all timely exchanged and listed exhibits of any party to which there has been no objection and rule on the objections to the admission of exhibits. If at any time during the hearing it becomes apparent that the initial ruling on an objection was incorrect, the ALJ on his own motion, or the motion of any party made re-consider the initial ruling and admit or exclude the disputed exhibit. Failure to timely object to

an exhibit in writing under this subsection concedes the authenticity of the exhibit.

§519.50. Reporter and Transcripts.

(a) Each contested hearing may be recorded. Any recording of contested case proceedings shall be conducted in accordance with the APA and SOAH's rules.

(b) A stenographic reporter may sell copies of a transcript. If the Respondent in the proceedings requests the original record of the testimony and evidence received during a disciplinary hearing, the costs for the original record shall be borne by the Respondent. When no party requests a transcript, but the ALJ requests a court reporter to prepare a transcript, SOAH shall bear the cost of any transcript requested by the ALJ unless the board agrees to pay the cost or assess the cost as allowed. Any subsequent copies of the record shall be borne by the person requesting the copy.

(c) Suggested corrections to the transcript of the record may be offered within ten days after the transcript is filed in the proceeding. The parties may agree in writing or the ALJ may order a longer period for corrections to the transcript of record to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the ALJ. If suggested corrections are not objected to within ten days of receipt, the ALJ will direct the corrections to be made and the manner of making them. If the parties disagree on suggested corrections, the party requesting the correction may request a hearing before the ALJ who shall then determine the manner in which the record shall be changed, if at all.

§519.51. Evidence.

(a) The rules of evidence as applied in nonjury civil cases in a district court of this state shall be followed, except that evidence inadmissible under those rules may be admitted if it meets the standards set out in section 2001.081 of the APA. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) Objections to physical evidence shall be made in conformity with section 519.49(b) of this title (relating to Exhibits). Objections to oral evidence shall be made and shall be noted in the record. Formal exceptions to rulings of the ALJ during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the ALJ the requested action.

(c) If evidence is excluded from the record by a ruling of the ALJ, the evidence may be included in the record by an offer of proof made by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review.

(d) When subpoenaed by the board, unless stipulated by the parties, the office records of each Respondent shall have stapled thereto an affidavit in the form approved and furnished by the board which contains the requisite elements to comply with the Texas Rule of Evidence 902 (10)(b), relating to form of affidavits for business records.

(e) In accordance with section 2001.081 of the APA and consistent with §901.502(10) of the Act and chapter 53 of the Texas Occupations Code, deferred adjudications are admissible as evidence that the Respondent violated the law with which the Respondent was charged and pled to, which gave rise to the deferred adjudication.

§519.52. Motions.

Any motion filed during the pendency period of a hearing shall be filed with SOAH in accordance with its rules.

§519.53. Dismissal by the Board.

The board may dismiss a complaint at any time, even after hearing or issuance of a proposal for decision if the matter is currently pending at SOAH. The dismissal is effective immediately upon the board giving notice of the dismissal. If the matter is pending at SOAH at the time of the dismissal, the board shall file the notice of dismissal with SOAH and the ALJ assigned to the matter shall promptly enter an order of dismissal without prejudice. The board may not impose a sanction on a certificate or registration holder based on a dismissed complaint.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402046
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §§519.70 - 519.72

The Texas State Board of Public Accountancy (Board) proposes new rules §519.70 concerning Proposals for Decision; §519.71 concerning Exceptions and Replies; and §519.72 concerning Final Decisions and Orders in Subchapter D concerning Procedures after Hearing.

The new rules §519.70 through §519.72 will rewrite the old rules and describe the procedure and timing for the events that occur after the hearing at SOAH has ended.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero because the rules are being rewritten and do not address costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because the rules are being rewritten and do not address costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because the rules are being rewritten and do not address revenue.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that these rules have been rewritten and easier to understand.

The probable economic cost to persons required to comply with the new rules will be zero because the rules are being rewritten and do not address costs.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the rules are being rewritten and do not address costs.

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

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§519.70. Proposals for Decision.

(a) In addition to any other requirement of the Act, the APA, the board's rules or SOAH's rules, the ALJ shall serve on the parties a PFD that contains:

(1) a summary of the evidence adduced by each party;

(2) a statement of the ALJ's reasons for the proposed decision;

(3) findings of fact based on the evidence and on matters officially noticed;

(4) conclusions of law necessary to the proposed decision;

(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board;

(6) a finding as to whether the board is authorized by the Act to take disciplinary action against the Respondent; and

(7) a recommendation as to the appropriate disposition.

(b) If a finding of fact is stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting that finding.

(c) If the board's staff submits proposed findings of fact, the ALJ shall rule on each proposed finding, including a statement as to why any proposed finding was not included in the proposal for decision.

(d) The ALJ's recommendations as to the appropriate disposition shall not be stated as a conclusion of law but only as a recommendation.

§519.71. Exceptions and Replies.

(a) Any party of record who is aggrieved by the PFD may file exceptions to the PFD within 20 days from the date of service of the PFD. Replies to the exceptions may be filed by opposing parties within ten days of the filing of the exceptions. Exceptions and replies shall be filed with SOAH.

(b) The form of exceptions and replies is governed by SOAH's rules.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Any party may request oral argument before the board after service of the PFD and disposition of the exceptions, if any, and before the board's final determination of the matter. The written request for oral argument must be filed with the Board's Executive Director no later than 5:00 p.m. on the twentieth day prior to the board meeting at which the matter is to be considered. Oral argument is allowed only at the discretion of the board. In the event oral argument is granted by the board, each party will be notified of the time and place of the argument and the amount of time allotted for the presentation. Only one spokesman per party and position will be allowed to speak. At the conclusion of the presentation, board members may ask questions of the person who made the presentation. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

§519.72. Final Decisions and Orders.

(a) All final decisions and orders of the board shall be made during a public meeting duly noticed pursuant to the chapter 551 of the Government Code (relating to Open Meetings). The board's decisions and orders shall be in writing and reported in the minutes of the meeting. A final order of the board shall include findings of fact and conclusions of law, separately stated.

(b) A copy of the final decision or order of the board shall be delivered or mailed to all parties or, if represented by counsel, to their attorney of record.

(c) It is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the proposed order is:

(1) erroneous;

(2) against the weight of the evidence;

(3) based on unsound accounting principles or auditing standards;

(4) based on insufficient review of the evidence;

(5) not sufficient to protect the public interest;

(6) not sufficient to adequately allow rehabilitation of the licensee;.

(7) an infringement on the board's discretion to determine the board's policies; or

(8) to correct a technical error.

(d) If the board modifies, amends, or changes the ALJ's recommended order, an order shall be prepared reflecting the board's changes and the board's justification for the changes.

(e) A final order or board decision is administratively final when:

(1) there is no filing of a timely motion for rehearing, upon the expiration of 20 days from the date the final order or board decision is entered; or

(2) a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402047
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER E. POST BOARD ORDER PROCEDURES

22 TAC §§519.90 - 519.94

The Texas State Board of Public Accountancy (Board) proposes new rule §519.90 concerning Motions for Rehearing; §519.91 concerning Judicial Review; §519.92 concerning The Record and Assessment of Cost of Preparation; §519.93 concerning Publication of Disciplinary/Administrative Sanctions and §519.94 concerning Compliance with Board Orders in Subsection E regarding Post Board Order Procedures.

The new rules §519.90 through §519.94 are a renumbering and relocating of former rule §519.9(f) which is now §519.90, §519.10 which is now §519.92, §519.12 which is now §519.93 and §519.11 which is now §519.94. New rule §519.91 states that appeals of board orders are governed by the APA. These rules describe the sequence of events, deadlines and procedure after the Board issues an order.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero because four of the rules are only being renumbered and relocated and the fifth rule is a restatement of the APA.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because four of the rules are only being renumbered and relocated and the fifth rule is a restatement of the APA.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because four of the rules are only being renumbered and relocated and the fifth rule is a restatement of the APA.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that the rules that address post-board order events will be located sequentially and in one location.

The probable economic cost to persons required to comply with the new rules will be zero because four of the rules are only being renumbered and relocated and the fifth rule is a restatement of the APA.

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

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on Thursday, April 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because four of the rules are only being renumbered and relocated and the fifth rule is a restatement of the APA.

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

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§519.90. Motions for Rehearing.

(a) A motion for rehearing must be filed with the board in accordance with the APA.

(b) Board action on the motion for rehearing must be taken in accordance with the APA.

§519.91. Judicial Review.

Once a board order has become administratively final under §519.72(e) of this title (relating to Final Decisions and Orders), a party aggrieved by the order may seek judicial review of the order in accordance with the APA.

§519.92. The Record and Assessment of Cost of Preparation.

(a) The record in any case includes:

(1) all pleadings, motions, and intermediate rulings of the ALJ;

(2) the transcript of the hearing on the merits;

(3) the evidence received or considered at the hearing on the merits;

(4) any statements of matters officially noticed;

(5) all objections to evidence, rulings on the objections and any offers of proof;

(6) any decision or opinion, objections to any decision or opinion, and rulings on the objections; and

(7) all staff memoranda and correspondence from parties or data submitted to or considered by the ALJ or the board in making decisions.

(b) The board shall require a party who seeks judicial review of a final decision of the board to pay all or part of the actual cost of preparation of the original or a certified copy of the record required to be transmitted to a reviewing court.

§519.93. Publication of Disciplinary/Administrative Sanctions.

The board may cause to be published in the board's official publication, the Texas State Board Report, and may publish in newspapers of general distribution in the state, the name of any certificate or registration holder who is the subject of a disciplinary or administrative action. Such publication shall not occur until a final board order has been issued. The publication may contain a narrative factual summary of the actions giving rise to the disciplinary or administrative action.

§519.94. Compliance with Board Orders.

The board shall use all available means to insure that any person subject to a board order adheres to the terms and conditions of that board order.

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

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402048
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 265. GENERAL SANITATION
SUBCHAPTER L. STANDARDS FOR PUBLIC POOLS AND SPAS

The Texas Department of Health (department) proposes the repeal of §§265.181 - 265.207 and new §§265.181 - 265.208, concerning the standards for public swimming pools and spas. The repeal is necessitated by substantive changes made to these rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). The department reviewed §§265.181 - 265.207, and has determined that the reasons for adopting the sections continue to exist, in that rules on this subject are still needed. The repeal of existing rules and proposed new rules accommodate needed revisions as outlined in this preamble.

The department published a Notice of Intent to review for §§265.181 - 265.207 in the September 12, 2003, issue of the *Texas Register* (28 TexReg 8014). No comments were received following publication of the notice.

In order to consolidate and simplify the rules, the proposed new §§265.181 - 265.208 incorporates requirements from 25 Texas Administrative Code (TAC), Chapter 337, Water Hygiene, Subchapter B, "Design Standards for Public Swimming Pool Construction". Sections 337.71 - 337.96 are being repealed in a companion rulemaking action. Rules pertaining to the construction, operation, and sanitization of a pool or spa in existence prior to October 1, 1999, and, that are not specifically addressed in existing Chapter 265, are found in Chapter 337, Subchapter B, "Design Standards for Public Swimming Pool Construction". Sections 265.181 - 265.207 proposed for repeal, encompass all requirements for public pools and spas constructed on or after October 1, 1999, (post-10/01/99 pools and spas) and limited requirements for pools and spas constructed prior to October 1, 1999, (pre-10/01/99 pools and spas). After this rulemaking, all pool and spa requirements will be included in the new proposed §§265.181 - 265.208.

New §§265.181 - 265.208 will more clearly define the differences in requirements for pools and spas built on or after October 1, 1999, and those requirements for pools and spas built prior to October 1, 1999. Definitions have been updated to include language and terminology utilized within the public pool and spa industry. Also, the proposed rules include current and accepted minimum industry standards that have been tested, certified and adopted by pool and spa owners and operators, and by construction and maintenance companies. More sophisticated and highly efficient pool and spa equipment now allows installation of specialized water recreational amenities in pools built before and after October 1, 1999. The proposed new rules will include provisions regulating, when applicable, the technologically sophisticated water amenity upgrades at public pools and spas.

Further, existing §265.190, requires upgrades be made to suction systems in all pools and spas constructed before October 1, 1999, and, that multiple inspections by qualified individuals be made in order to determine the type of upgrade needed. After careful review of existing §265.190, it was determined that many pools and spas, constructed prior to October 1, 1999, would be unable to meet the structural upgrade requirements. Additionally, the cost involved in obtaining the required inspections and upgrades would be prohibitive and, if made, the upgrades would

not necessarily provide protection against body entrapment, limb entrapment and hair entanglement. New §265.190 will eliminate the need for multiple inspections and offer pool owner/operators multiple upgrade choices. These upgrade choices will not only provide protection against entrapment and entanglement dangers, but also provide the owner/operator less costly options.

The current rules for public pools and spas, §§265.181 - 265.207, contain recommendations for the owner/operator that include both structural and operational elements. In all cases these recommendations exceed the scope of providing minimum construction, operation and maintenance standards. The recommendations have been removed from the proposed new rules: however; because they are believed to increase the levels of safety for pool and spa owner/operators and users, the recommendations will be available on the General Sanitation website.

Elias Briseno, Director, General Sanitation and Product Safety Division, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections as proposed because the rules do not involve new program activities.

Mr. Briseno has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the rule will be increased protection for the public from disease transmission, catastrophic injury and death in public pools and spas. The proposal will not adversely affect small businesses or micro-businesses. Administrating the sections as proposed could reduce personnel and equipment costs, possibly result in a decrease in utility costs, and help reduce the cost of formerly required upgrades. For example, elimination of a section requiring some facilities to construct fences with expensive, special order materials, should result in cost savings for micro-businesses, small businesses, and larger businesses. There will be no impact on local employment.

Comments on the proposal may be submitted to Mr. Elias Briseno, Director, General Sanitation and Product Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, phone 512-834-6600, fax 512-834-6707, or by email to katie.moore@tdh.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

25 TAC §§265.181 - 265.207

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

The repeals are proposed under Health and Safety Code, §§341.064 and 341.002, which provide the Texas Board of Health (board) with the authority to adopt necessary rules to administer this chapter; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeals affect the Health and Safety Code, Chapters 12 and 341. The review of the rules implements Government Code, §2001.039.

§265.181. General Provisions.
§265.182. Definitions.
§265.183. Plans, Permits and Instructions.
§265.184. General and Structural Design.
§265.185. Dimensional Design.
§265.186. Deck Entry/Exit, and Diving Facilities, and Other Deck Equipment.
§265.187. Circulation Systems.
§265.188. Filters.
§265.189. Pumps and Motors.
§265.190. Suction Outlets and Return Inlets.
§265.191. Surface Skimming and Perimeter Overflow (Gutter) Systems.
§265.192. Electrical Requirements.
§265.193. Heaters.
§265.194. Pool and Spa Water Supply.
§265.195. Facility Drinking Water Supply.
§265.196. Waste Water Disposal.
§265.197. Disinfectant Equipment and Chemical Feeders.
§265.198. Gas Chlorination.
§265.199. Specific Safety Features.
§265.200. Pool Yard Enclosures.
§265.201. Dressing and Sanitary Facilities.
§265.202. Food, Beverages, and Containers.
§265.203. Operation and Management.
§265.204. Water Quality.
§265.205. Spa Construction, Operation, and Maintenance.
§265.206. Compliance: Inspections and Investigations.
§265.207. 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.

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Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 458-7236

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25 TAC §§265.181 - 265.208

The new rules are proposed under Health and Safety Code, §§341.064 and 341.002, which provide the Texas Board of Health (board) with the authority to adopt necessary rules to administer this chapter; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new rules affect the Health and Safety Code, Chapters 12 and 341. The review of the rules implements Government Code, §2001.039.

§265.181. General Provisions.

(a) Scope and purpose of rules. These rules address minimum standards for design and construction of pools and spas. These rules also establish minimum operating standards for pools and spas to assure proper filtration, chemical, and general maintenance of water and safety to users. These standards are based in part on the American National Standards Institute and the National Spa and Pool Institute Standards for Public Swimming Pools (ANSI/NSPI-1, 1991) and the

American National Standards Institute and National Spa and Pool Institute Standards for Public Spas (ANSI/NSPI-2, 1992). These rules are in addition to any municipal or federal laws applicable to pools and spas. These rules implement Texas Health and Safety Code, Title 5, Subtitle A, §341.064(g), and are considered good public health engineering and safety practices.

(b) Application of rules.

(1) A pool or spa constructed prior to October 1, 1999 will be defined as "pre-10/01/99". A pool or spa constructed on or after October 1, 1999 will be defined as "post-10/01/99". A pool or spa is considered constructed on the date that a building permit for construction of the pool or spa is issued by a municipality or, if no building permit is required, the pool/spa operator/owner must produce adequate written documentation of the date that excavation or electrical service to the pool or spa begins, whichever is first.

(2) A pool or spa serving only one or two dwellings (a single family home or a duplex), regardless of whether the pool or spa is permanently or temporarily installed in or above the ground, is exempt from these rules.

(3) Each section of the rules states the extent to which the rule applies to post-10/01/99 or pre-10/01/99 pools, spas, or facilities.

(4) The standards for pools or spas that apply to pools or spas constructed on or after October 1, 1999, are contained in these rules. Except for rules that specifically apply to pre-10/01/99 pools and spas, the standards for pool or spa design and construction are those standards that were in existence at the time the pool or spa was initially constructed, including then-applicable local, state and federal laws except as otherwise stated in these rules. Owners of pre-10/01/99 pools and spas may follow the rules applicable to post-10/01/99 pools and spas.

(5) The standards for spa design, construction, and operation that apply to post-10/01/99 and pre-10/01/99 spas are contained or referenced in §265.205 of this title (relating to Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Spas).

(6) The standards for pool or spa operation that apply to pre-10/01/99 pools or spas are the provisions that specifically state that they are applicable to pre-10/01/99 pools or spas.

(7) The standards contained in these rules may be met notwithstanding minor variations in equipment, materials, or design if:

(A) the variation provides the quality, strength and durability equal to or greater than the standards contained in these rules; and

(B) the operation, maintenance, safety, and sanitation of the pool or spa are not adversely affected by the variation.

(8) Where a local regulatory authority has jurisdiction for the regulation of pools and spas, such authorities may, as statutorily allowed, adopt standards that vary from these standards; however, such standards shall be the same as, equivalent to, or more stringent than these standards and shall be in accordance with good public health engineering and safety practices.

(c) Stricter codes and standards. Whenever a pool or spa owner is in compliance with a more recent code or standard that is stricter than these rules, that standard shall be deemed as in compliance with these rules on a particular subject.

(1) Except as expressly provided in these rules, an owner whose pool or spa was constructed in compliance with a standard applicable on the date of construction is not required to modify construction to comply with a subsequent construction standard for post-10/01/99 pools and spas.

(2) Except as expressly provided in these rules, an owner whose pool or spa equipment was in compliance with a standard applicable at the time installation of equipment is not required to purchase and reinstall equipment complying with a subsequent equipment standard for post-10/01/99 pools and spas in these rules.

(3) Post-10/01/99 and pre-10/01/99 facilities shall be required to meet the operational standard that is most applicable to their use. For example, if a pool is operated as a Class C pool but will be made available for use by the general public, the pool shall meet Class B operational standards for lifeguards, etc.; or if a pool is normally operated as a Class B pool but, is used for a private party and is closed to the general public for the duration of the party.

(4) A post-10/01/99 facility shall be required to meet the applicable construction standard that is most restrictive for its intended use. For example, if a pool at a facility that is generally classified as a Class C pool will be opened for use by the general public at any time, it shall be constructed to meet Class B pool standards.

§265.182. Definitions.

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

(1) Above-ground pool or spa--A removable pool or spa of any shape that is located on the surrounding earth or a pool or spa package located in an excavation below the ground level that may be readily disassembled or stored and reassembled.

(2) Actual water level--The water level at any particular point in time, which may vary with specific conditions such as rainfall or number of users. (See definition (46) "Design water level" and (87) "Operating water level range".)

(3) Algae--Microscopic plant-like organisms that contain chlorophyll and include green, blue-green or black brown, and yellow-green (mustard) algae.

(4) Algaecide--A natural or synthetic substance used for killing, destroying, or controlling algae.

(5) Alkalinity--The amount of bicarbonate, carbonate or hydroxide compounds present in water solution. (See definition (142) "Total alkalinity".)

(6) Approved cover or approved drain cover--A suction outlet drain cover that meets the requirements of §265.190(c)(1) of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(7) Approved grate--A suction outlet grate that meets the requirements of §265.190(c)(2) of this title.

(8) ACI--American Concrete Institute, P. O. Box 9094, Farmington Hills, Michigan 48333-9094, telephone (248) 848-3800.

(9) ANSI--American National Standards Institute, 25 West 43rd Street (4th Floor), New York, New York 10036, telephone (212) 642-4900.

(10) ANSI/NSPI-1, 1991--American National Standards Institute and National Spa and Pool Institute Standards for Public Swimming Pools adopted in 1991.

(11) ANSI/NSPI-2, 1992--American National Standards Institute and National Spa and Pool Institute Standards for Public Spas adopted in 1992.

(12) ARC--American Red Cross, 8111 Gatehouse Road, Falls Church, Virginia 22042, telephone (703) 206-6000.

(13) ASHRAE--American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, Georgia 30329-2305, telephone (800) 527-4723.

(14) ASME--American Society of Mechanical Engineers, 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007-2900, telephone (800) 843-2763.

(15) ASTM--American Society of Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, telephone (610) 832-9500.

(16) Available chlorine--Rating of chlorine containing products for total oxidizing power. (See definition number (61) "Free available chlorine".)

(17) AVS--An atmospheric vent system, as described in §296.190(d)(3)(A) of this title for minimizing risk of entrapment.

(18) Backwash--The process of cleansing the filter medium and/or elements by the reverse flow of water through the filter.

(19) Backflow prevention device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system. (See definition number (40) "Cross-connection control device".)

(20) Bacteria--Single-celled microorganisms of various forms, some of which cause infections or disease.

(21) Beginner's areas--Water areas that are 3 feet or less in depth in a pool.

(22) Bleeder valve--A device that allows air to be vented from a closed system. (See definition number (153) "Valve".)

(23) Bonded--The permanent joining of metallic parts to form an electrically conductive path that will ensure electrical continuity and the capacity to conduct safely any current likely to be imposed in order to minimize the risk of electrocution. Examples of bonding are the installation of a metal wire from a pool or spa pump to the rebar in the pool or spa wall, or interconnecting all rebar in a pool or spa wall by metal wire prior to pouring concrete in the wall.

(24) Breakpoint--The practice of adding a sufficient amount of chlorinating compound to water to destroy chlorine demand compounds and any combined chlorine, which is present. Generally, the level of chlorine added is 10 times the level of combined chlorine in the water. (See definition number (131) "Super chlorination".)

(25) Breakpoint chlorination--The addition of a sufficient amount of chlorine to water to destroy the chlorine demand compounds and any combined chlorine that is present. (See definition number (131) "Super chlorination".)

(26) Broken stripe--A horizontal stripe that is at least 1 inch wide with uniform breaks in the stripe, with the breaks totaling not more than 75% of the length of the stripe and stripe breaks.

(27) Bromine--A chemical element (Br2) that exists as a liquid in its elemental form or as part of a chemical compound that is a biocide agent used to disinfect pool or spa water.

(28) Chemical feeder--A mechanical device for applying chemicals to pool or spa water.

(29) Chloramine--A compound formed when chlorine combines with nitrogen or ammonia that when found in significant amounts in a pool or spa, may cause eye and skin irritation and may have an objectionable odor.

(30) Chlorinator--A device to apply or to deliver a chlorine disinfectant to water at a controlled rate.

(31) Chlorine--A chemical element (Cl2) that exists as a gas in its elemental form or as a part of chemical compound that is an oxidant Chlorine is a biocide agent used to disinfect pool or spa water.

(32) Chlorine demand compounds--Organic matter, chloramines, and other such compounds that chlorine reacts with and that depletes chlorine.

(33) Chlorine Institute--Chlorine Institute, 2001 L Street North West, Suite 506, Washington, D.C. 20036-4919, telephone (202) 775-2790.

(34) Circulation equipment--The mechanical components that are a part of a circulation system on a pool or spa. Circulation equipment may include but is not limited to, categories of pumps; hair and lint strainers; filters; valves; gauges; meters; heaters; surface skimmers; inlet/outlet fittings; and chemical feeding devices. The components have separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining pool or spa water in a clear, sanitary, and desirable condition for use.

(35) Circulation system--An arrangement of mechanical equipment or components, connected by piping to a pool or spa in a closed circuit. The function of a circulation system is to direct water from the pool or spa, causing it to flow through the various system components for purposes of clarifying, heating, purifying, and returning the water back to the original body of water.

(36) Combined chlorine--The portion of the total chlorine pre-10/01/99 in water in chemical combination with ammonia, nitrogen, and/or organic compounds, mostly comprised of chloramines. Combined chlorine plus free chlorine equals total chlorine.

(37) Construction date--The date that a building permit for construction of the pool or spa is issued by a municipality or, if no building permit is required, written documentation of the date that excavation or electrical service to the pool or spa begins, whichever is first.

(38) Coping--The cap on the pool or spa wall that provides a finishing edge around the pool or spa. The coping can be formed, cast in place or pre-cast, or pre-fabricated from metal or plastic materials.

(39) CPSC--United States Consumer Product Safety Commission, Washington, D.C. 20207, telephone (800) 638-2772.

(40) Cross-connection control device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system. (See definition number (19) "Backflow prevention device".)

(41) Cyanuric acid--A chemical that helps reduce the excess loss of chlorine in water due to the ultraviolet rays of the sun.

(42) Decks--Areas immediately adjacent to or attached to a pool or spa that are specifically constructed or installed for sitting, standing, or walking.

(43) Deep areas--Water levels in pools that are over 5 feet deep.

(44) Department--The Texas Department of Health, General Sanitation Division, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 834-6635.

(45) Depth (pool or spa depth)--The vertical distance measured at 3 feet from the pool or spa wall from the bottom of the pool or spa to the design water level.

(46) Design water level--The design water level defined in either of the following ways:

(A) skimmer system--The design water level shall be at the midpoint of the operating range of the skimmers; or

(B) overflow system--The design waterline shall be at the top of the overflow rim of the gutter system.

(47) DPD--A chemical testing reagent (N,N-Diethyl-P-Phenylenediamine) used to measure the levels of free chlorine or bromine in water by yielding a series of colors ranging from light pink to dark red.

(48) Disinfectant--Energy or chemicals used to kill undesirable or pathogenic (disease causing) organisms, and having a measurable residual at a level adequate to make the desired kill.

(49) Disinfectant equipment--Equipment designed to apply or deliver a disinfectant (such as chlorine or bromine) at a controlled rate.

(50) Diving board--A recreational mechanism for entering a pool, consisting of semi-rigid board that derives its elasticity through the use of a fulcrum mounted below the board.

(51) Diving equipment for competition--Competitive diving boards and fulcrum-setting diving stands intended to provide adjustment for competitive diving.

(52) Dwelling or rental dwelling--One or more rooms rented to one or more persons where a Class C or Class D pool or spa is located.

(53) Effective filter area--Total surface area through which designed flow rate will be maintained during filtration.

(54) Effluent--The water that flows out of a filter, pump, or other device.

(55) Facility(ies)--The pool or spa, restrooms, dressing rooms, equipment rooms, deck, enclosure, and other appurtenances directly serving the pool or spa area.

(56) Feet of head--A basis for indicating the resistance in a hydraulic system, equivalent to the height of a column of water that would cause the same resistance (100 feet of head equals 43 pounds per square inch). The dynamic head is the sum of all resistances in a complete operating system.

(57) Filter--A device that removes undissolved particles from water by recirculating the water through a porous substance (filter media or element).

(58) Filter element--A device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit and return it to the pool or spa. A filter element usually consists of a septum and septum support, or a cartridge.

(59) Filter media--A finely graded material (for example, sand, diatomaceous earth, polyester fabric, and anthracite) that removes filterable particles from the water.

(60) Floor--The interior bottom surface of a pool or spa.

(61) Free available chlorine--That portion of the total chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and that will react chemically with undesirable or pathogenic organisms. Combined chlorine plus free chlorine equals total chlorine.

(62) Handhold--A ledge, coping, rope, railing, deck, or similar construction along the immediate top edge of the pool that provides a slip-resistant surface or grip.

(63) Handrail--A railing that is intended to be gripped for resting and/or steadying a person while entering or exiting a pool or spa and that is typically part of a ladder, a set of steps, or deck-installed equipment.

(64) Hardness--The amount of calcium and magnesium dissolved in water measured by a chemical test kit and expressed as parts per million (ppm) of equivalent calcium carbonate.

(65) Heat exchanger--A device with coils, tubes or plates that absorbs heat from any fluid, liquid or air, and transfers that heat to another fluid without intermixing the fluids.

(66) Heat pump--A refrigeration compressor, usually electrically driven, that is operated in reverse. To obtain heat, the evaporator side (cooling coil) is exposed to warm water, air or ground. The evaporator coil absorbs the heat from this source and transfers it to the condenser coil where it discharges the heat to the pool or spa to be heated.

(67) Hot tub--A spa constructed of wood with sides and bottoms formed separately and joined together by pressure from surrounding hoops, bands, or rods; distinct from spa units formed of plastic, concrete, metal, or other materials.

(68) IESNA--Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, New York 10005-4001, telephone (212) 248-5000.

(69) Influent--The water entering a filter or other device.

(70) Jump board--A recreational mechanism for entering a pool that has a coil spring or comparable device located beneath the board which is activated by the force exerted in jumping on the board.

(71) Labeled--Equipment or material to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

(72) Ladders -

(A) Deck ladder--A ladder ascending from ground level outside the pool or spa to the level of a deck.

(B) In-pool or in-spa ladder--A ladder located in a pool or spa to provide ingress and egress from the deck.

(73) Listed--Equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate designated standards or has been tested and found suitable for use in a specified manner.

(74) Local regulatory authority--The local enforcement body or authorized representative having jurisdiction over pools, spas, and associated facilities.

(75) May--An advisory statement or a good practice and is not legally required.

(76) MSHA--Mine Safety and Health Administration, 2002 Thayer Center, Oakland, Maryland 21550, telephone (301) 334-3831.

(77) Multi-port valve--A device that allows the multi-directional control of the passage or flow of water through a system. (See definition number (153) "Valve".)

(78) NEC--National Electric Code, published by NFPA. (See definition number (80) "NFPA".)

(79) NEMA--National Electric Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, Virginia 22209, telephone (703) 841-3200.

(80) NFPA--National Fire Protection Association, 11 Tracy Drive, Avon, Massachusetts 02322, telephone (800) 344-3555.

(81) NOx--(also written nox) Nitrogen oxides or the sum of the nitric oxide and nitrogen dioxide found in the flue gas or emission point of a source.

(82) NRPA--National Recreation and Park Association, 650 West Higgins Road, Hoffman Estates, Illinois 60195-3402, telephone (847) 843-7529.

(83) NSFI--NSF International, (National Sanitation Foundation International), 789 North Dixboro Drive, Ann Arbor, Michigan 48115, telephone (800) 673-6275.

(84) NSPF--National Swimming Pool Foundation, 224 East Cheyenne Mountain Boulevard, Colorado Springs, CO 80906, telephone (719) 540-9119.

(85) NSPI--National Swimming Pool Institute, 2111 Eisenhower Avenue, Alexandria, Virginia 22314, telephone (703) 838-0083.

(86) Offset ledge--A horizontal shelf or ledge projecting toward the interior of a pool from the vertical wall that provides a safe footing for a pool user to stand on in deep areas of the pool.

(87) Operating water level range--The operating water level defined in one of the following ways:

(A) skimmer system--Two inches above to 2 inches below the midpoint of the operating range of the device, or manufacturer's maximum stated operating range; or

(B) overflow (gutter) system--The manufacturer's maximum stated operating range above the design water level.

(88) Organic matter--Perspiration, urine, fecal matter, saliva, suntan oil, cosmetics, lotions, dead skin, and similar debris introduced to water by users and the environment.

(89) ORP--The potential level of oxidation-reduction produced by strong oxidizing (sanitizing) agents in a water solution. Oxidation level is measured in millivolts by an ORP meter.

(90) OSHA--United States Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (800) 321-6742.

(91) Outlet--(See definition number (130) "Suction outlet".)

(92) Overflow system--Overflows, surface skimmers, and surface water collection systems of various design and manufacture for removal of pool or spa surface water.

(93) Owner/operator--Fee title holder of the property upon which the pool or spa is located, and/or business manager, complex manager, property owners, association manager, rental agent or other individual who is in charge of the day to day operation or maintenance of the property. The owner/operator is responsible to ensure that the pool or spa and associated facilities comply with state and local pool or spa design, construction, operation, and maintenance standards.

(94) Parts per million (PPM)--A unit of measurement in chemical testing that indicates the parts by weight in relation to one million parts by weight of water. For the purposes of pool or spa water chemistry, ppm is considered to be essentially identical to the term milligrams per liter (mg/L).

(95) pH--A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of zero to 14, zero being most acidic, 1 to 7 being acidic, 7 being neutral, 7 to 14 being basic and, 14 being most basic.

(96) Plaster--A type of interior finish (a mixture of cement and aggregate) that is applied to a concrete pool or spa and that is either white or meets the observable "black disk" requirement in §265.184(f) of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas) and §265.185(c) of this title (relating to General Construction and Design for Pre-10/01/99 Pools and Spas).

(97) Plummet--A line perpendicular to the water surface and extending vertically to a point located at the front end of the diving board and at the center line directly in front of the diving board.

(98) Pool--Any man-made permanently installed or nonportable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool. References within the standard to various types of pools are defined by the following categories.

(A) Class A pool--Any pool used, with or without a fee, for accredited competitive aquatic events such as Federation Internationale De Natation Amateur (FINA), United States Swimming, United States Diving, National Collegiate Athletic Association (NCAA), National Federation of State High School Associations (NFSHSA), events. A Class A pool may also be used for recreation.

(B) Class B pool--Any pool used for public recreation and open to the general public with or without a fee.

(C) Class C pool--Any pool operated for and in conjunction with

(i) lodging such as hotels, motels, apartments, condominiums, or mobile home parks,

(ii) property owner associations, private organizations, or clubs, or

(iii) a school, college or university while being operated for academic or continuing education classes. The use of such a pool would be open to occupants, members or students, etc., and their guests but not open to the general public.

(D) Class D pool--A wading pool with a maximum water depth of 24 inches at any point.

(99) Pool yard or spa yard--An area that has a pool yard or spa yard enclosure and that contains a pool or spa.

(100) Pool yard or spa yard enclosure--A fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool or spa.

(101) Post-10/01/99 pool or spa--A pool or spa built on or after October 1, 1999, unless otherwise indicated. See §265.181(b) of this title (relating to General Provisions).

(102) Post-10/01/99 pool and/or spa construction--The activity of building or installing a pool and/or spa structure, and its component parts, where no such structure has previously existed or where previously pre-10/01/99 pool or spa structures have been removed.

(103) Potable water--Water that is bacteriologically safe and otherwise suitable for drinking and is regulated by the Texas Commission on Environmental Quality or local regulatory authority as a drinking water system.

(104) Pre-10/01/99 pool or spa--A pool or spa built before October 1, 1999, unless otherwise indicated. See §265.181(b) of this title (relating to General Provisions).

(105) Precipitate--A solid material that is forced out of a solution by some chemical reaction and that settles out or remains as a haze in suspension (turbidity).

(106) Pressure differential--The difference in pressure between two parts of a hydraulic system, such as the influent and effluent of a filter.

(107) PSI--Pounds per square inch.

(108) Pump--A mechanical device, usually powered by an electric motor that causes hydraulic flow and pressure for the purpose of filtration, heating, and circulation of pool and spa water.

(109) Push-pull valve--A device that allows the dual direction control or flow of water through a system. (See definition number (153) "Valve.")

(110) Rate of flow--The quantity of water flowing past a designated point within a specified time, such as the number of gallons flowing in 1 minute (gallons per minute).

(111) Regulatory authority--Any federal, state, or local enforcement body or authorized representative having jurisdiction over pools, spas, and associated facilities.

(112) Residential pool or spa--A pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests. It includes a pool or spa serving only a single-family home or a duplex.

(113) Return inlet or inlet--The aperture or fitting through which the water under positive pressure returns into a pool or spa.

(114) Ring buoy--A ring-shaped floating buoy capable of supporting a user.

(115) Rope and float line--A continuous line that is not less than 1/4 inch in diameter and that is supported by buoys and attached to opposite sides or ends of a pool to separate the deep and shallow ends or mark exercise or racing lanes.

(116) Scale--The precipitate that forms on surfaces in contact with water when the hardness, pH, or total alkalinity levels are too high.

(117) Self-closing and self-latching device--A device that causes a gate to automatically fully close and latch without human or electrical power.

(118) Separation tank--A tank used in conjunction with a filter to facilitate the separation of filtrate material for disposal.

(119) Service animal--A guide dog, signal dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, or providing minimal protection or rescue work, such as pulling a wheelchair, or fetching dropped items.

(120) Shall--Mandatory provisions of these regulations.

(121) Shallow areas--Pool water areas that are 5 feet deep or less.

(122) Shock treatment--The practice of adding significant amounts of an oxidizing chemical to water to destroy ammonia and nitrogenous and organic contaminants in water.

(123) Skimmer weir--Part of a skimmer that adjusts automatically to small changes in water level to assure a continuous flow of water to the skimmer.

(124) Slide--A recreational feature with a flow of water and an inclined flume or channel by which a rider is conveyed downward into a pool.

(125) Slip-resistant--A surface that has been treated or constructed to significantly reduce the chance of slipping.

(126) Spa--A constructed permanent or portable structure that is 2 feet or more in depth and that has a surface area of 250 square feet or less or a volume of 3250 gallons or less and that is intended to be used for bathing or other recreational uses and is not drained and refilled after each use. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof. A spa, as is defined in these rules, does not refer to a business establishment such as a day spa or a health spa. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub," etc. A spa does not include a residential spa. (See definition number (112) "Residential pool or spa".)

(127) Special aquatic activity device--An interactive play device, such as a slide, spray stream, or similar item, utilizing water that is recirculated.

(128) Stabilizer--A chemical that helps reduce the excess loss of chlorine in water due to the ultraviolet rays of the sun. (See definition number (41) "Cyanuric acid".)

(129) Steps, recessed steps, ladders, and recessed treads--A means of pool and spa ingress and egress that may be used separately or in conjunction with one another.

(A) Steps--A riser/tread or series of risers/treads extending down from the deck and terminating at the pool or spa floor. Included are recessed steps that have the risers located outside of user areas.

(B) Ladders--A series of vertically separated treads or rungs connected by vertical rail members or independently fastened to an adjacent vertical pool or spa wall. (See definition number (72) "Ladders" for particular ladder types.)

(C) Recessed treads--A series of vertically spaced cavities in the pool or spa wall creating tread areas for step holes.

(130) Suction outlet--The aperture or fitting through which the water is drawn from the pool or spa. A skimmer is not considered a suction outlet for purposes of these rules.

(131) Super chlorination--The practice of adding a sufficient amount of chlorinating compound to water to destroy chlorine demand compounds and any combined chlorine that is present. Generally, the level of chlorine added is 10 times the level of combined chlorine in the water. (See also definition number (25) "Breakpoint chlorination".)

(132) Surface skimmer system/Through wall skimmer--A device installed in the wall of an in-ground pool or spa, or above-ground pool or spa that permits the continuous removal of floating debris and surface water to the filters.

(133) Surge pit--A collecting tank or sump that allows the pool drains(s) and surface collection system to flow into it by gravity.

(134) SVRD--A safety vacuum release device, as described in §296.190(d)(3)(B) of this title for minimizing risk of entrapment.

(135) SVRS--A safety vacuum release system that consists of either an SVRD or an AVS, as described in §296.190(d)(3) of this title for minimizing risk of entrapment.

(136) Swimout--A recessed area outside of the general perimeter of the pool designed to facilitate the entry and exit of swimmers from a pool.

(137) TCEQ--Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-1000.

(138) TDLR--Texas Department of Licensing and Regulation, Boiler Division, P. O. Box 12157, Austin, Texas 78711, telephone (800) 803-9202.

(139) TDS--Total dissolved solids, i.e., a measure of the total amount of dissolved matter in water (for example, calcium, magnesium, carbonates, bicarbonates, metallic compounds).

(140) Test kit--A device for monitoring a specific chemical level in pool or spa water.

(141) Therapeutic pool or spa--A pool or spa that is operated exclusively for therapeutic purposes, such as physical therapy, and is under the direct supervision and control of licensed medical personnel.

(142) Total alkalinity--A measure of the ability or capacity of water to resist change in pH; also known as the buffering capacity of water. Measured with a test kit and expressed as ppm; consists mainly of carbonates, bicarbonates and hydroxides.

(143) Total chlorine--The sum of both the free available and combined chlorine.

(144) Toxic--A substance that has an adverse physiological effect on human beings or other living organisms.

(145) Turbidity--Cloudy condition of water due to the presence of fine particulate materials in suspension that interferes with the passage of light.

(146) Turnover rate--The period of time (usually in hours) required to circulate a volume of water equal to the total pool or spa capacity.

(147) UFC--Uniform Fire Code, published by the International Fire Code Institute, 5360 Workman Mill Road, Whittier, California 90601-2298, telephone (800) 423-6587.

(148) Underwater light--A fixture designed to illuminate a pool or spa from beneath the water surface. An underwater light includes either of the following:

(A) wet niche light--a watertight and water-cooled light unit placed in a submerged, wet niche in the pool or spa wall and accessible only from the pool or spa; or

(B) dry niche light--a light unit placed behind a watertight window in the pool or spa wall.

(149) UL--Underwriters Laboratory, 333 Pfingsten Road, Northbrook, Illinois 60062-2096, telephone (847) 272-8800.

(150) User--A person using a pool or spa and adjoining deck area for the purpose of water sports, recreation therapy or related activities.

(151) User load--The number of persons in the pool or spa area at any given moment, or during any stated period of time.

(152) Vacuum--The reduction of atmospheric pressure within a pipe, tank, pump, or other vessel. Vacuum is measured in inches of mercury. Each inch of mercury is equivalent to 1.13 feet of head. The typical maximum vacuum is 30 inches of mercury, or 33.9 feet of head.

(153) Valve--Any device in a pipe that will partially or totally obstruct the flow of water (as in a ball, gate or globe valve) or permit flow in one direction only (as in a check or foot valve). See definition numbers (22) Bleeder valve, (77) Multi-port valve, and (109) Push-pull valve.

(154) Velocity--The speed at which a liquid flows between two specified points, expressed in feet per second.

(155) Vortex pool--Circular pools equipped with a method of transporting water in the pool for the purpose of propelling riders at speed dictated by velocity of the moving stream.

(156) Wading pool--A Class D pool that has a maximum depth of 2 feet at any point.

(157) Walls--The interior pool or spa wall surfaces consisting of surfaces from plumb to a slope of 11 degrees from plumb.

(158) Waste water disposal system--A plumbing system used to dispose of backwash or other water from a pool or spa or from dressing rooms and other facilities associated with a pool or spa.

(159) Water action pools--A pool designed to simulate breaking or cyclic waves for the purpose of general play or surfing.

(160) Water lounge--A horizontal area of a pool that adjoins the pool wall at a depth of from 2 inches to 10 inches, is used for seating and play.

(161) Weir--Part of a skimmer that adjusts automatically to small changes in water level to assure a continuous flow of water to the skimmer.

(162) YMCA--Y.M.C.A. of U.S.A. (Y.M.C.A.), 101 North Wacker, Chicago, Illinois 60606, telephone (800) 872-9622.

(163) Zero depth entry pool--A pool in which the pool floor intersects the water surface along at least one side of the pool.

§265.183. Plans, Permits and Instructions for Post-10/01/99 Pools and Spas.

(a) Plans and permits for post-10/01/99 pools and spas. The department may review plans for post-10/01/99 pools or spas in order to ensure compliance regarding enforcement issues. If the department intends to review plans it will notify the owner/operator in writing. The department recommends that a registered professional engineer or registered architect be consulted to ensure that the pool or spa is designed and built in compliance with these rules and applicable federal, state, and/or local regulatory requirements. Regardless of whether

a regulatory authority requires plans or permits, pools and spas shall be designed, constructed, and operated in compliance with these standards.

(b) Instructions for post-10/01/99 pools and spas. Upon completion of construction of a post-10/01/99 pool or spa, the owner shall obtain from the pool or spa builder complete written operational instructions for the pool or spa. Written instructions shall include items such as procedures for filtration, backwash, cleaning, and operation of all chemical feed devices and general maintenance of pool or spa. In addition, the following are required:

(1) labeling of valves;

(2) labeling of exposed piping

(3) clean filter pressures, normal operating pressures, and pressure differentials that indicate the need for filter cleaning.

§265.184. General Construction and Design for Post-10/01/99 Pools and Spas.

(a) Structural design and materials for post-10/01/99 pools and spas. Construction design and materials used in construction of post-10/01/99 pools and spas shall comply with the requirements of this section, as well as other requirements expressly stated in these rules.

(b) Non-toxic and sound materials for post-10/01/99 pools and spas. Post-10/01/99 pools and spas and all appurtenances shall be constructed of materials that are considered to be nontoxic to humans and the environment, are impervious and enduring, and will withstand design stresses; and will provide a water-tight structure with a smooth and easily cleanable surface without cracks or joints, excluding structural joints.

(c) Accepted practice for post-10/01/99 pools and spas. The structural design and materials used for post-10/01/99 pools or spas shall be in accordance with generally accepted industry engineering practices and methods prevailing at the time of original construction.

(d) NSFI Standard-50 for post-10/01/99 pools and spas. Where equipment for a post-10/01/99 pool or spa such as pumps, filters, skimmers, chemical feeders, and other equipment, falls within the scope of ANSI and NSFI Standard-50-1996 (ANSI/NSFI-50-1996), such equipment shall meet the standard as confirmed by a testing laboratory, except as otherwise noted in Section 265.190(h) of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas). Conformity with standards noted above shall be evidenced by the listing or labeling of such equipment by such a laboratory or by separate documentation.

(e) Prohibition of earth material for post-10/01/99 pools and spas. Earth shall not be permitted as an interior finish in a post-10/01/99 pool or spa. Clean sand or similar material, if used in a beach pool environment shall only be used over an impervious surface and designed to perform in such an environment, and controlled so as not to adversely affect the proper filtration, treatment system, maintenance, safety, sanitation and operation of the overall pool or spa. If sand or similar material is used, positive upflow circulation through the sand shall be provided as necessary to assure that sanitary conditions are maintained at all times.

(f) Interior color for post-10/01/99 pools and spas. The colors, patterns, or finishes of a post-10/01/99 pool or spa interior shall not obscure the existence or presence of objects or surfaces within the pool or spa. All post-10/01/99 pool and spa interior surfaces shall be a light enough color so that an 8-inch black disk on the pool or spa floor at the deepest point of the pool or spa can be clearly and immediately seen by an observer standing on the pool or spa deck at a point closest to the disk.

(g) Materials to withstand freezing temperatures for post-10/01/99 pools and spas. In climates subject to freezing temperatures, a post-10/01/99 pool or spa shell and appurtenances, piping, filter system, pump and motor, and other components shall be designed and constructed to facilitate protection from damage due to freezing.

(h) Hydrostatic relief for post-10/01/99 pools and spas. A hydrostatic relief valve, plug, or a more extensive hydrostatic system shall be installed if necessary to prevent ground water pressure from displacing or otherwise damaging a post-10/01/99 pool or spa.

(i) Interior surface footing for post-10/01/99 pools and spas. The surfaces within a post-10/01/99 pool or spa intended to provide footing for users shall have a slip-resistant surface to help reduce the chance for a fall. The roughness or irregularity of such surfaces shall not cause injury to feet during normal use.

(j) General shape for post-10/01/99 pools and spas. This standard is not intended to regulate the perimeter shape of post-10/01/99 pools or spas. It is the designer's responsibility to take into account the effect a given shape will have on the health and safety of the occupants.

(k) Dimensional variation for post-10/01/99 pools and spas. Dimensions for post-10/01/99 pools and spas may vary in limited areas where access for persons with disabilities has been provided, as long as general safety of all users is maintained. The design shall take into account requirements of the "Americans with Disabilities Act of 1990", 42 U.S.C. §§12101-12213, Disability Act and any other applicable local, state and federal laws relating to such access.

(l) Entanglement or entrapment avoidance for post-10/01/99 pools and spas. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a post-10/01/99 pool or spa that are likely to cause the entrapment or injury of the user. For specific information regarding entrapment issues, see the CPSC, Handbook for Public Playground Safety, Publication Number 325-1997, or the ASTM, Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, F1487-1995.

(m) Construction tolerances for post-10/01/99 pools and spas. For post-10/01/99 pools and spas, construction tolerances allowed on all dimensional designs for overall length, width, and depth in the deep end may vary plus or minus 3 inches. All other dimensions may vary plus or minus 2 inches, unless otherwise specified (such as in a Class A pool). The design water level shall have a maximum construction tolerance at the time of completion of the work of plus or minus 1/4 inch for post-10/01/99 pools or spas with adjustable weir surface skimming systems, and of plus or minus 1/8 inch for post-10/01/99 pools or spas with non-adjustable surface skimming systems. Step treads and risers may vary plus or minus 1/2 inch.

(n) Maximum user loading for post-10/01/99 pools and spas. The maximum number of users to be allowed in a post-10/01/99 pool or spa at one time will depend on a number of factors, such as the type of pool or spa; indoor or outdoor location, surface area, operating characteristics of the water; purification system, quality and clarity of the pool or spa water, etc., the most significant factors are the surface area of the water in the pool or spa and the sanitary and physical condition of the pool or spa water. Based on these factors, pool or spa owners of a post-10/01/99 pool or spa shall reduce the user load if pre-10/01/99 conditions indicate the need. The maximum user load in a post-10/01/99 pool or spa shall be based on the following.

(1) In post-10/01/99 pools, maximum load limit shall be in accordance with the following table:
Figure: 25 TAC §265.184(n)(1)

(2) In post-10/01/99 spas, the maximum user load shall not exceed 1 person per 10 square feet of water surface area.

(o) Interior walls for post-10/01/99 pools and spas. Post-10/01/99 Class B and C pools and spas shall have walls not greater than 11 degrees from plumb. Maximum allowable wall slope:
Figure: 25 TAC §265.184(o)

(p) Walls joining floors for post-10/01/99 pools. Walls for post-10/01/99 Class B and C pools shall be joined to the floor with a radius tangent to the wall at a depth not less than 4 feet 6 inches in water depths 8 feet and greater and not less than 2 feet 6 inches in water depths of 3 feet. The tangent radius point at the wall shall progressively move between these points as the water depth progressively changes. Wall to floor radiuses shall not encroach on the minimum specified floor width, prescribed in §265.186(c)(7) of this title (relating to Decks, Entry/Exit, Diving Facilities and Other Deck Equipment at Post-10/01/99 and Pre-10/01/99 Pools and Spas). Class A pools, where racing lanes terminate, shall have walls that are not greater than 1 degree from vertical.

(q) Floor slopes for post-10/01/99 pools. Floor slopes for post-10/01/99 pools shall, as a minimum meet the following requirements:

(1) all slopes shall drain and be uniform within the different activity areas of the pool;

(2) the slope of the floor from the shallow end wall toward the deep end shall not exceed 1 foot in 10 feet to the point of the first slope change;

(3) the point of the first slope change shall be defined as the point at which the floor slope exceeds 1 foot in 10;

(4) the slope of the floor from the point of the first slope change to the deep end shall not exceed 1 foot in 3 feet; and

(5) the slope of the floor may vary in limited areas where access for persons with disabilities has been provided.

(r) Visual separation for post-10/01/99 pools. Any area of a post-10/01/99 pool that is less than 3 feet in depth shall be visually set apart from deeper areas of the pool by a minimum 4-inch wide tile band, painted line, or similar means of contrasting color across the floor at this point, see also §265.199(b)(1), (2), and (3) of this title (relating to Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(s) Zero depth entry design for post-10/01/99 pools. Zero depth entry designs for post-10/01/99 pools shall be allowed where the bottom of the pool in the beginner's area is designed and constructed to meet the pool deck surface at a slope not to exceed 1 in 12 to a water depth of 1-1/2 feet. In such pools where the water depth is less than 1-1/2 feet, floor inlets shall be provided and spaced uniformly with at least 1 inlet per 200 square feet or portion thereof.

(t) Offset ledges for post-10/01/99 pools. When provided in a post-10/01/99 pool, offset ledges shall:

(1) fall within 11 degrees from plumb starting at the junction of the pool wall and the design water level;

(2) have a slip-resistant surface; and

(3) have a maximum width of 8 inches and shall be in accordance with the following drawing of offset ledges:
Figure: 25 TAC §265.184(t)(3)

(u) Underwater seat benches for post-10/01/99 pools and spas. Underwater seat benches for post-10/01/99 pools and spas shall:

(1) have a maximum seating width of 18 inches projecting from the wall at a depth not to exceed 24 inches below the design water level;

(2) be located fully outside of the required minimum diving water envelope if the pool is intended for use with diving equipment;

(3) be visually set apart and be provided with a solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of the bench. The stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent;

(4) have a slip-resistant surface; and

(5) not be used as the required entry/exit access unless they are in conjunction with pool steps.

(v) Water lounges in post-10/01/99 pools and spas. Water lounges in post-10/01/99 pools and spas must:

(1) be a minimum of 20 inches wide and provide a minimum of 10 square feet of horizontal surface adjoining on the edge of the pool over a distance of not less than 3 feet;

(2) be horizontal and at a depth of 2 inches to 10 inches below the water surface;

(3) be visually set apart with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the leading edge of horizontal surfaces of all edges not adjoining the pool wall. The stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent;.

(4) be located fully outside of the required minimum diving water envelope if the pool is intended for use with diving equipment;

(5) have a slip-resistant surface; and

(6) be located in water depths of 4 feet or less.

(w) Special requirements for post-10/01/99 Class D wading pools.

(1) Post-10/01/99 wading pools at a facility having Class A, B, or C pools shall be separate and physically set apart from beginner or shallow water areas by at least 15 feet of deck or a pool yard enclosure meeting the requirements of §265.200 of this title (relating to Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas). If a pool yard enclosure is provided, clear visibility through the barrier shall be maintained.

(2) If a post-10/01/99 wading pool at a facility having a Class A, B, or C pool is within 35 feet of any deep-water area, a pool yard enclosure meeting the requirements of §265.200 of this title shall be provided to physically separate the wading pool from the deep-water area. Clear visibility through the barrier shall also be maintained.

(3) The maximum water depth in a post-10/01/99 wading pool shall be no greater than 24 inches. At the perimeter of the pool the vertical distance from the deck or walk to the bottom of the pool or to perimeter seating bench underwater shall not be greater than 18 inches. The vertical distance from the bottom of the pool to the deck or walk may be reduced and brought to zero at the most shallow point. The slope of zero level deck entries shall not exceed 1 foot in 12 feet.

(4) Floors of post-10/01/99 wading pools shall be uniform, sloped to drain with a maximum slope of 1 foot in 12 feet, and shall be slip-resistant.

§265.185. General Construction and Design for Pre-10/01/99 Pools and Spas.

(a) Structural design and materials for pre-10/01/99 pools and spas. Construction design and materials used in construction of pre-10/01/99 pools and spas shall comply with good public health engineering practices for construction of newly-built pools and spas prevailing at the time of original construction as required by Health and Safety Code, §341.064(g), and shall comply with these rules except as expressly provided otherwise.

(b) Prohibition of earth material for pre-10/01/99 pools and spas. Earth shall not be permitted as an interior finish in a pre-10/01/99 pool or spa. Clean sand or similar material, if used in a beach pool environment shall only be used over an impervious surface and designed to perform in such an environment, and controlled so as not to adversely affect the proper filtration, treatment system, maintenance, safety, sanitation and operation of the overall pool or spa. If sand or similar material is used, positive upflow circulation through the sand shall be provided as necessary to assure that sanitary conditions are maintained at all times.

(c) Interior color for pre-10/01/99 pools and spas. The colors, patterns, or finishes of a pre-10/01/99 pool or spa interior shall not obscure the existence or presence of objects or surfaces within the pool or spa. Surfaces of a pre-10/01/99 pool and spa shall be a light enough color so that an 8 inch black disk on the pool or spa floor at the deepest point of the pool or spa can be clearly and immediately seen by an observer standing on the pool or spa deck at a point closest to the disk.

(d) NSFI Standard-50 for pre-10/01/99 pools and spas. When equipment is replaced on pre-10/01/99 pools and spas, such equipment that falls within the scope of ANSI and NSFI Standard-50-1996 (ANSI/NSFI-50-1996), shall meet the standard as confirmed by a testing laboratory. Conformity with standards noted above shall be evidenced by the listing or labeling of such equipment by such a laboratory or by separate documentation.

(e) Maximum user loading for pre-10/01/99 pools and spas. The maximum number of users to be allowed in a pre-10/01/99 pool or spa at one time will depend on a number of factors, such as the type of pool or spa; indoor or outdoor location; surface area; operating characteristics of the water; purification system; quality and clarity of the pool or spa water, etc., the most significant factors being the surface area of the water in the pool or spa and the sanitary and physical condition of the pool or spa water. Based on these factors, pool or spa owners of a pre-10/01/99 pool or spa shall reduce the user load if pre-10/01/99 conditions indicate the need. The maximum user load in a pre-10/01/99 pool or spa shall be based on the following:

(1) In pre-10/01/99 pools, the maximum load limit shall be in accordance with the table in §265.184(n)(1) of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas).

(2) In pre-10/01/99 spas, the maximum user load shall not exceed 1 person per 10 square feet of water surface area.

§265.186. Decks, Entry/Exit, Diving Facilities, and Other Deck Equipment at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Decks for post-10/01/99 pools and spas.

(1) Deck(s) for post-10/01/99 pools and spas shall be designed and installed in accordance with the engineering methods required by the department or the applicable local regulatory authority. This includes the design and quality of subbase, concrete mix, reinforcing, joints, etc.

(2) If a concrete deck is installed, in the absence of specific local engineering practices, the work shall be performed in accordance with ACI Standard 302.1R-1998, "Guide for Concrete Floor and Slab Construction."

(3) Decks, ramps, coping, steps, markings, brand insignias and similar surfaces shall be slip-resistant and easily cleanable.

(4) Soils supporting decks shall have adequate load-bearing capacities.

(5) The minimum continuous, unobstructed, usable deck width (which can include flush coping) shall conform with subparagraphs (A)-(G) of this paragraph, except that at a Class B, C, or D pool, as much as 35% of the deck in subparagraphs (A)-(E) of this paragraph may be replaced with other structures; however, in no case shall other structures restrict emergency access or create above deck structures that may be used as diving platforms or create other safety or sanitary hazards.

(A) Class A pool deck widths shall meet standards of the appropriate sanctioning body that regulates the type of competitions to be held.

(B) Class B pool deck widths shall be a minimum of 4 feet if the post-10/01/99 pool was built before October 1, 2004.

(C) Class B pool deck widths shall be a minimum of 6 feet if the post-10/01/99 pool is built on or after October 1, 2004.

(D) Class C pool deck widths shall be a minimum of 4 feet.

(E) Class D pool deck widths shall be a minimum of 4 feet.

(F) Decks shall be provided surrounding at least 50% or more of the spa. Spa deck widths shall be a minimum of 4 feet, and the decks shall be continuous and unobstructed. Coping that is flush where it meets the deck may be included in determining minimum deck width compliance.

(G) A minimum of 4 feet of deck width shall be provided on the sides and rear of any diving equipment. A deck clearance of 3 feet shall be provided around all other deck equipment.

(6) The minimum slope of the deck(s) shall be 1/8 inch per foot for textured, hand-finished concrete decks and 1/4 inch per foot for exposed aggregate concrete decks including decks covered with an epoxy finish and other specialty surfaces installed according to the manufacturer's instructions and good sanitation practices. Wood decks or indoor/outdoor carpeting shall not be located within the distance specified in paragraph (5) of this subsection unless approved by local regulatory authority.

(7) The maximum slope of all decks, other than wood decks, shall be one-half inch per foot, except for ramps. The maximum slope for wood decks shall be 1/8 inch per foot. Gaps shall be required between deck boards consistent with good engineering and safety practices with respect to the type of wood used.

(8) The maximum gaps between pool or spa decks and/or walkways including joint material, shall be 3/16 inch of horizontal clearance with a maximum difference in vertical elevation of 1/4 inch.

(9) Joints where pool or spa coping meets concrete deck(s) shall be watertight.

(10) Joints where pool or spa coping meets concrete deck shall be installed to protect the coping and its mortar bed from damage as a result of movement of adjoining deck(s).

(11) Joints in deck(s) shall be provided to minimize the potential for cracks due to shrinkage or slight movement of the slab.

(12) The areas where concrete deck(s) join other concrete work shall be protected by expansion joints to protect the pool and spa adequately from the pressures of relative movements.

(13) The edge of deck(s) shall be rounded, tapered or otherwise shaped to eliminate sharp corners.

(14) Deck(s) shall be sloped to effectively drain to perimeter areas or to deck drains. Drainage shall remove pool and spa splash water, deck cleaning water, and rainwater without leaving standing water deeper than 1/8 inch. Water from deck drainage shall not be mixed with pool or spa water.

(15) Site drainage shall direct all perimeter deck drainage, general site and roof drainage away from the pool area. Yard drains shall be installed, as needed, to prevent the accumulation or puddling of site water in the general area of the deck(s) and related improvements.

(16) Valves installed in or under any deck(s) shall be accessible through an access cover at least 10 inches in diameter and installed in a valve pit at least 10 inches in diameter to facilitate operation, service, and maintenance. Access covers shall be provided for valve pits for post-10/01/99 pools and spas.

(17) An adequate number of hose bibs and adequate hose shall be provided for washing down all areas of the deck. Cross-connection control device(s) as approved by the TCEQ or local regulatory authority shall be provided. When not in use, hoses shall be stored in such a manner to prevent a hazard from tripping.

(b) Decks for pre-10/01/99 pools and spas.

(1) Decks for pre-10/01/99 pools and spas shall comply with the construction and design requirements in existence at the time the pool was originally built.

(2) In decks of pre-10/01/99 pools and spas, access covers shall be provided for any valve pits in the decks.

(3) In pre-10/01/99 pools and spas, the usable pool deck (which can include flush coping) must be continuous and unobstructed and shall conform to the applicable minimum width in subparagraphs (A)-(E) of this paragraph. However, at a Class B, C, or D pool, as much as 35% of the deck in subparagraphs (A)-(E) of this paragraph may be replaced with other structures. Other structures must not restrict emergency access or create above-deck structures that may be used as diving platforms or create other safety or sanitary hazards.

(A) Class A pool deck widths shall meet standards of the appropriate sanctioning body that regulates the type of competitions to be held.

(B) Class B pool deck widths shall be a minimum of 4 feet.

(C) Class C pool deck widths shall be a minimum of 4 feet.

(D) Class D pool deck widths shall be a minimum of 4 feet.

(E) A minimum of 4 feet of deck width shall be provided on the sides and rear of any diving equipment. A deck clearance of 3 feet shall be provided around all other deck equipment.

(c) Entries and exits for post-10/01/99 pools. Post-10/01/99 pools shall have a minimum of two entry/exits, e.g., one serving the shallow end and one serving the deep end. Entry/exits may consist of ladders, steps, recessed treads, zero depth entries or combinations thereof. Ladders, steps, and recessed treads shall conform to the following:

(1) in post-10/01/99 pools, areas where the vertical distance from the bottom of the pool to the deck or walk is 18 inches or less at the pool wall may be considered as an entry/exit;

(2) in post-10/01/99 pools, if the deep portion of the pool is more than 30 feet wide, opposite sides of the deep portion must each have an entry/exit;

(3) a means of entry/exit for the shallow end of a post-10/01/99 pool shall be located between the shallow end wall and the cross section at Point C, while a means of entry/exit for the deep end shall be between the deep end wall and the cross section at Point B, refer to pool dimensions at subsection (e)(6) of this section, or if not a diving pool, they shall be so located as to reasonably serve the respective areas;

(4) a means of entry/exit shall be provided at a minimum of every 75 linear feet of wall or fraction thereof, in a post-10/01/99 pool;

(5) steps, ladders, and recessed treads in a post-10/01/99 pool shall be located so as not to interfere with racing lanes if applicable;

(6) steps, ladders, and recessed treads in a post-10/01/99 pool shall have slip-resistant surfaces;

(7) steps in a post-10/01/99 pool shall comply with the following:

(A) steps shall have a minimum unobstructed horizontal depth (i.e., horizontal run) of 12 inches and a minimum width of 20 inches;

(B) risers for steps shall have a maximum uniform height of 10 inches, with the bottom riser height allowed to taper to zero;

(C) underwater steps shall be provided with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of each step. This stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent in nature and shall be a slip-resistant surface; and

(D) the pool shall comply with applicable requirements for disability access for pools under federal, state, and local fair housing and handicap access laws. A handrail shall be provided in pools for which a lifeguard is required under these rules. When provided, handrails shall comply with the following requirements:

(i) handrails, if removable, shall be installed in such a way that they cannot be removed without the use of tools;

(ii) the leading edge of handrails for steps shall be no more than plus or minus 8 inches horizontally from the vertical plane of the bottom riser or extend into the pool to a water depth of 36 inches as measured from the horizontal step surface to the design water level; and

(iii) the outside diameter of handrails shall range from 1.25 inches to 2 inches;

(8) Pool ladder(s) with ladder treads in post-10/01/99 pools shall comply with the following:

(A) the handrails and treads of the ladders shall be made entirely of corrosion-resistant materials;

(B) two handrails shall be provided for each ladder, one on each side of the ladder;

(C) the clear horizontal distance between ladder handrails shall be a minimum of 17 inches and a maximum of 24 inches;

(D) there shall be a uniform vertical distance between ladder treads of not less than 7-inches or more than 12 inches;

(E) the vertical distance between the pool coping edge, deck, or step surface and the uppermost ladder tread shall be a maximum of 12 inches;

(F) the ladder treads shall have a minimum horizontal depth of 1.5 inches; and

(G) below the water level of the pool, the inside edge of the ladder hand rails may not be further than 5 inches and the ladder treads may not be further than 3.5 inches from the pool wall. See §265.184(l) of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas);

(9) pool ladder(s) with recessed treads in walls of post-10/01/99 pools shall comply with the following:

(A) the handrails of the ladders shall be made entirely of corrosion-resistant materials;

(B) two handrails shall be provided for each ladder, one on each side of the ladder;

(C) the clear horizontal distance between ladder handrails shall be a minimum of 17 inches and a maximum of 24 inches;

(D) there shall be a uniform vertical distance between recessed treads of not less than 7-inches or more than 12 inches;

(E) the vertical distance between the pool coping edge, deck, or step surface and the uppermost recessed tread shall be a maximum of 12 inches;

(F) the recessed treads shall have a minimum depth of 4.5 inches and a minimum width of 12 inches; and

(G) the recessed treads shall drain into the pool but not be sloped more than 1/2 inch per foot, to prevent the accumulation of dirt and debris.

(10) swimouts in the pool walls of post-10/01/99 pools shall comply with the following:

(A) swimouts shall be completely outside the perimeter shape of the pool;

(B) when used as an entry/exit access, swimouts shall be provided with step(s) to meet the pool step requirements as stated in paragraph (7) of this subsection;

(C) when steps are used in swimouts, they shall be visually set apart with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the leading edge of horizontal surfaces of each step. The stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent;

(D) swimouts are allowed in the deep or shallow areas of the pool;

(E) the horizontal surface shall be a maximum of 20 inches below the design water level unless steps are provided in the swimout; and

(F) pools that do not utilize a perimeter overflow system shall provide a wall return inlet or outlet in the swimout to maintain sufficient circulation.

(d) Entries and exits for pre-10/01/99 pools.

(1) Entries and exits in pre-10/01/99 pools shall comply with good public health engineering practices for construction of newly-built pools and spas prevailing at the time of original construction as required by Health and Safety Code, §341.064(g), and shall comply with these rules except as expressly provided otherwise.

(2) Pre-10/01/99 pools shall comply with applicable requirements for disability access for pools under federal, state, and local fair housing and handicap access laws. A handrail serving all treads of a stepped entry shall be provided in pools for which a lifeguard is required under these rules. When provided, handrails shall be installed in such a way that they cannot be removed without the use of tools.

(e) Diving facilities for post-10/01/99 pools. Except for diving facilities in pools covered by subsection (g) of this section, diving facilities in post-10/01/99 pools shall comply with the following:

(1) post-10/01/99 pools with diving facilities in excess of 3 meters in height or pools designed for platform diving, shall comply with the pool dimension design requirements of one of the organizations listed in subsection (g) of this subsection;

(2) post-10/01/99 Class B and C pools with diving areas shall conform to the minimum water depths, areas, slopes, and other dimensions shown in paragraph (6) of this subsection. Diving equipment on post-10/01/99 Class B and C pools shall have a fixed fulcrum unless the design and construction of the pools meets the standards for a Class A pool as stated in subsection (g) of this subsection;

(3) at post-10/01/99 pools, there shall be a completely unobstructed clear vertical distance of 16 feet above any diving board measured from the center of the front end of the board. This area shall extend horizontally at least 12 feet behind, 12 feet to each side and 16 feet ahead of Point A, as described in paragraph (6) of this subsection;

(4) the tip of the diving board at a post-10/01/99 pool shall be located at directly above Point A, as described in paragraph (6) of this section, which is the reference point of all other dimensions. If the board is given more overhang, other dimensions shall move further outward by the same amount respectively;

(5) when other types of equipment or devices are provided for water entry at post-10/01/99 pools, installation of the equipment or devices shall be in accordance with the manufacturer's instructions regarding location, size, and depths of the required water envelope. At post-10/01/99 pools, a label shall be permanently affixed to the equipment or device and shall include the applicable items found in paragraph (9) of this subsection;

(6) minimum dimensions for diving areas of post-10/01/99 Class B and C pools are contained in the table:
Figure: 25 TAC §265.186(e)(6)

(7) at post-10/01/99 pools, supports, platforms, steps, and ladders for diving equipment shall be designed to carry the anticipated loads. Steps and ladders shall be of corrosion-resistant material, easily cleanable and with slip-resistant tread;

(8) in post-10/01/99 pools, diving equipment shall be installed according to manufacturer's instructions supplied with each unit;

(9) on post-10/01/99 pools, a label shall be permanently affixed to the diving equipment or diving board and shall include the following:

(A) manufacturer's name and address;

(B) board equipment length;

(C) identification as to diving or jump board;

(D) fixed fulcrum setting;

(E) reference to the applicable article(s) in the American National Standards Institute/National Swimming Pool Institute-1 (ANSI/NSPI-1, 1991) Standards for Public Swimming Pools;

(F) weight limitations as specified by the board manufacturer, if available; and

(G) date of installation;

(10) in post-10/01/99 pools, post-10/01/99 diving stands higher than 21 inches measured from the deck to the top butt end of the board shall have steps or a ladder and handrails. Step treads shall be self-draining;

(11) on post-10/01/99 pools, platforms and diving equipment of 1/2 to 1 meter in height shall be protected with guardrail(s) that shall be at least 30 inches above the diving board and extend from the butt end of the equipment to the edge of the pool wall. All platforms or diving equipment higher than 1 meter shall have dual guardrails that are approximately 18 inches and 36 inches above the diving board. A means shall be provided on platforms or diving equipment higher than 1 meter to prevent slips or falls through the equipment onto the deck surface;

(12) on post-10/01/99 pools, diving equipment shall have slip-resistant tread surfaces;

(13) on post-10/01/99 pools, diving equipment shall be permanently anchored to the pool deck;

(14) at post-10/01/99 pools, the top of the diving board from the deck end to the tip shall be level or have an upward slope of 5/8 inch per foot maximum, provided elevation difference shall not exceed 6 inches from the deck end to the tip of the board; and

(15) at post-10/01/99 pools, the maximum construction tolerances for the installation of diving equipment shall be plus or minus 2 inches to allow for construction variances only on Class B and C pools.

(f) Diving facilities in pre-10/01/99 pools. Except for diving facilities in pools covered by subsection (g) of this section, diving facilities in pre-10/01/99 pools shall comply with the following:

(1) diving areas for pre-10/01/99 Class A, B, and C pools shall conform to the minimum water depths, areas, slopes, and other dimensions in the table listed in subsection (e)(6) of this section;

(2) in pre-10/01/99 pools, new diving stands higher than 21 inches measured from the deck to the top butt end of the board shall have steps or a ladder and handrails. Step treads shall be self-draining; and

(3) when other types of equipment or devices are provided for water entry at pre-10/01/99 pools, installation of the equipment or devices shall be in accordance with the manufacturer's instructions regarding location, size, and depths of the required water envelope.

(g) Platform or diving facilities in post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 Class A, B, and C pools containing platform or diving facilities shall be designed and constructed according to dimensions specified by either the Federation Internationale De Natation Amateur-2002, the United States Swimming Association-2002, the United States Diving Association-2002, the National Federation of State High School Association-2002, or the National Collegiate Athletic Association-2003. Pre-10/01/99 Class A, B, and C pools containing platform or deck diving facilities shall conform to one of the above standards.

(h) Starting blocks in post-10/01/99 and pre-10/01/99 pools. In post-10/01/99 and pre-10/01/99 pools:

(1) starting blocks shall be installed to meet the standards, depth specifications and other requirements of the national competitive pool organization having jurisdiction over the competition;

(2) starting blocks shall only be used during official competition or when there is direct supervision by the team coach or another qualified instructor; and

(3) starting blocks shall be removed or secured to prevent inadvertent use when use of the starting blocks is not directly supervised.

(i) Play equipment for post-10/01/99 and pre-10/01/99 pools. Playground equipment that is installed on or after October 1, 1999 in a post-10/01/99 and pre-10/01/99 pool yard or spa yard and that is not covered by the Amusement Ride Safety Inspection and Insurance Act, Chapter 2151, Texas Occupations Code, shall be designed and installed according to the CPSC Handbook for Public Playground Safety, Publication Number 325-1997, or the ASTM Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, F1487-1995. (See subsection (k) of this section.)

(j) Slides for post-10/01/99 and pre-10/01/99 pools. Slides at post-10/01/99 and pre-10/01/99 pools that are of the slide configuration and type covered by the CPSC Standard for Swimming Pool Slides as published in the Code of Federal Regulations, 16 CFR, Part 1207, shall comply with those standards.

(k) Exclusion of post-10/01/99 and pre-10/01/99 pools. This section is not intended to cover amusement rides as defined in the Occupations Code, §2151.002 (relating to the Amusement Ride Safety Inspection and Insurance Act) and 28 TAC §§5.9001-5.9014, Subchapter J, Rules to Implement the Amusement Ride Safety Inspection and Insurance Act (that regulates large slides and other such types of amusement devices used at post-10/01/99 and pre-10/01/99 pool facilities).

§265.187. Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Suction outlet covers or grates for post-10/01/99 and pre-10/01/99 pools and spas. Suction outlet covers or grates must be provided for post-10/01/99 and pre-10/01/99 pools and spas in accordance with §265.190(c) of this title (relating to Suction Outlets and Return Inlets in Post-10/01/99 and Pre-10/01/99 Pools and Spas). If the owner or operator of a post-10/01/99 or pre-10/01/99 pool or spa knows or should have known in the exercise of ordinary care that a suction outlet cover or grate is missing, broken, or loose, the pool or spa must be closed immediately and the pump(s) must be shut off. The pool or spa must remain closed until a proper repair or replacement has been accomplished.

(b) General circulation requirements for post-10/01/99 pools and spas. In post-10/01/99 pools and spas, a circulation system consisting of pumps, piping, return inlets and suction outlets, filters, and other necessary equipment shall provide complete and uniform circulation of water and be designed to accommodate 100% of the turnover flow rate and maintain the distribution of disinfectant residual through all parts of the pool or spa.

(1) The system shall be designed to give the proper turnover rate based on the manufacturer's specified maximum pressure and flow through of the filter. (Also refer to §265.203(c) of this title (relating to Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas.) The equipment shall be of adequate size to turn over the entire pool or spa water capacity as follows:

(A) a turnover rate of 6 hours is required for post-10/01/99 pools with average depths of 4 feet or greater;

(B) turnover rates in pools with shallower average depths shall be calculated based upon the formula: average depth in feet times 1.5 shall be the required turnover rate; for example, a pool with an average depth of 3 feet will require a 4.5 hour turnover rate;

(C) a spa recirculation system shall turn over the entire spa water capacity at a minimum of once every 30 minutes based on the manufacturer's recommended rate of the filter, with a clean filter; and

(D) the turnover rate for a wading pool shall be at least once per hour.

(2) Circulation system components that require replacement or servicing shall be accessible for inspection, repair, or replacement, and shall be installed according to manufacturer's instructions.

(3) Pool and spa equipment and related plumbing shall be supported to prevent damage from misalignment, settlement, or similar activities. The equipment shall be mounted to minimize the potential for the accumulation of debris and moisture, following manufacturer's instructions.

(4) The water velocity in the pool and spa piping shall not exceed 10 feet per second for discharge piping (except for copper pipe where the velocity shall not exceed 8 feet per second), and 6 feet per second for suction piping, and 1.5 feet per second velocity through suction grates unless the suction outlet meets the requirements of ASME/ANSI A112.19.8M and is rated under such standard at a higher flow rate. Pool and spa piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.

(5) Circulation system piping, other than that integrally included in the manufacture of the pool or spa, shall be subject to an induced static hydraulic pressure test for 6 hours at a pressure 50% greater than the maximum design operating pressure of the system or 25 pounds per square inch, whichever is less. This test shall be performed before the deck is poured, and the pressure shall be maintained throughout the deck pour.

(6) The circulation system piping and fittings shall be nontoxic, and shall be of material(s) able to withstand operating pressures and operating conditions. Polyvinyl chloride pipe shall bear the NSFI seal for potable water and be schedule 40 or stronger.

(7) Pool or spa piping subject to damage by freezing shall have a uniform slope in one direction and equipped with valves for adequate drainage or shall be capable of evacuating water to prevent freezing and possible damage. Pool or spa piping shall be adequately supported and designed to prevent entrapment of air, water or dirt. Provision shall be made for expansion or contraction of pipes.

(8) Equipment shall be designed and fabricated to drain the pool or spa water from the equipment, by removal of drain plugs and manipulating valves, or by other methods.

(9) Post-10/01/99 pools and spas shall be equipped with the following:

(A) a pump suction (vacuum) gauge installed as close to the suction side of the pump as possible without sacrificing accuracy;

(B) a filter inlet pressure gauge installed in the area of greatest pressure;

(C) a filter outlet gauge; and

(D) a flow meter that is located to show the rate of flow through the filter in gallons per minute and that is represented by the manufacturer to be accurate within 10% of true flow and capable of measuring flow of at least 1.5 times the design flow rate of the circulation system.

(c) General circulation requirements for pre-10/01/99 pools and spas. In pre-10/01/99 pools and spas, a circulation system consisting of pumps, piping, return inlets, suction outlets, filters, and other necessary equipment shall provide complete and uniform circulation of water and be designed to maintain distribution of disinfectant through all parts of the pool or spa.

(1) Equipment in pre-10/01/99 pools shall be designed to provide a turnover rate of 8 hours or less, providing a minimum turnover of at least 3 times in 24 hours. Water quality as required in §265.203(b) of this title must be maintained at all times.

(2) Equipment in pre-10/01/99 spas shall be designed to provide a turnover rate of 30 minutes or less.

(3) Equipment in pre-10/01/99 wading pools shall be designed to provide a turnover rate of 1 hour or less unless the wading pool flows by gravity to a pool, in which case the turnover requirements for the pool shall apply to the wading pool.

(4) Piping in pre-10/01/99 pools and spas shall be of nontoxic material, resistant to corrosion and able to withstand operating pressures.

(5) In pre-10/01/99 pools, a vacuum cleaning system shall be provided. Any vacuum outlets in pre-10/01/99 pools and spas must comply with §265.190(g) of this title.

(6) Pumps on pre-10/01/99 pools and spas should be located so as to eliminate the need for priming whenever possible. If the pump or suction piping is located above the water level, the pump should be self-priming. Under normal conditions, the pump or pumps should supply the circulation flow rate at a dynamic head of at least 40 feet.

(7) Pre-10/01/99 pools and spas shall be equipped with the following:

(A) a pump suction (vacuum) gauge installed as close to the suction side of the pump as possible without sacrificing accuracy;

(B) a filter inlet pressure gauge installed in the area of greatest pressure;

(C) a filter outlet gauge; and

(D) a flow meter that is located to show the rate of flow through the filter in gallons per minute and that is represented by the manufacturer to be accurate within 10% of true flow and capable of measuring flow of at least 1.5 times the design flow rate of the circulation system.

(d) Labeling of exposed piping for post-10/01/99 and pre-10/01/99 pools and spas. Exposed piping in post-10/01/99 and pre-

10/01/99 pools and spas shall be labeled to identify the piping function and direction of flow. The name of the liquid or gas and arrows indicating direction of flow, shall be permanently indicated on the pipe.

§265.188. Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Filters for post-10/01/99 pools and spas. Filters for post-10/01/99 pools and spas shall meet ANSI/NSFI Standard-50-1996.

(b) Replaced filters for pre-10/01/99 pools and spas. When equipment is replaced on pre-10/01/99 pools and spas, equipment falling within the scope of ANSI/NSFI Standard-50-1996 shall meet that standard.

(c) Filter design and operation for post-10/01/99 pools and spas. Filters for post-10/01/99 pools and spas shall be designed so that after cleaning according to the manufacturer's instructions the system provides the water clarity noted in §265.203(b) of this title (relating to Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(d) Filter accessibility for post-10/01/99 pools and spas. Filters for post-10/01/99 pools and spas shall be installed so that filtration surfaces are accessible for inspection and service in accordance with manufacturer's instructions.

(e) Filter and separation tank pressure release for post-10/01/99 pools and spas. Filters or separation tanks for post-10/01/99 pools or spas shall have both manual and automatic means of air release that provide a slow, safe release of pressure as a part of their design.

(f) Filter and separation tank instructions for post-10/01/99 pools and spas. Filters and separation tanks for post-10/01/99 pools and spas shall have operation and maintenance instructions permanently installed on the filter or separation tank and shall include a warning statement not to start up the system after maintenance without first opening the air release and properly reassembling the filter and separation tank. The statement shall be readily visible from the area of the air release and the start-up controls.

(g) Observable waste discharge for post-10/01/99 pools and spas. Filters for post-10/01/99 pools and spas shall be provided with a readily observable free fall or sight glass installed on the waste discharge line in order that the filter washing progress may be observed. Sight glasses shall be readily removable for cleaning.

(h) Backwashing for post-10/01/99 and pre-10/01/99 pools and spas. Filters for post-10/01/99 and pre-10/01/99 pools and spas shall be backwashed and maintained according to manufacturer's instructions.

§265.189. Pumps and Motors at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Safe pump operation for post-10/01/99 and pre-10/01/99 pools and spas. A pump for a post-10/01/99 or pre-10/01/99 pool or spa shall not be operated if the owner or operator of the pool or spa knows or should have known in the exercise of ordinary care the main drain grate, suction outlet, or any suction outlet cover is missing, broken, or loose. If such a condition exists the pool or spa shall be closed immediately and remain closed until a proper repair or replacement has been accomplished.

(b) Safe pump design and operation for post-10/01/99 pools and spas. The design, construction and installation of the pump(s) and component parts for post-10/01/99 pools and spas shall provide safe operation in accordance with manufacturer's instructions. Pumps for post-10/01/99 pools and spas shall comply with UL and/or NEMA requirements.

(c) Backflow prevention or cross-connection control devices for post-10/01/99 and pre-10/01/99 pools and spas. Any priming device for a post-10/01/99 or pre-10/01/99 pool or spa pump receiving piped water from a potable water supply shall be isolated from the potable supply by means of a cross-connection control device (backflow prevention device) approved by the TCEQ, the department, or state or local regulatory authority.

(d) Pump and motor provided for circulation for post-10/01/99 and pre-10/01/99 pools and spas. A pump and motor shall be provided for circulation of water in post-10/01/99 and pre-10/01/99 pools and spas. Performance of all pumps for post-10/01/99 pools and spas shall meet the filter design range of flow required for filtering as stated in §265.187(b)(1) of this title (relating to Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas) and cleaning the filters (if applicable) against the total dynamic head developed by the complete system and to meet the clarity as required in §265.203(b) of this title (relating to Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(e) Cleanable strainer for post-10/01/99 pools and spas. Post-10/01/99 pools and spas, except those with a vacuum filter, shall have a cleanable strainer or screen upstream of the circulation pump(s) to remove solids, such as debris, hair, and lint, and shall be readily accessible and cleaned routinely.

(f) Pumps and motors accessible for post-10/01/99 pools and spas. Pumps and motors for post-10/01/99 pools and spas shall be accessible for inspection and service in accordance with manufacturer's instructions.

(g) Durable pump seal for post-10/01/99 pools and spas. Components of mechanical pump seals for post-10/01/99 pools and spas shall be corrosion resisting and capable of operating under conditions normally encountered in pool or spa operation.

(h) Pump valves for post-10/01/99 pools and spas. If the pump for a post-10/01/99 pool or spa is below the design water level, valves shall be installed on suction and discharge lines to enable maintenance and removal of the pump without draining the pool or spa.

(i) Motors for post-10/01/99 pools and spas. Motors for post-10/01/99 pools and spas shall comply with the following:

(1) Motors shall have as a minimum an open, drip-proof enclosure as defined by the National Electrical Manufacturers Association (NEMA) Standard NEMA, MG1-1993, and be constructed electrically and mechanically to perform satisfactorily and safely under the conditions of load and environment normally encountered in pool or spa installations. Motors shall comply with UL requirements.

(2) Motors shall be capable of operating the pump under full load with a voltage variation of plus or minus 10% from the nameplate rating.

(3) Motors shall have thermal or current overload protection, either built in or in the line starter, to provide locked rotor and running protection.

§265.190. Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Suction outlets for post-10/01/99 and pre-10/01/99 pools and spas. Any suction outlet system for a post-10/01/99 or pre-10/01/99 pool or spa circulation or filtration system, booster system, automatic cleaning system, solar system, water feature, etc., must be designed to protect against a suction entrapment, evisceration or hair entrapment/entanglement hazard and must comply with this section. Drain covers do not need to be flush with the floor. For the

purpose of this section, skimmers are not considered to be suction outlets.

(b) Closure of post-10/01/99 and pre-10/01/99 pools and spas if the suction outlet is defective. If the owner or operator of a post-10/01/99 or pre-10/01/99 pool or spa knows or should have known in the exercise of ordinary care that a cover or grate of a suction outlet (including a vacuum outlet) is missing, broken, or loose, the pool or spa must be closed immediately and the pump(s) must be shut off. The pool or spa must remain closed until a proper repair or replacement has been accomplished. The pool or spa may not be opened unless all covers or grates are securely installed according to subsection (c)(5) and subsection (g) of this section. Suction outlets must have cover(s) complying with subsection (c)(1) or grate(s) complying with subsection (c)(2) of this section, as well as covers for vacuum outlets complying with subsection (g) of this section.

(c) Approved suction outlet covers and grates in post-10/01/99 and pre-10/01/99 pools and spas. In post-10/01/99 and pre-10/01/99 pools and spas, a suction outlet must be provided with an approved cover or approved grate, as described below.

(1) An approved cover is a suction outlet drain cover that:

(A) is stamped showing that it has been certified by a nationally recognized testing laboratory as being in compliance with ASME/ANSI A112.19.8M;

(B) is stamped showing the gallons per minute approved by the testing laboratory for the cover and the designation ASME/ANSI A112.19.8M;

(C) does not have water flow through the cover that exceeds the maximum gallons per minute approved for the drain cover under ASME/ANSI A112.19.8M testing; and

(D) complies with paragraph (5) of this subsection.

(2) An approved grate is a suction outlet grate that:

(A) has a minimum diagonal measurement of 24 inches;

(B) has a flow velocity through the open area that does not exceed 1.5 feet per second; and

(C) complies with paragraph (5) of this subsection.

(3) In a post-10/01/99 pool that has hydraulically balanced main drains and meets all of the other requirements of this subsection, grates that are 12 inches by 12 inches or greater may be used if no approved cover is manufactured in that size, as long as the velocity through the open area of the grate does not exceed 1.5 feet per second.

(4) If a pre-10/01/99 pool has a drain cover or grate with less than a 24 inch diagonal measurement and no approved cover is manufactured and available, a cover or grate that is not approved may be used as long as the velocity through the open area of the cover or grate does not exceed 1.5 feet per second.

(5) The installation of all approved covers or grates must be according to manufacturer's instructions. If the manufacturer specifies fasteners, they must be stainless steel or brass.

(d) Suction outlets in post-10/01/99 pools and spas. All post-10/01/99 pools and spas built after October 1, 2004, must comply with the following.

(1) In post-10/01/99 pools and spas, at least two hydraulically balanced suction outlets (suction fittings) with approved covers or approved grates per pump suction line, must be provided for each suction line. Multiple sets of pump suctions are permitted in two or more suction outlets as long as they are hydraulically balanced and meet the requirements of subsection (c) of this section. The distance between the drain covers or grates of the suction outlet fittings must be no less than 3 feet and no more than 20 feet apart. Suction outlets that are main drains shall be located at the lowest point of the pool or spa floor. No means of isolating hydraulically balanced suction outlets is permitted that could allow one suction outlet to serve as the sole source of water to a pump. A single pipe to a pump suction inlet that serves two or more suction outlets may have a valve to shut off the flow to the pump.

(2) In post-10/01/99 pools and spas, water velocity in pipes in a pump-suction hydraulic system must not exceed 6 feet per second when 100% of the pump flow comes from the main drain system and any suction fitting in the main drain system is completely blocked. When 100% of the pump flow comes from the main drain system and one fitting is completely blocked, water velocity and flow rate at the remaining suction fittings must comply with the following.

(A) if the fitting is a grate with at least a 24-inch diagonal measurement, the velocity of the water at the grate may not exceed 1.5 feet per second; and

(B) if the fitting does not have at least a 24-inch diagonal measurement, it must have an approved cover and the flow rate may not exceed the approved flow rate for that cover.

(3) Post-10/01/99 spas and pools that are 4 feet deep or less measured from the normal water level to the suction outlet and that have covers or grates that measure less than 24 inches diagonally, must also have a Safety Vacuum Release System (SVRS). No SVRS may be installed to create an additional hazard (such as chlorine gas release, electrical danger, etc.) in the event of the deployment of the device. An SVRS is either an AVS or an SVRD, as defined below.

(A) An AVS is a system that provides indirect suction and a break to the atmosphere and that is limited to 5 feet of head. An AVS is described in the United States CPSC "Guideline for Addressing Potential Entrapment Hazards Associated with Pools and Spas," Publication Number 363-009801. The vent of an AVS must be at least 2 inches in diameter and if vented by pipe, it must have a vent cover that may be removed only with a tool. Vent systems, other than surge pits that do not have direct suction between the pool drain(s) and pump and that are installed after October 1, 2004, must be:

(i) a complete assembly that is engineered and manufactured offsite;

(ii) designed so that a 1/2-inch ball will not pass through any vent opening; and

(iii) installed and maintained so that the vent function will not be impaired by accumulation of vegetation or soil or by improper installation or maintenance of the vent system; or

(B) An SVRD is a vacuum safety valve or pump shut-off device that has been specifically designed and manufactured to help prevent entrapment hazards, according to the manufacturer's description of the device, by either cutting off electricity to the pump or allowing air to enter the main drain line, or both after the main drain or other suction line becomes blocked.

(e) Upgrading suction outlet system on pre-10/01/99 pools and spas. No later than October 1, 2004, a pre-10/01/99 pool or spa shall have an approved cover or approved grate on each suction outlet, except that a vacuum outlet may be permanently sealed or have a cover that closes automatically and can be opened only with a tool. If the manufacturer's installation instructions require the use of nuts or bolts they must be stainless steel or brass. A pre-10/01/99 pool or spa

is required to be upgraded to comply with all other provisions of either subsection (d) of this section or subsection (e)(1) or (e)(2) of this section, as applicable no later than January 1, 2005.

(1) In a pre-10/01/99 pool or spa, suction outlets that are 4 feet deep or less, as measured from the normal water level to the suction outlet, must have for each suction system:

(A) dual hydraulically balanced suction outlets with approved covers as described in subsection (c)(1) or approved grates as described in subsection (c)(4) of this section with a distance between the suction outlet fittings no less than 3 feet and no more than 20 feet, and either an AVS or SVRD as described in subsection (d)(3) of this section; or

(B) a single suction outlet with an approved cover or a grate with a minimum diagonal measurement of 24 inches and a flow velocity of 1.5 fps as described in subsection (c)(1), (c)(2) or (c)(4) of this section, and either an AVS or an SVRD as described in subsection (d)(3) of this section; or

(C) dual hydraulically-balanced, suction outlets with a distance between the suction outlet fittings no less than 3 feet and no more than 20 feet, each with a minimum diagonal measurement of 24 inches and a flow velocity through the open area of the grate that does not exceed 1.5 feet per second.

(2) In a pre-10/01/99 shallow pool or spa with water 3 feet deep or less that has no main drains or other suction outlets and the water turnover rate and the water quality required by these rules is maintained by gravity drainage from the shallow pool to another deeper pool that has a main drain, the shallow pool is not required to have a main drain, other suction outlet or an SVRS, provided the deeper pool complies with these rules.

(3) In a pre-10/01/99 pool or spa, suction outlets that are more than 4 feet deep, as measured from the normal water level to the suction outlets, must have, for each suction system:

(A) two or more hydraulically-balanced suction outlets with a distance between the suction outlet fittings no less than 3 feet and no more than 20 feet, and with approved covers or grates as described in subsection (c)(1), (c)(2) or (c)(4) of this section; or

(B) a single suction outlet with an approved cover or approved grate as described in subsection (c)(1), (c)(2) or (c)(4) of this section, and either an AVS or an SVRD as described in subsection (d)(3) of this section.

(f) Stainless steel or brass fasteners for drain covers and grates in post-10/01/99 and pre-10/01/99 pools and spas. On a post-10/01/99 or pre-10/01/99 pool or spa, all suction outlet covers or grates must be designed to be opened only with the use of a tool. If the manufacturer of the cover or grate specifies that it should be installed with fasteners (e.g. screws or bolts), the fasteners must be stainless steel or brass.

(g) Vacuum outlets in post-10/01/99 and pre-10/01/99 pools and spas. If a post-10/01/99 or pre-10/01/99 pool or spa has a vacuum outlet, the outlet must be provided with a cover that automatically closes and automatically latches and that is designed to be opened only with the use of a tool. The cover must be installed according to manufacturer instructions and subsection (f) of this section. The cover must be securely closed and latched when the pool or spa is open for use. When a vacuum outlet is internally located in a skimmer that has a cover, a separate cover for the vacuum outlet is not required. If a vacuum outlet is provided in a post-10/01/99 pool or spa, it must be located in an accessible position at least 12 inches and no greater than 18 inches below the design water level or as an attachment to a skimmer. If a vacuum outlet is provided in a post-10/01/99 or pre-10/01/99 pool or spa, it may be permanently sealed in lieu of having a cover.

(h) Skimmer lines in post-10/01/99 and pre-10/01/99 pools and spas. If skimmer equalizer lines are installed in post-10/01/99 pools or spas they must be installed with an approved equalizer wall or drain cover as described in subsection (c) of this section. Skimmer equalizer lines in pre-10/01/99 pools and spas shall either be permanently sealed or fitted with an approved equalizer wall or drain cover as described in subsection (c) of this section.

(i) Automatic cleaners not operated while a post-10/01/99 or pre-10/01/99 pool or spa is in use. In a post-10/01/99 or pre-10/01/99 pool or spa, an automatic bottom or side cleaner that could provide a means of entanglement or entrapment must not be in the pool or operated while the facility is open for use.

(j) Check valves in post-10/01/99 and pre-10/01/99 pools and spas. Check valves may not be used in a post-10/01/99 or pre-10/01/99 pool or spa except as provided in this subsection. Check valves may be used only when there is no other manual or practical way of preventing drainage from elevated pools or sections of pools. When check valves are used, they may not be on the suction side of the pump, on any system that has single source suction (excluding skimmers), or where the manufacturer of an SVRS that is used on the system does not allow check valves.

(k) Velocity in suction piping in pre-10/01/99 pools and spas. In pre-10/01/99 pools and spas where the suction piping is not accessible, water velocities in the piping may exceed 6 feet per second if:

(1) the water velocity through a grate on any suction outlet does not exceed 1.5 feet per second; and

(2) the gallons per minute rating of an ANSI/ASME-approved cover on any suction outlet is not exceeded by the gpm flow of the pool as measured by the flow meter.

(l) Replacement cover on hand for post-10/01/99 and pre-10/01/99 pools and spas. For post-10/01/99 and pre-10/01/99 pools and spas, a replacement cover with stainless steel or brass fasteners (if fasteners are specified by the manufacturer) must be kept on site. This subsection does not apply to grates that are 24 inches or larger, measured diagonally.

(m) Clearance beneath a main drain cover or grate for post-10/01/99 pools and spas. Clearance beneath a main drain cover or grate for post-10/01/99 pools and spas, must have a sump below the open area of a drain cover or grate that meets the following:

(1) clearance between the cover or grate and the closest part of the suction pipe must be at least one and one half times the diameter of the suction pipe or 8 inches, whichever is less; and

(2) the sump must be below all of the open area of a drain cover or grate; or

(3) cover assemblies that do not connect directly to the circulation piping must have either the manufacturer's recommended sump below the outlet cover, or a field built sump of the design specified by the manufacturer.

(n) Clearance beneath a main drain cover or grate for pre-10/01/99 pools and spas. Pre-10/01/99 pools and spas must have clearance below the open area of a drain cover or grate that meets the following:

(1) clearance between the cover or grate and the closest part of the suction pipe must be equivalent to at least the diameter of the suction pipe serving the suction outlet or 8 inches, whichever is less; or

(2) cover assemblies that do not connect directly to the circulation piping must have either the manufacturer's recommended sump below the outlet cover, or a field built sump of the design specified by the manufacturer.

(o) Return inlets in post-10/01/99 pools and spas. Return inlets from the circulation system in post-10/01/99 and pre-10/01/99 pools and spas must be designed to not constitute a hazard to the user. Return inlets in post-10/01/99 pools and spas must comply with the following:

(1) a post-10/01/99 pool must have one return inlet for each 300 square feet of surface area or portion thereof with a minimum of two return inlets per pool. A spa must have one return inlet for each 150 square feet of surface area or portion thereof with a minimum of two return inlets per spa; and

(2) return inlets in a post-10/01/99 pool or spas must not project more than 1 inch beyond the pool or spa wall surface and must be submerged at least 12 inches below the design water level. Return inlets in the pool or spa bottom must be flush with the floor. Bottom inlets will be considered to have an area of influence within a radius of 15 feet.

§265.191. Surface Skimming and Perimeter Overflow (Gutter) Systems for Post-10/01/99 Pools and Spas.

(a) Surface skimming or perimeter overflow system required for post-10/01/99 pools and spas. A surface skimming system or perimeter overflow (gutter) system shall be designed and constructed to skim the surface of a post-10/01/99 pool or spa when the water level is maintained within the operating water level range of the system's rim or weir device.

(b) Safe design of surface skimming or perimeter overflow system for post-10/01/99 pools and spas. Surface skimmers and perimeter overflow systems in post-10/01/99 pools and spas shall be designed and installed to prevent body or limb entrapment. See §265.184(d) of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas) regarding equipment meeting any applicable NSFI Standard-50 standards.

(c) Specific requirements for surface skimmer systems for post-10/01/99 pools and spas. Surface skimmer systems for post-10/01/99 pools and spas shall comply with the following:

(1) the return inlet(s) shall be located so as to help bring floating particles within range of the skimmers;

(2) if surface skimmers are used, they shall be located to maintain effective skimming action throughout the pool or spa;

(3) if surface skimmers are used in a pool as the sole overflow system, at least one surface skimmer shall be provided for each 500 square feet or fraction thereof of the water surface area (recessed areas such as steps, and swimouts shall not be considered in the calculation);

(4) if surface skimmers are used on a spa, one surface skimmer shall be provided for each 150 square feet, or fraction thereof;

(5) the circulation system shall be designed to handle 100% of water flow through surface skimmers;

(6) flow rate shall be no less than 3 gallons per minute per skimmer per weir inch; and

(7) skimmer covers located on a walking surface shall be securely seated, slip-resistant, of sufficient strength to withstand normal deck use, and not constitute a tripping hazard.

(d) Specific requirements for perimeter overflow (gutter) systems for post-10/01/99 pools and spas. Perimeter overflow (gutter) surface skimming systems for post-10/01/99 pools and spas shall comply with the following:

(1) if a perimeter overflow (gutter) surface-skimming system is used as the sole surface skimmer system, the system shall extend around a minimum of 50% of the perimeter of the pool or spa;

(2) if a perimeter overflow (gutter) surface skimming system is used, it shall be connected to the circulation system with a system surge capacity not less than 1 gallon for each square foot of pool surface; gutter as well as gutter piping capacity may be counted as surge capacity;

(3) if a perimeter overflow (gutter) surface skimming system is used in a spa, it shall be connected to the circulation system with a system surge capacity not less than 2 gallons for each square foot of spa surface;

(4) the hydraulic capacity of a perimeter overflow (gutter) surface skimming system shall be capable of handling 100% of the circulation flow; and

(5) the operating water level for a perimeter overflow (gutter) surface skimming system shall be slightly over the overflow (gutter) lip or, in the case of surface skimmers, within the vertical operating range of the skimmers.

§265.192. Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards, and Spa Yards.

(a) National Electrical Code (NEC) for post-10/01/99 pools and spas. Electrical equipment and lines at post-10/01/99 pools and spas and at restrooms, equipment rooms and other facilities serving post-10/01/99 pools or spas shall:

(1) comply with the 1996 NEC if the pool or spa was constructed between October 1, 1999 and October 1, 2004; or

(2) comply with applicable provisions of this section, applicable local electrical codes, and the 2002 NEC if the pool or spa was constructed on or after October 1, 2004; or

(3) comply with the local electrical code to the extent the local electrical code is more restrictive than the NEC.

(b) National Electrical Code (NEC) for pre-10/01/99 pools and spas. Electrical equipment and lines at pre-10/01/99 pools and spas and at restrooms, equipment rooms and other facilities serving pre-10/01/99 pools and spas shall comply with applicable provisions of this section, local electrical codes, and the NEC in effect on the original construction date of the pool or spa. If a pool or spa was built before June 13, 1965, the pool shall comply with good public health engineering and safety practices in effect at the time, applicable local electrical codes, and subsections (d), (e), (f), (g), (i), (j), (k), (l), and (m) of this section to the extent they are applicable to pre-10/01/99 pools.

(c) National testing for electrical equipment for post-10/01/99 pools and spas. Electrical equipment for post-10/01/99 pools and spas shall be approved by a nationally recognized electrical testing laboratory, such as UL, at the time of installation, evidenced by the listing or labeling on the equipment. Junction boxes shall comply with applicable provisions of UL-1241 regarding Junction Boxes for Swimming Pool Fixtures at the time of installation. Pumps, filters, and chlorinators shall comply with UL-1081 regarding Swimming Pool Pumps, Filters and Chlorinators, at the time of installation.

(d) Manufacturer's instructions for proper installation in post-10/01/99 and pre-10/01/99 pools and spas. Electrical equipment and

related electrical components for post-10/01/99 and pre-10/01/99 pools and spas shall comply with the manufacturer's installation instructions for such equipment and components.

(e) Ground fault circuit interrupters in post-10/01/99 and pre-10/01/99 pools and spas. Each electrical outlet in the pool yard or spa yard of a post-10/01/99 or pre-10/01/99 pool or spa and in a dressing or sanitary facility serving a post-10/01/99 or pre-10/01/99 pool or spa shall be protected with a ground fault circuit interrupter (commonly referred to as a "GFI" or "GFCI"). Each electrical line to an underwater light in a post-10/01/99 or pre-10/01/99 pool and spa shall be protected with a ground fault circuit interrupter that is located in the circuit breaker for the light at the breaker box or in an outlet through which the power for the light passes.

(f) If a switch that serves lights or equipment (other than pumps and underwater lights) in a post-10/01/99 or pre-10/01/99 pool or spa is between 5 and 10 feet from the wall of the pool or wall of the spa, each electrical line to such switch shall be grounded and shall have a ground fault circuit interrupter located:

(1) in the circuit breaker for the light;

(2) in the equipment circuit that powers the switch at the breaker box; or

(3) in an outlet through which the power for the switch passes. All ground fault circuit interrupters and circuit breakers shall comply with 2002 NEC requirements. Other electrical equipment, including pumps, must be grounded in accordance with subsection (g) of this section.

(g) Bonding and grounding in post-10/01/99 and pre-10/01/99 pools and spas. To reduce electrical shock, electrical equipment serving a post-10/01/99 or pre-10/01/99 pool or spa shall be grounded according to ANSI/UL 1563-1995 "Standard for Electric Hot Tubs, Spas and Associated Equipment" and the 2002 NEC. All post-10/01/99 pools shall comply with applicable bonding and grounding requirements of the 2002 NEC. All post-10/01/99 spas and hot tubs shall comply with bonding and grounding requirements of ANSI/UL 1563-1995 "Standard for Electric Hot Tubs, Spas and Associated Equipment. Pumps in post-10/01/99 and pre-10/01/99 pools and spas shall be both internally and externally grounded. If a pool or spa was built between October 1, 1999 and October 1, 2004, and if the 2002 NEC requirements referred to in subsection are more restrictive than the 1996 NEC, the 1996 NEC requirements shall apply.

(h) Plastic-coated or epoxy-coated rebar in pools or spas constructed on or after October 1, 2004, shall not be used.

(i) Electrical line clearances for post-10/01/99 and pre-10/01/99 pools, spas, pool yards, and spa yards. For post-10/01/99 and pre-10/01/99 pools, spas, pool yards and spa yards, electrical line clearances shall comply with the following:

(1) overhead lines above post-10/01/99 pools and spas. Insulated overhead electrical lines above a post-10/01/99 pool or spa may pass no closer than 22.5 feet to the water surface, deck, or permanently-anchored raft of the pool or spa as required in the 2002 NEC and may pass no closer than 14.5 feet to the top of an observation stand, tower, diving platform, or diving board as required in the 2002 NEC. However, such lines may pass as low as 20 feet above the water surface, deck, or permanently anchored raft of the post-10/01/99 pool or spa if the pool or spa was built between October 1, 1999 and October 1, 2004. Non-insulated overhead electrical lines may pass no closer to the pool or spa than the distances required in the 2002 NEC. A neutral wire for residential-type service is not considered a line for purposes of this subsection;

(2) overhead lines above post-10/01/99 pool yards and spa yards. Insulated overhead electrical lines may pass no closer than 20 feet to other surfaces of a pool yard or spa yard of a post-10/01/99 pool or spa. Non-insulated overhead electrical lines above such other surfaces may pass no closer than the distances required in the 2002 NEC. A neutral wire for residential-type service is not considered a line for purposes of this subsection;

(3) overhead lines above pre-10/01/99 pools and spas. Insulated overhead electrical lines above a pre-10/01/99 pool or spa may pass no closer than 20 feet to the deck, water surface, or permanently-anchored raft of the pool or spa and may pass no closer than 14.5 feet to the top of an observation stand, tower, diving platform or diving board. Non-insulated overhead electrical lines may pass no closer to the pool or spa than the distances required in the 2002 NEC, unless the NEC in effect at the time of original construction of the pool or spa expressly allowed for a closer distance. A neutral wire for residential-type service is not considered a line for purposes of this subsection;

(4) overhead lines above pre-10/01/99 pool yards and spa yards. Insulated overhead electrical lines may pass no closer than 20 feet to other surfaces of a pool yard or spa yard of a pre-10/01/99 pool or spa. Non-insulated overhead electrical lines above such other surfaces may pass no closer than the distances required in the 2002 NEC, unless the NEC in effect at the time of original construction of the pool or spa expressly allowed a closer distance. A neutral wire for residential-type service is not considered a line for purposes of this subsection; and

(5) non-overhead lines. Non-overhead electrical lines that are inside a pool yard or spa yard or within 20 feet outside the perimeter of the pool yard or spa yard:

(A) shall be at least 5 feet from the edge of the water in the pool or spa (except for lines serving underwater or overhead lighting); and

(B) shall, to the point of connection with an overhead lines, be either underground, encased in concrete, or completely inside a wall, building or conduit.

(j) Electrical disconnects for service personnel in post-10/01/99 and pre-10/01/99 pools and spas. Electrical disconnecting means for the protection of service personnel for post-10/01/99 and pre-10/01/99 pool and spa equipment shall be accessible for service personnel, located within sight from the pool or spa equipment, and located at least 5 feet from the inside walls of the pool or spa as required by the 2002 NEC, Chapter 6, §680.12 - Disconnecting Means. Each disconnecting means (i.e., turn-off switch) shall disconnect all ungrounded conductors (hot wires) to the equipment it serves. For example, a switch serving a 220-volt pump motor shall be able to turn off both hot wires at the same time. If electricity to equipment is supplied through a line that plugs into an outlet and if the line may be disconnected by removing the plug from the outlet, a separate disconnect switch is not required for that equipment.

(k) Location of other electrical equipment for post-10/01/99 and pre-10/01/99 pools and spas. Electrical equipment, including switches, outlets, deck lights, pumps, and other electrical equipment at post-10/01/99 and pre-10/01/99 pools and spas, shall be located at least 10 feet from the inside wall of a post-10/01/99 pool or spa unless:

(1) the electrical equipment is at least 5 feet from the wall of the pool or spa and is separated from the pool or spa by a solid fence, wall or other permanent barrier at least 4 feet in height; or

(2) the electrical equipment is at least 5 feet from the wall of the pool or spa and:

(A) consists of only one outlet for an electrical line that is grounded, has a ground fault circuit interrupter, and has a locking mechanism covering the outlet;

(B) consists of one or more switches serving electrical lines that are grounded and that have ground fault circuit interrupter protection that is located in the circuit breaker for the equipment at the breaker box or in an outlet through which the power for the equipment passes; or

(C) consists of an electrical device other than an outlet or switch and complies with applicable NEC requirements at the time of installation.

(l) Emergency shutoff switch for post-10/01/99 and pre-10/01/99 pools and spas. On post-10/01/99 and pre-10/01/99 pools, a pump shutoff switch for use by pool users is not required. On post-10/01/99 and pre-10/01/99 spas, a pump shutoff switch for use by spa users is required and shall be:

(1) clearly labeled as "Emergency Spa Shutoff";

(2) located within sight of the spa, or, there shall be a sign visible from the spa, in letters at least 1 inch tall, stating the location of the emergency shutoff switch;

(3) readily accessible to spa users;

(4) not behind a locked door or gate; and

(5) located no closer than 5 feet from the spa unless the switch is a non-electrical air switch.

(m) Electrical inspections during construction of post-10/01/99 pools and spas. The owner of a post-10/01/99 pool or spa constructed after October 1, 2004, shall have an electrician licensed in this state conduct a minimum of two inspections during and after the construction of a pool or spa to ensure that all electrical facilities serving the pool or spa are constructed in compliance with this section. The first inspection shall be conducted to assure proper bonding of the pool or spa shell prior to the concrete pour and another inspection shall be conducted after all electrical equipment is installed and operating and prior to opening the facility to users. The inspections may be done by the licensed electrician who installs the bonding and grounding equipment or by a governmental inspector who is a licensed electrician.

(n) Electrical safety of underwater lights in post-10/01/99 and pre-10/01/99 pools and spas. Underwater lights are not required in post-10/01/99 and pre-10/01/99 pools and spas. If the lights have no epoxy insulation, have cracked insulation, have spliced connection cords, or have been modified in violation of an applicable electrical code they shall be replaced with lights complying with this section.

§265.193. Heating of Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Certification of heaters or boilers for post-10/01/99 and pre-10/01/99 pools and spas. If required by TDLR, both post-10/01/99 and pre-10/01/99 pool and spa heaters or boilers shall have a current certificate of operations from the TDLR. In addition, all pool and spa heater installation and energy sources for post-10/01/99 pools and spas shall be designed, constructed and operated to comply with applicable local, state, or federal codes or standards as well as the manufacturer's instructions.

(b) Heater installation and testing for post-10/01/99 pools and spas. Heaters using fossil fuels, such as natural gas, liquid petroleum gas, No. 2 fuel oil, or electricity for heating water for post-10/01/99 pools and spas and shall comply with the following:

(1) heaters shall comply with ANSI Z21.56-1994, Standards for Gas-Fired Heaters, or for electrical heaters UL 1261-1992, or UL 559-1985 for heat pumps and shall comply with 30 TAC, TCEQ Chapter 117, Control of Air Pollution from Nitrogen Compounds, Subchapter D, Small Combustion Sources, at the time of construction of the pool or spa, including requirements related to ASME ratings and low NOx emissions;

(2) heaters shall be installed on a surface with sufficient structural strength to support the heater when it is full of water and operating. The heater shall be level and stationary after plumbing, gas and/or electrical connections are completed;

(3) heaters requiring a non-combustible surface per the manufacturer, shall be placed on a concrete or other accepted surface in accordance with ANSI Z21.56-1994 Gas-Fired Heaters;

(4) heaters shall be installed and maintained with at least the minimum clearances to combustibles for which the heater has been tested as specified by the manufacturer;

(5) heaters shall have adequate ventilation in order to ensure proper operation;

(6) heaters shall be grounded and bonded to reduce electrical shock hazard;

(7) heaters shall be wired to ensure they will not turn on when the pump is off; and

(8) water flow through heaters, bypass plumbing installed, cross-connection protection, and heat sinks shall be installed in accordance with manufacturer and TCEQ specifications or the department or other state or local regulatory authority.

(c) Temperature and thermometer for post-10/01/99 and pre-10/01/99 spas. The following shall apply to post-10/01/99 and pre-10/01/99 spas.

(1) The maximum temperature of the water shall not exceed 104 degrees Fahrenheit (40 degrees Centigrade).

(2) A break-resistant thermometer (plus or minus 1 degree Fahrenheit tolerance) that is designed for use in spas shall be available for spa users and staff to monitor spa temperature; and

(3) The control for the temperature of the water in the spa shall not be accessible to the spa user.

(d) Heating energy source for post-10/01/99 pools and spas. The heating energy source for post-10/01/99 pools and spas shall comply with the following:

(1) pool and spa heater energy sources shall be designed, constructed and operated to comply with applicable local, state, or federal codes or standards as well as the manufacturer's instructions;

(2) the natural gas energy supply piping shall comply with manufacturer's instructions and ANSI Z223.1-1996-National Fuel Gas Code;

(3) gas lines shall have a gas cock, properly sized and readily accessible outside the jacket, to stop the flow of natural gas for heater service or emergency shutdown;

(4) where liquid petroleum gas appliances are used, they shall be installed in accordance with ANSI/NFPA 58-1998-Storage and Handling of Liquefied Petroleum Gases;

(5) the storage tank, supply piping and regulator shall be adequately sized to ensure operating fuel pressures as specified by the appliance manufacturer; and

(6) propane appliances located in a pit or enclosed area shall be installed in accordance with ANSI/NFPA 58-1998 standards.

§265.194. Pool or Spa Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Initial fill water for post-10/01/99 and pre-10/01/99 pools and spas. The water supply used to fill a post-10/01/99 or pre-10/01/99 pool or spa shall be from a potable water system that meets applicable standards of 30 TAC, Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, or meets the approval of the department or local regulatory authority, or is from a pre-10/01/99 pool's water that meets or exceeds all relevant conditions in this standard.

(b) Make-up water source for post-10/01/99 and pre-10/01/99 pools and spas. In a post-10/01/99 or pre-10/01/99 pool or spa, water added to maintain the pool or spa water level, water used as vehicle for disinfectants or chemicals, and water used for pump priming shall be potable water from a water system meeting applicable standards of 30 TAC, Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems or local regulatory authority or shall be water from the pool or spa itself.

(c) No direct connection to wastewater system for post-10/01/99 and pre-10/01/99 pools and spas. In a post-10/01/99 or pre-10/01/99 pool or spa, no direct mechanical (hard) connection shall be made between the pool or spa, chlorinating equipment, or the system of piping for the pool or spa and between the sanitary sewer system, septic system or other wastewater disposal system.

(d) Fill spout for post-10/01/99 pools and spas. An over-the-rim spout, if used in a post-10/01/99 pool or spa, shall be located under a diving board, adjacent to a ladder, or otherwise properly shielded so as not to create a trip or other hazard. Its open end shall have a secured soft pliable end (for example, a short section of a rubber hose) to prevent injury to patrons and shall not protrude more than 2 inches beyond the edge of the pool or spa. The end of the soft pliable outlet shall be separated from the maximum possible pool or spa water level by an air gap at least two times the diameter of the pipe. Other methods for addition of water to the pool may be used as long as cross-connections control and other safety considerations are adequately addressed.

(e) Fill spout for pre-10/01/99 pools and spas. An over-the-rim spout, if used in a pre-10/01/99 pool or spa, shall have a secure soft pliable end (for example, a short section of rubber hose) to prevent injury to patrons and shall not protrude more than 2 inches beyond the edge of the pool or spa. The end of the soft pliable outlet shall be separated from the maximum possible pool or spa water level by an air gap at least two times the diameter of the pipe.

§265.195. Drinking Water at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Potable water source for post-10/01/99 and pre-10/01/99 pools and spa facilities. The water supply serving a post-10/01/99 or pre-10/01/99 pool or spa facility, such as drinking water fountains, plumbing fixtures, lavatories and showers shall be a potable water system and shall meet applicable standards of 30 TAC, Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems.

(b) No cross-connections at post-10/01/99 and pre-10/01/99 pools and spas. At a post-10/01/99 or pre-10/01/99 pool or spa, no direct mechanical connection shall be made between the potable water supply and the pool or spa, chlorinating equipment, or the system of piping for the pool or spa, unless it is protected against cross-connection in a manner in compliance with 30 TAC, Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, §290.44(h) of this title (relating to Water Distribution) concerning back siphonage or local regulatory authority.

(c) Drinking water fountain for post-10/01/99 pools and spas. At least one drinking fountain shall be provided and available to users at a post-10/01/99 pool or spa. The drinking water may be tap water or chilled water.

(d) Location of waterlines for post-10/01/99 pools and spas. Location of water lines, in relation to wastewater lines, at a post-10/01/99 pool or spa facility shall be in compliance with 30 TAC, Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, §290.44(e) of this title concerning location of waterlines or local regulatory authority.

§265.196. Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Filter backwash disposal for post-10/01/99 and pre-10/01/99 pools and spas. Filter backwash water and pool or spa drainage water from post-10/01/99 and pre-10/01/99 pools and spas shall be discharged or disposed of in accordance with the requirements of TCEQ or local regulatory authority.

(b) No direct connection between a wastewater system and a post-10/01/99 or pre-10/01/99 pool or spa. There shall be no direct physical connection between a wastewater disposal system and a drain or recirculation system of a post-10/01/99 or pre-10/01/99 pool or spa. Backwash water or pool and spa draining water, shall be discharged through an air gap formed by positioning the discharge pipe opening at least two pipe diameters above the overflow level of any confining barriers that could cause flooding and submergence of the discharge opening, in the event that the disposal system should fail or by other means in accordance with TCEQ or other local regulatory requirements. Splash screening barriers are permitted as long as they do not destroy air gap effectiveness.

(c) Location of on-site sewage facility wastewater disposal lines for post-10/01/99 and pre-10/01/99 pools and spas. The location of on-site sewage facility wastewater disposal lines at a post-10/01/99 or pre-10/01/99 pool or spa shall be in compliance with 30 TAC, Chapter 285, On-site Sewage Facilities, Subchapter D, Planning, Construction and Installation Standards for OSSF's, §285.31 (relating to Selection Criteria for Treatment and Disposal Systems) or local regulatory requirements.

(d) Location of other wastewater disposal facilities or lines for post-10/01/99 and pre-10/01/99 pools and spas. The location of other wastewater disposal facilities or lines at a post-10/01/99 or pre-10/01/99 pool or spa shall meet applicable standards of the 30 TAC, Chapter 307, Texas Surface Water Quality Standards, Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, Chapter 311, Watershed Protection, and Chapter 315, Pretreatment Regulations for Post-10/01/99 and Pre-10/01/99 Sources of Pollution or local regulatory authority if local regulations are more strict.

§265.197. Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Disinfectant equipment and practices at post-10/01/99 and pre-10/01/99 pools and spas. Disinfectant equipment and practices at post-10/01/99 and pre-10/01/99 pools and spas shall comply with the following:

(1) disinfectant equipment, installation, and use shall comply with ANSI/NSFI-50-1996, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs";

(2) disinfectant feed systems shall have the capacity to maintain up to 5 parts per million chlorine or approved equivalent for outdoor pools and up to 3 parts per million chlorine or approved equivalent for indoor pools, under all conditions of intended use. The disinfectant feed system at a post-10/01/99 outdoor spa shall have the capacity to maintain up to 8 parts per million chlorine or approved equivalent and up to 5 parts per million chlorine or approved equivalent in a post-10/01/99 indoor spa;

(3) chlorine or bromine residual or other method of disinfectant approved by the department shall be maintained in the pool or spa water to meet the requirements of §265.204(a) of this title (relating to Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas). Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be achieved under all conditions. The use of elemental gas chlorine shall be in compliance with §265.198 of this title (relating to Gas Chlorination at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(4) the pool or spa water shall be continuously disinfected by a disinfecting agent whose residual can be easily measured by simple and accurate field tests;

(5) personnel responsible for the operation of the disinfection agent and other potentially hazardous chemicals shall be properly trained. Protective equipment and clothing, including rubber gloves and goggles, and any other protective gear and safety information shall be provided;

(6) disinfection agents or other chemicals and feed equipment shall be stored in such a manner that pool and spa users shall not have access to such facilities and/or chemicals. Dry chemicals shall be stored off the floor in a dry, above ground level room and protected against flooding or wetting from floors, walls, and ceiling;

(7) all chemical bulk and day tanks shall be clearly labeled to indicate the tank's contents;

(8) solution containers shall be provided with a cover to prevent the entrance of dust, insects, and other contaminants;

(9) chlorine compounds shall not be stored in the same area as petroleum products as required in §§295.1-295.8 and 295.10 of this title (relating to Hazardous communications);

(10) chlorine, pH or other chemical control equipment that automatically adjusts chemical feed based on demand, shall be provided if needed in order to meet §265.204(a) of this title (relating to Required Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(11) if ancillary non-chlorine or non-bromine disinfectants are used, they shall be used in addition to chlorine or bromine or other approved equivalent, see §265.204(a) of this title;

(12) disinfectant agents for pools and spa shall be registered for use by the United States Environmental Protection Agency;

(13) supplemental hand feeding of disinfectant or other chemicals directly into the pool or spa must not be done when the pool or spa is occupied by users; and

(14) pool and spa skimmer baskets shall not be used as chemical feeders.

(b) Chemical feeders at post-10/01/99 and pre-10/01/99 pools and spas. Chemical feeders at post-10/01/99 and pre-10/01/99 pools and spas shall:

(1) be installed, maintained and operated in accordance with the manufacturer's instructions;

(2) be installed so that the gas or solution is introduced downstream from the filter and heater and, if possible, at a point lower than the heater outlet fitting or according to manufacturer's instructions;

(3) incorporate failure-proof features so that the chemical cannot feed into the pool or spa, the pool or spa piping system, water supply system, or the pool and spa enclosure if equipment or power fails. Chemical feed pumps shall be wired so they cannot operate unless there is adequate return flow to properly disburse the chemical throughout the pool or spa as designed;

(4) be regulated to ensure constant feed with varying supply or back pressure;

(5) be designed to prevent siphoning from the recirculation system to the solution container and to prevent the siphoning of the chemical solution into the pool or spa;

(6) have a graduated and clearly marked dosage adjustment to provide flows from full capacity to 10% of such capacity. The device shall be capable of continuous delivery within 10% of the dosage at any setting;

(7) be provided with make-up water supply lines to chemical feeder solution containers that have an air gap or other acceptable cross-connection control; and

(8) comply with ANSI/NSFI-50-1996 "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs" except as otherwise noted in §265.190(h) of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas). Chemicals used in a disinfection system for a post-10/01/99 or pre-10/01/99 pool or spa should be those complying with the instructions of the system's manufacturer and shall not be of a type or used in a manner that would invalidate the ANSI/NSFI-50-1996 rating for the system equipment.

§265.198. Gas Chlorination for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Gas chlorination equipment shall not be installed on post-10/01/99 pools or spas constructed after October 1, 2004.

(b) Post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas using gas chlorination shall comply with the following:

(1) trained personnel shall be provided to comply with §265.197(b)(3) of this title (relating to Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(2) two persons trained in the performance of routine chlorination operation and emergency procedures shall be readily available during normal operating hours;

(3) pool personnel shall be informed about leak control procedures;

(4) only trained designated personnel shall operate the chlorinator and change chlorine cylinders; and

(5) chlorination equipment shall be located so that failure or malfunction will have minimum effect on evacuation of pool users in an emergency.

(c) Chlorinators on post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas. On post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and the spas the chlorinator's regulator shall attach to the gas cylinder so that the injector is located at the point of injection. The vacuum line taking suction at the regulator shall deliver gas to the vacuum injector. They shall be designed to prevent the suction of water into the chlorination system if the booster pump fails to operate.

(d) Booster pumps on post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas. The booster pump water supply for the gas chlorinator injector on post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas shall be capable of producing the flow rate and pressure required by the manufacturer's instructions for proper operation of the equipment.

(1) Elemental chlorine feeders (chlorinators) shall be activated by a booster pump using recirculated water supplied via the recirculation system.

(2) The booster pump shall be interlocked to the filter pump to prevent feeding of chlorine when the recirculation pump is not running.

(e) Housing of chlorinators, cylinders of chlorine and associated equipment at post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas. The chlorinator, cylinders of chlorine, and associated equipment at post-10/01/99 pools and spas constructed before October 1, 2004, and pre-10/01/99 pools and spas shall be housed in a separate corrosion-resistant reasonably gas-tight room with a floor area adequate to the purpose. The following shall apply to housing structures:

(1) all enclosures shall be located at or above ground level;

(2) the enclosure shall:

(A) have ducts from the bottom of the enclosure to the atmosphere in an unrestricted area, and a motor-driven louvered exhaust fan capable of producing at least one air change per minute near the top of the enclosure for admitting fresh air; or

(B) have negative pressure ventilation as long as the facility also has gas containment and treatment equipment and procedures as prescribed by the Uniform Fire Code (UFC).

(3) a warning sign shall be posted on the exterior side of the doors that states in 4-inch letters, "DANGER CHLORINE";

(4) the doors to the chlorine room shall open away from the pool and open outward and have panic hardware;

(5) electrical switches for the control of artificial lighting and ventilation shall be on the outside of the enclosure adjacent to the door. Adequate lighting shall be provided;

(6) at least one door shall have a view port to permit the operators to look into the room before entering; and

(7) the door shall be kept locked when the chlorine room is not being serviced.

(f) General gas chlorine safety features at post-10/01/99 pools and spas constructed before October 1, 2004 and pre-10/01/99 pools and spas. The following gas chlorination safety features shall be required at post-10/01/99 pools and spas constructed before October 1, 2004 and pre-10/01/99 pools and spas.

(1) Two full-face self-contained breathing apparatus (SCBA) or supplied air respirators that meet Occupational Safety and Health Administration (OSHA) or Mine Safety Health Administration (MSHA) standards shall be provided for protection against chlorine in the event of a leak. This equipment shall have sufficient capacity for the purpose intended. All applicable local, state or federal requirements concerning the proper handling of chlorine shall be followed.

(2) Containers may be stored indoors or outdoors. Full and empty cylinders shall be segregated and appropriately tagged. Cylinders, empty or full, shall always be stored in an upright position and properly secured. Cylinders shall be chained to a wall or scale support. Storage conditions shall:

(A) minimize external corrosion;

(B) be clean and free of trash;

(C) be away from elevator shafts or intake vents; and

(D) be away from elevated temperatures or heat sources;

(3) Chlorine cylinders shall be handled with care. Valve protection and outlet caps shall be in place at all times except when the cylinder is connected for use. Cylinders shall not be dropped and shall be protected from falling objects. Cylinders shall be used on a first-in, first-out basis. Post-10/01/99, approved washers shall be used each time a cylinder is connected;

(4) As soon as a container is empty, the valve shall be closed and the lines disconnected. The outlet cap shall be applied promptly and the valve protection hood attached. The open end of the disconnected line shall be plugged or capped promptly to keep atmospheric moisture out of the system. A chlorine valve shut off wrench shall be kept on the cylinder valve stem of the cylinder that is in use;

(5) Contents of a chlorine cylinder can be determined only by weight; therefore, facilities shall include a scale suitable for weighing the cylinders. Changing cylinder(s) shall be accomplished only after weighing proves contents of cylinder to be exhausted. Care shall be taken to prevent water suck-back into the cylinder by closing the cylinder valve;

(6) The telephone number of the chlorine supplier, and the fire department or agency trained in the handling of chlorine spills shall be posted on the outside of the chorine room door. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted.

(7) The chlorinator and all line and tank fittings shall be checked for leaks at regular intervals and after every tank exchange. A small bottle of fresh ammonia solution (or approved equivalent) for testing for chlorine leakage shall be provided and accessible outside the chlorinator room when chlorine gas is used; and

(8) Tanks and cylinders shall be secured as necessary to prevent spills.

§265.199. Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Handholds and coping for post-10/01/99 and pre-10/01/99 pools and spas. A post-10/01/99 pool or spa shall be provided with a handhold around its perimeter in areas where depths exceed 42 inches and there is no seat bench, swimout, or lounge area below the perimeter area in question. Handholds shall be provided no farther apart than 2 feet to include, but not limited to, one or a combination of the following items:

(1) handholds for post-10/01/99 and pre-10/01/99 pools may be coping, rope, railing, ledge, deck, or similar construction along the immediate top edge of the pool that provides a slip-resistant surface or grip and shall be at least 4 inches minimum horizontal width

and located at or not more than 9 inches above the design water level. Any overhang of coping or decking shall not exceed 2 inches;

(2) coping overhang in post-10/01/99 and pre-10/01/99 pools shall be continuous without breaks or notches (other than slight indentations by masonry joints);

(3) coping in post-10/01/99 and pre-10/01/99 pools shall be rounded at the edge closest to the water with the rounding having a radius of at least 1/16 inch; and

(4) ladders, steps, and seat ledges for post-10/01/99 pools shall be constructed in accordance with §265.186(b) of this title (relating to Decks, Entry/Exit, Diving Facilities, and Other Deck Equipment at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(b) Float lines and floor markings for post-10/01/99 and pre-10/01/99 pools. Float lines with floats and floor markings for a post-10/01/99 and pre-10/01/99 pools shall comply with the following:

(1) in post-10/01/99 and pre-10/01/99 Class A and B pools over 5 feet deep:

(A) the transition point of the pool from the from the shallow area to the deep area of the pool shall be visually set apart with a 4-inch minimum width row of floor tile, a painted line, or similar means using a color contrasting with the bottom; and

(B) a rope and float line shall be provided between 1 foot and 2 feet on the shallow side of the 5-foot depth along and parallel to this depth from one side of the pool to the other side. The floats shall be spaced at not greater than 7-foot intervals; and the floats shall be secured so they will not slide or bunch up. The stretched float line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by users. If the owner or operator of the pool knows or should have known in the exercise of ordinary care that a rope or float is missing, broken, or defective, the problem shall be promptly remedied.

(2) in post-10/01/99 and pre-10/01/99 Class C pools over 5 feet deep, the transition point of the pool from the shallow area to the deep area of the pool shall be visually separated by a 4-inch minimum width row of floor tile, a painted line, or similar means using a color contrasting with the bottom; and

(3) if rope and float lines are provided in post-10/01/99 or pre-10/01/99 pools, they shall be securely fastened to wall or deck anchors of corrosion-resisting materials and of the type that is recessed or removable and shall have no projection that will constitute a hazard when the line is removed.

(c) Depth markers for post-10/01/99 pools. Post-10/01/99 pools shall have markers showing depth and unit of measurement for the depth, complying with the following:

(1) Depth markers on both sidewalls and decks of the pool shall;

(A) indicate the pool depth from the design water level to the floor of the pool according to a vertical measurement taken 3 feet from the pool wall;

(B) be a minimum of 4 inches in height (measured vertically on a sidewall and horizontally on a deck);

(C) be of contrasting color to the background on which they are applied;

(D) have permanent colors for the numbers, units, and background of the marker;

(E) placed at 2-foot increments of depth in the shallow and deep ends of the pool, and be uniformly installed around a pool to the extent practical;

(F) be spaced at distances not greater than 25-foot intervals, and with a minimum of at least one marker per pool side;

(G) be placed at the maximum and minimum points of depths and at the 5-foot depth of a pool over 5 feet deep;

(H) designate the depth, on irregularly shaped pools, at all major deviations in shape; and

(I) have units of measurement spelled out in "feet" or "inches" or abbreviated as "Ft.", "In." or feet and fractions of a foot. In addition to feet and inches, the unit of measurement may also be displayed in meters, in which event units of measurement may be spelled out as "meters" or abbreviated as "M".

(2) Depth and unit markers on decks shall be slip-resistant, placed within 24 inches of the water's edge, and positioned to be read while standing on the deck facing the water;

(3) Depth and unit markers on pool sidewalls, except as provided in paragraph (4) of this subsection shall be plainly and conspicuously posted in the top 4.5 inches of the pool wall and be positioned to be read by a user while in the pool; and

(4) If depth and unit markers cannot be placed on the sidewall with a readable portion of the marker above the actual water level (e.g. the edges of a zero depth entry pool or other coping types that do not allow sufficient space for the 4-inch depth markers), other methods may be used to mark the depth and unit of measurement, as follows:

(A) sidewall depth and unit markers shall not be required on the edges of a zero depth entry pool;

(B) on roll out gutter pools or other pools without a vertical sidewall and with at least 3 inches of the sidewall above the design water level, depth and unit markers shall be readable from the pool and shall be placed in the first 6 inches of deck or on a vertical wall or fence, if one exists, within 10 feet of the water's edge. Otherwise, no depth or unit markers shall be required for such pools; and

(C) on vanishing edge pools, depth and unit markers shall not be required on that portion of the vanishing edge that has no pool wall above the design water level and shall not be required on that portion of the vanishing edge that is inaccessible to patrons on the deck; but sidewall and deck markers must be installed on the vanishing edge immediately at the end of the vanishing edge, in the top 4.5 inches of the pool.

(d) Depth markers for pre-10/01/99 pools. Pre-10/01/99 pools shall have depth markers that comply with the following:

(1) depth markers on both sidewalls and decks of the pool shall:

(A) indicate the pool depth from the design water level to the floor of the pool according to a vertical measurement taken 3 feet from the pool wall;

(B) be a minimum of 4 inches in height (measured vertically on a sidewall and horizontally on a deck);

(C) be of contrasting color to the background on which they are applied;

(D) have permanent colors for the numbers, units (if any), and background of the marker;

(E) be placed at 2-foot increments of depth around the pool; and

(F) be placed at the maximum and minimum points of depths and at the point of bottom slope change from shallow end and deep end;

(2) depth markers and any unit markers on decks shall be slip-resistant, placed within 24 inches of the water's edge, and positioned to be read while standing on the deck facing the water;

(3) depth and any unit markers on pool sidewalls, except as provided in paragraph (4) of this subsection, shall have at least 50% of the depth number and any unit of measurement, plainly and conspicuously placed above the design water level on the sidewall and be positioned to be read by a user while in the pool. A percentage higher than 50% is permitted but not required;

(4) if depth markers and any unit markers cannot be placed on the sidewall with a readable portion of the marker above the design water level (e.g. the edges of a zero depth entry pool or other coping types which do not allow sufficient space for the 4-inch depth markers), other methods may be used to mark the depth and unit of measurement, as follows:

(A) sidewall depth markers shall not be required on edges of zero depth entry pools;

(B) on roll out gutter pools or other pools without a vertical wall that does not have at least 3 inches of pool wall above the design water level, the depth markers and any unit markers shall be readable from the pool and shall be placed in the first 6 inches of deck, or on a vertical wall or fence, if one exists, within 10 feet of the water's edge. If there is no practical location for installation of vertical depth markers, no depth or unit markers shall be required in those areas; and

(C) on vanishing edge pools, depth markers and any unit markers shall not be required on that portion of the vanishing edge that has no pool wall above the design water level and shall not be required on that portion of the vanishing edge that is inaccessible to patrons on the deck; but sidewall and deck markers must be installed on the vanishing edge immediately at the end of the vanishing edge, in the top 4.5 inches of the pool; and

(5) if a pre-10/01/99 pool is substantially replastered or the waterline tile is substantially replaced, all depth markers on the sidewalls must comply with subsection (c) of this section regarding depth markers for post-10/01/99 pools.

(e) "NO DIVING" wording and international no diving symbol warning signs for post-10/01/99 and pre-10/01/99 pools. This subsection applies to post-10/01/99 and pre-10/01/99 pools.

(1) The warning words "NO DIVING" and the international no diving symbol shall be clearly marked on the pool deck with contrasting colors and letters at least 4 inches high. The warning shall be placed at least every 25 feet or fraction thereof, around the pool where the water depth is 6 feet or less. At least two warnings including the "NO DIVING" and international no diving symbol, shall be provided at the extreme ends of the minimum depth and at the extreme ends of the maximum depth at 6 feet on each side of the pool or on each of the longer dimensional sides of the pool. These warning signs shall be slip-resistant. The warning "NO DIVING" and international no diving symbol on the deck shall be within 24 inches of the water edge and positioned to be read while standing on the deck facing the water. The international no diving symbol consists solely of a diver's profile in a circle with a 45-degree slash through the diver and may be red and/or black on a light background.

(2) If a permanent structure above the pool deck (other than a diving board or diving platform) is within 5 feet of the water surface of a pool and is likely to be used for diving, the international no diving symbol and the warning "NO DIVING" (in contrasting colors and letters at least 4 inches high), shall be permanently affixed to the structure so that such warnings are visible to persons who may be attempt to use the structure for diving.

(f) Signs for post-10/01/99 and pre-10/01/99 pools.

(1) Post-10/01/99 and pre-10/01/99 pools shall comply with the following sign requirements:

(A) signs shall be securely mounted as applicable and readily visible to the pool user from inside the pool enclosure;

(B) for Class C and D pools where no lifeguard is provided, a sign shall be placed in plain view and shall state "NO DIVING" along with an international warning symbol for no diving. The letters "NO DIVING" and the symbol shall be at least 4 inches high;

(C) for pools where no lifeguard service is required, a warning sign shall be placed in plain view and shall state "WARNING-NO LIFEGUARD ON DUTY" with clearly legible letters at least 4 inches high. In addition, the sign shall also state in letters at least 2 inches high "CHILDREN SHOULD NOT USE POOL WITHOUT ADULT SUPERVISION". The additional signage required in this subsection may be included on the sign described in paragraph (2) of this subsection; and

(D) when a required telephone is not readily visible from a post-10/01/99 or pre-10/01/99 pool or spa, directions shall be posted regarding its location as stated in subsection (i) of this section.

(2) In areas of Texas where a majority of citizens are non-English speaking, in addition to signs in English, signs, and other written warnings required by these standards, may be posted in the predominant language.

(g) Lifeguard personnel standards at post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 and pre-10/01/99 pools shall comply with the following lifeguard requirements:

(1) lifeguards and second responders shall be provided at:

(A) post-10/01/99 and pre-10/01/99 Class A pools during competitive events;

(B) post-10/01/99 and pre-10/01/99 Class B pools; and

(C) post-10/01/99 and pre-10/01/99 Class C pools with a diving board or a slide that is not locked or chained to prevent use of the slide. At pools where lifeguards are not provided, refer to subsection (f)(1) of this section relating to signs; and

(2) when a lifeguard is provided at a pool, the following shall apply:

(A) the number of lifeguards provided shall be adequate to provide supervision, continuous surveillance and close observation of pool users in all areas of the pool and at all times when the pool is in use. No user shall be permitted in a pool area unless lifeguard(s) are present;

(B) the lifeguard(s) shall hold a current American Red Cross (ARC) "Lifeguard Training" certificate or the equivalent certification from an aquatic safety organization, which also includes training in (ARC) "Adult, Infant, and Child CPR" and "Community First Aid" or their equivalent. Management at each facility will maintain a current file with each staff person's current certification including expiration dates;

(C) an additional lifeguard, or second responder who is monitoring and readily available at the pool, and who has a minimum

training in (ARC) "Adult, Infant, and Child CPR" and "Community First Aid" or equivalent training, shall also be in the pool area when the pool is in use;

(D) lifeguard(s) conducting surveillance of pool users shall not be assigned duties that would distract their attention from proper observation of the patrons, or that would prevent immediate assistance to persons in distress in the water;

(E) pool facilities shall provide alertness/response drills and other training including documentation of the following:

(i) a pre-season training program;

(ii) a continual "in-service" training program for all lifeguards, and other aquatic personnel totaling a minimum 60 minutes per week; and

(iii) performance "audits" as recommended by the ARC or YMCA or equivalent aquatic safety organization;

(F) owners shall maintain an emergency action plan similar to the one outlined by the ARC or YMCA or equivalent aquatic safety organization. All lifeguards and second responders shall receive training in the application of effective pool emergency procedures for events such as submersions, suspected spinal injury, medical emergencies, missing persons, bad weather, etc. Such training will be reviewed as necessary and kept current. Each lifeguard shall be given an assigned surveillance area commensurate with ability;

(G) owners shall allow lifeguards to have sufficient break time from guarding activities as recommended by the ARC or YMCA or equivalent aquatic safety organization.

(H) when a lifeguard is conducting active surveillance of pool patrons, the lifeguard shall not be in the water except in the line of duty.

(h) Lifeguard chairs and lifeguard equipment for post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 and pre-10/01/99 pools shall comply with the following requirements, as applicable:

(1) A post-10/01/99 pool that has a diving board(s) shall have at least one elevated lifeguard chair, located to provide a clear unobstructed view of the pool bottom in the diving area and shall comply with the following.

(A) The seat of the lifeguard chair in the diving water area shall be located at an elevation at least 4 feet above the pool deck. The lifeguard chair may be portable so that its location can be optimized to prevent glare and provide proper supervision.

(B) If the width of the pool is 45 feet or more, an additional elevated chair or station shall be provided and shall be located in the diving area on the opposite side of the pool.

(C) Such lifeguard platforms or chairs shall be placed in locations to reduce sun glare on the water, and in positions which allow complete visual coverage of the pool and the pool bottom within a field of view no greater than 90 degrees on either side of a line of sight extending straight out from the platform or chair.

(2) At post-10/01/99 and pre-10/01/99 pools, lifeguard(s) shall have a sufficient number of standard rescue tube(s) or buoy(s) with attached rope/strap and other equipment as necessary for use by the lifeguard(s). Such equipment shall be immediately accessible at all times. Lifeguard(s) and second responders shall be dressed in swimming attire so that they are readily identifiable as members of the staff.

(i) Pool safety equipment for post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 and pre-10/01/99 pools shall comply with the following standards:

(1) lifesaving equipment at post-10/01/99 and pre-10/01/99 Class A, B, and C pools. At post-10/01/99 and pre-10/01/99 Class A, B, and C pools having less than 2,000 square feet of surface area, at least one of each of the following items of lifesaving equipment shall be provided for the pool:

(A) a reaching pole that is light, strong, non-telescoping and at least 12 feet long. The pole shall be constructed of fiberglass or other material that does not conduct electricity and shall have a body hook or shepherd's crook with blunted ends attached to it; and

(B) a throwing rope that is 1/4-inch to 3/8-inch diameter, with a length at least two-thirds the maximum width of the pool. A ring buoy that is approved by the United States Coast Guard and that has an outside diameter of 15 to 24 inches shall be attached to the throwing rope;

(C) if the pool has between 2,000 and 4,000 square feet of water surface area, an additional reaching pole and throwing rope with ring buoy, as described in subparagraphs (A) and (B) of this paragraph shall be provided. If the pool has over 4,000 square feet of water surface area, an additional reaching pole and throwing rope with ring buoy as described in subparagraphs (A) and (B) of this paragraph shall be provided for each 6,000 square feet of water surface area or portion thereof over 4,000 square feet. All such lifesaving equipment shall be mounted in conspicuous places around the pool deck within 20 feet of the pool. All lifesaving equipment shall be kept in good repair and ready condition.

(2) backboards at post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 and pre-10/01/99 Class A and B pools and Class C pools that have a diving board, slide, or lifeguard shall have one or more backboards with a minimum of 3 tie down straps and head immobilizer for back and neck injuries; and

(3) first aid kits at post-10/01/99 and pre-10/01/99 pools. Post-10/01/99 and pre-10/01/99 Class A and B pools and other pools with lifeguards shall be equipped with a first aid kit meeting OSHA requirements. First aid kits shall be a standard 24-unit kit and housed in a durable weather resistant container and kept filled and ready for use (including disease transmission barriers and cleansing kits that meet OSHA standards.

(j) Telephones at post-10/01/99 and pre-10/01/99 pools and spas. Post-10/01/99 and pre-10/01/99 pools and spas shall have a telephone that is capable of immediately summoning emergency service and that is readily accessible within 200 feet from the pool or spa water. Any other electronic means of summoning emergency service will qualify as a telephone if clear instructions for its use are provided by signage. A telephone that is answered by an on-site office does not meet the requirements of this subsection. The following shall apply to telephones for post-10/01/99 and pre-10/01/99 pools and spas.

(1) The telephone may be located inside or outside of the pool yard or spa yard if the enclosure entry gates and doors of the pool yard or spa yard are never locked in any manner, or the gate or fence is not more than 4 feet 4 inches tall.

(2) The telephone may be located inside or outside of the pool yard if the pool is a Class A or B pool.

(3) The telephone must be located outside of all other pool yards or spa yards if all of the following occur:

(A) the entry gate(s) or door(s) are locked on either side of the gate or door;

(B) the enclosure entry gates and doors and the enclosure fences and walls are all higher than 4 feet 4 inches; and

(C) the pool or spa is operated in conjunction with:

(i) lodging such as hotels, motels, apartments, condominiums, or mobile homes parks;

(ii) a property owners association, private organization, or club;

(iii) a school, college, or university while being operated for academic or continuing education classes, or (iv) practice event (excluding competition events in accordance with subparagraph (A) of this paragraph).

(4) Each entry gate and door of a pool yard or spa yard that is locked must have a sign on the exterior of the gate or door or on the exterior of the enclosure fence or wall immediately adjacent to the gate or door, stating the location of the telephone outside of the enclosure and complying with the content and letter size of paragraph (5) of this subsection if:

(A) the telephone is located outside the pool yard of a Class A or B pool; or

(B) the telephone is required to be located outside the pool yard or spa yard under paragraph (3) of this subsection.

(5) Regardless of where the telephone is located or whether the gate(s) or door(s) are locked, a sign must be installed inside the pool yard or spa yard in plain view of the pool or spa and state in letters at least 1 inch high: "In case of emergency, call 911". If the telephone is not readily visible from the pool or spa, the sign inside the pool yard or spa yard shall include a concise description of the location of the telephone.

(k) Lighting for post-10/01/99 and pre-10/01/99 pools and spas. Lighting for decks and water surfaces of post-10/01/99 or pre-10/01/99 pool or spa shall be provided according to this subsection. Lighting for such pools and spas shall comply with the following:

(1) lighting above water level for decks and water surfaces shall be not less than 0.5 watts (incandescent equivalent) per square foot of the combined deck and water surface areas of the pool or spa;

(2) if underwater lighting is installed in a pool, the underwater lighting shall be 0.5 watts per square foot of water surface area of the pool, and the water surface area need not be counted for purposes of subsection (l) of this section; and

(3) lighting shall be spaced to provide illumination to all portions of the deck and water surface areas of a pool or spa. The bottom of the pool or spa must be readily seen without glare.

(l) Indoor ventilation for post-10/01/99 pools and spas. A post-10/01/99 pool or spa that is constructed indoors must meet ASHRAE 62-1989 "Ventilation for Acceptable Indoor Air Quality" standards.

(m) Safety and sanitation of special aquatic activity devices. Post-10/01/99 or pre-10/01/99 special aquatic activity devices involving a water circulation system separate from the circulation system for a pool (e.g., separate pump, holding tank, etc.) shall comply with the following sections to the same extent the sections apply to pools, except as otherwise noted:

(1) §265.187 of this title relating to (Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas), except that the water turnover rate shall be at least once every 30 minutes, and a vacuum cleaning system is not required;

(2) §265.188 of this title (relating to Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(3) §265.189 of this title (relating to Pumps and Motors at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(4) §265.190 of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(5) §265.192 of this title (relating to Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards, and Spa Yards);

(6) §265.194 of this title (relating to Pool or Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(7) §265.196 of this title (relating to Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(8) §265.197 of this title (relating to Disinfection Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas); and

(9) §265.204 of this title (relating to Water Quality for Post-10/01/99 and Pre-10/01/99 Pools and Spas).

§265.200. Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Enclosures for post-10/01/99 and pre-10/01/99 Class A and B pools and spas and post-10/01/99 and pre-10/01/99 residential youth camp pools and spas.

(1) Post-10/01/99 and pre-10/01/99 Class A and B pools, and post-10/01/99 and pre-10/01/99 pools and spas that are located at residential youth camps required to be licensed under Health and Safety Code, Chapter 141 shall be enclosed by a barrier consisting of one of the following, or equivalent barrier: a fence, portion of a building, wall, or other durable enclosure.

(2) A building that serves as part of the enclosure may have doors or gates that open into the pool yard only if:

(A) any doors or gates between the building and the pool yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool;

(B) the room does not have any door or gate openings to the outside of the pool yard enclosure; and

(C) the room does not contain any gas chlorine containers.

(3) The enclosure, including doors and gates, shall:

(A) have a minimum effective perpendicular height of at least 6 feet as measured from the ground surface on the outside of the fence;

(B) have no openings in the enclosure through or under which a 4-inch diameter sphere can pass;

(C) be designed and constructed so that it cannot be readily climbed; and

(D) have all doors, gates, and windows in the enclosure directly and continuously supervised by staff at the pool during hours of operation, or locked to prevent unauthorized entry.

(b) Enclosures for post-10/01/99 or pre-10/01/99 Class C and D pools and spas that are subject to Health and Safety Code, Chapter 757. A post-10/01/99 or pre-10/01/99 pool or spa that is subject to Health and Safety Code, Chapter 757 (covering pool yards and spa yards of apartments, property owner associations, and similar residential developments) shall have an enclosure as required in Chapter 757.

(c) Enclosures for all other post-10/01/99 or pre-10/01/99 Class C and D pools and spas. A post-10/01/99 or pre-10/01/99 Class C pool or spa or Class D pool or spa that is not subject to Health and Safety Code, Chapter 757 (such as pools and spas for hotels, motels, RV parks, etc.) must have a pool yard or spa yard enclosure in compliance with this subsection.

(1) The pool yard or spa yard enclosure for a post-10/01/99 or pre-10/01/99 pool or spa subject to this subsection shall consist of one or a combination of a fence, portion of a building, wall or other durable enclosure. The enclosure shall comply with the following:

(A) the enclosure must have a minimum perpendicular height of at least 48 inches as measured from the ground surface on the outside of the fence;

(B) openings in or under the enclosure shall not allow the passage of a 4-inch diameter sphere;

(C) planters or other structures that might allow small children to climb over the enclosure shall not be permitted within 36 inches, measured horizontally, from the outside of the enclosure;

(D) chain link fencing may be used for the enclosure of a pre-10/01/99 pool and spa if the chain link fencing was installed prior to October 1, 1999. Chain link fencing may not be used for an enclosure for a post-10/01/99 pool or spa;

(E) doors, gates, or windows that open into a building are allowed as part of a pre-10/01/99 pool or spa enclosure. Windows that are capable of being opened are not allowed as part of a post-10/01/99 pool or spa enclosure. Doors or gates of a building that are capable of being opened are not allowed as part of a post-10/01/99 pool or spa enclosure unless:

(i) the doors or gates between the building and the pool yard or spa yard are for entry into a storage room, restroom, shower room, dressing room or mechanical room adjacent to the pool;

(ii) the room does not have any door or gate openings to the outside of the pool yard or spa yard enclosure; and

(iii) the room does not contain any gas chlorine containers.

(2) Gates and doors for pool yard or spa yard enclosures for post-10/01/99 and pre-10/01/99 pools and spas subject to this subsection shall:

(A) be equipped with self-closing and self-latching devices and be latched when the pool or spa is not in use. The self-closing device shall be designed to keep the gate or door securely closed and the self-latching device shall latch when the gate is allowed to close within in its range of operation, which is from its fully open position to 6 inches from the fully closed position;

(B) open outward away from the pool or spa except for gates constructed before October 1, 1999, in compliance with an applicable city ordinance;

(C) have hand activated door or gate opening hardware located at least 3.5 feet above the deck or walkway;

(D) be capable of being locked;

(E) be locked if it is for entry into a Class A or B pool or a spa, and the pool or spa is not open for use; and

(F) be locked if it is for entry into a Class C or D pool or a spa and the pool or spa needs to be closed because of repairs, hazards, or other conditions.

(3) Pool yard and spa yard enclosures for post-10/01/99 pools and spas shall be constructed so that all persons will be required to pass through an enclosure gate or door in order to gain access to the pool or spa. All gates and doors exiting a pool yard or spa yard of a post-10/01/99 pool or spa shall open into a public area or walkway accessible by all users of the pool or spa.

§265.201. Dressing and Sanitary Facilities at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Fixture design at post-10/01/99 facilities. Fixtures at facilities for post-10/01/99 and pre-10/01/99 pools and spas shall be designed so that they are readily cleanable.

(b) Fixture installation at post-10/01/99 and pre-10/01/99 facilities. Fixtures at facilities for post-10/01/99 and pre-10/01/99 pools and spas shall be installed in accordance with local plumbing codes and shall be properly protected by cross-connection control devices (backflow prevention devices).

(c) Proper cleaning at post-10/01/99 and pre-10/01/99 facilities. Facilities for post-10/01/99 and pre-10/01/99 pools and spas shall be cleaned as necessary to maintain sanitary conditions at all times.

(d) Adequate ventilation at post-10/01/99 facilities. Adequate ventilation shall be provided in facilities for post-10/01/99 and pre-10/01/99 pools and spas to prevent objectionable odors in accordance with §265.199(l) of this title (relating to Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(e) Dressing and sanitary facilities at facilities for post-10/01/99 Class A, B, or D pools. Adequate dressing and sanitary facilities shall be provided for post-10/01/99 Class A or B pools and for post-10/01/99 Class D pools and spas operated in conjunction with a Class A or Class B pool.

(1) Separate dressing and sanitary facilities shall be provided for each gender. The rooms shall be well lit, drained, ventilated, and of good construction, using impervious materials. They shall be developed and planned so that good sanitation will be maintained throughout the building at all times. An appropriate number of dressing rooms that can accommodate a family are allowed.

(2) Partitions between portions of the dressing room area, screen partitions, shower, toilet, and dressing room booths shall be of durable material not subject to damage by water and shall be designed so that a waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

(3) At least one shower and dressing booth for each gender shall be provided. This condition may be subject to variation for schools and other institutional use where a pool or spa may be open to one gender at a time.

(4) Floors shall have a slip-resistant surface and shall be sufficiently smooth to ensure ease in cleaning. Floor drains shall be provided, and floors shall be sloped 1/4 inch per foot toward the drains to ensure positive drainage.

(5) An adequate number of hose bibs and a hose of adequate length shall be provided for washing down all areas of the dressing facility interior. Adequate cross-connection control devices as approved by the TCEQ or local regulatory authority shall be provided. When not in use, hoses shall be stored in such a manner to prevent a trip hazard.

(f) Lavatories, showers, and toilets at post-10/01/99 pools and spas. Except as provided in subsection (g) of this section, the following requirements apply to lavatories, showers and toilets in facilities serving post-10/01/99 Class A, B, C, or D pools and spas:

(1) the required fixture schedule is contained in the following table:
Figure: 25 TAC §265.201(f)(1)

(2) the number of fixtures should be increased for swimming pools at schools or similar locations where load may reach peaks due to schedule of use; and

(3) shower(s) and lavatory(s) water temperature shall be controlled by anti-scald devices. The water heater and thermostatically-controlled mixing valves shall be inaccessible to users and shall be capable of providing 2 gallons per minute of water between 90 to 110 degrees Fahrenheit to each shower head. A shower can be located on the deck of the pool if proper wastewater disposal is provided. The shower need not be enclosed in Class C pools.

(g) Sanitary facilities serving post-10/01/99 pools or spas in apartments, hotels, motels or condominiums. Post-10/01/99 Class C and D pools and spas located in an apartment, hotel, motel or condominium complex are not required to have the following facilities:

(1) showers;

(2) dressing rooms;

(3) toilets;

(4) urinals unless the facility has toilets for persons using the pool or spa;

(5) hand drying towels unless the facility has a lavatory in an enclosed room;

(6) baby changing table unless the facility has a dressing room or toilets; and

(7) a lavatory if a faucet is installed at lavatory height and in compliance with subsection (f)(3) of this section and proper wastewater disposal is provided.

(h) Additional requirements for sanitary facilities at post-10/01/99 and pre-10/01/99 pools and spas. Post-10/01/99 and pre-10/01/99 sanitary facilities serving a post-10/01/99 or pre-10/01/99 pool or spa shall comply with the following whenever lavatories, toilets, mirrors, or dressing rooms are provided:

(1) Soap dispensers with liquid or powdered soap shall be provided at each lavatory. The dispenser shall be of all metal or plastic type with no glass permitted in these units;

(2) any mirrors shall be shatter resistant;

(3) toilet paper holders and toilet paper shall be provided at each toilet;

(4) covered waste receptacles shall be provided in toilet or dressing room areas; and

(5) single-use hand drying towels or hand drying devices shall be provided near the lavatory.

§265.202. Food, Beverages, and Containers at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Food and beverages while in the water at post-10/01/99 and pre-10/01/99 pools and spas. At post-10/01/99 and pre-10/01/99 pools and spas, no person may eat, drink, or smoke while in the pool or spa water.

(b) Non-breakable containers at post-10/01/99 and pre-10/01/99 pools and spas. At post-10/01/99 and pre-10/01/99 pools and spas, food and beverage(s) shall be served only in non-breakable containers. Glass containers shall not be allowed on a deck, in a pool or spa, or elsewhere in a pool yard or spa yard.

(c) Trash containers at post-10/01/99 and pre-10/01/99 pools and spas. At post-10/01/99 and pre-10/01/99 pools and spas, trash containers shall be provided where food and/or beverage(s) are allowed.

§265.203. Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Required operator certification for certain types of post-10/01/99 and pre-10/01/99 pools and spas. Post-10/01/99 and pre-10/01/99 Class A or B pools and Class D pools operated in conjunction with a Class A or B pool shall be maintained under the supervision and direction of a properly trained and certified operator who is responsible for the sanitation, safety, and proper maintenance of the pool or spa, and for maintaining all physical and mechanical equipment and records. Training and certification can be obtained by completion of one of the following courses or their equivalent:

(1) the NRPA, "Aquatic Facility Operator" (A.F.O.);

(2) the NSPF, "Certified Pool-Spa Operator" (C.P.O.);

(3) YMCA, "Pool Operator on Location" (P.O.O.L.); or

(4) the NSPI, "Professional Pool & Spa Operator" (P.P.S.O.).

(b) Water clarity standards for post-10/01/99 and pre-10/01/99 pools and spas. Areas of a post-10/01/99 or pre-10/01/99 pool or a spa shall be opened for use only if the pool or spa bottom and/or main drains are clearly visible. Possible visual occlusion by sediment or other matter shall be checked before opening a pool and periodically, as necessary, while the pool is in use. To check the pool or spa when in use, bathers shall exit and the pool or spa water shall be allowed to calm. Clarity shall be observed between 1 to 5 minutes after users have exited. The pool or spa shall be opened for use only if the bottom and/or main drains are clearly visible. Sediment or other matter that may cause visual occlusion shall be vacuumed, filtered or otherwise removed as needed prior to pool use.

(c) Equipment for water clarity for post-10/01/99 and pre-10/01/99 pools and spas. When a post-10/01/99 or pre-10/01/99 pool or spa is open for use, filtration, circulation systems, chemical/disinfectant feeders, slurry feeders, heaters, etc., that are dependent upon circulation pump flow shall be operating, plus any additional time necessary to ensure continuous water clarity and chemical distribution.

(1) The pool and spa shall be operated to maintain the turnover rates as stated in §265.187(b)(1) of this title (relating to Circulation Systems for Post-10/01/99 Pools and Spas) and §265.187(c) of this title.

(2) Circulation pumps shall run continuously 24 hours a day year round and not be throttled to reduce circulation below the design flow rate, except that a pool pump may run less than 24 hours a day if:

(A) a "Pool Closed" sign, with letters at least 1-inch tall, is posted on the exterior side of each entry gate into the pool yard; and

(B) the pump runs a sufficient number of hours needed to keep the water at required clarity and disinfectant levels; and

(C) the pump runs the same number of hours each day.

(d) Off season water clarity for post-10/01/99 and pre-10/01/99 outdoor pools and spas. When a post-10/01/99 or pre-10/01/99 outdoor pool or spa is not in use for an extended period of time (such as off season), clarity shall be maintained and algae growth shall be prevented; however, other water quality parameters as required in §265.204(a) of this title (relating to Water Quality for Post-10/01/99 and Pre-10/01/99 Pools and Spas) do not need to be

maintained. Other methods may be used to maintain pools and spas during extended periods of non-use if the methods are approved by local authorities in writing and water clarity is maintained.

(e) Off season safety for post-10/01/99 and pre-10/01/99 pools and spas. When a post-10/01/99 or pre-10/01/99 pool or spa is not in use after seasonal operation, while under construction or renovation, or for any other reason, the facility shall not be allowed to give off objectionable odors, become a breeding site for insects, or create any other nuisance situation or safety hazard.

(f) Domestic animals prohibited at post-10/01/99 and pre-10/01/99 pools and spas. Domestic animals and other pets shall not be allowed within a post-10/01/99 or pre-10/01/99 pool or spa enclosure area, except that service animals shall be allowed on the deck and within the pool enclosure but not in the pool.

(g) Actual water level at post-10/01/99 and pre-10/01/99 pools and spas. Actual water level in a post-10/01/99 or pre-10/01/99 pool or spa shall be maintained within the operating water level range of the system's rim or weir device.

(h) Protection from chemicals for post-10/01/99 and pre-10/01/99 pools and spas. Personnel in charge of maintaining a post-10/01/99 or pre-10/01/99 pool or a spa shall be properly trained in accordance with §265.197(a)(5) of this title (relating to Disinfectant Equipment and Chemical Feeders at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(i) Maximum load limits for post-10/01/99 pools and spas. The maximum load limits for a post-10/01/99 pool and spa shall be calculated and posted. Load limits are indicated in §265.184(n) of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas).

(j) Use of life jackets for post-10/01/99 and pre-10/01/99 pools and spas. No person shall be prohibited from the use of a life jacket in a post-10/01/99 or pre-10/01/99 pool or spa.

(k) Proper use of chemicals at post-10/01/99 and pre-10/01/99 pools and spas. Use of chemicals at post-10/01/99 and pre-10/01/99 pools and spas shall be according to the chemical manufacturer's directions. No chemical shall be used in a way that violates the manufacturer's instructions for the chemical feed system or the ANSI/NSF-50 certification of the chemical feed system.

(l) Use of registered products at post-10/01/99 and pre-10/01/99 pools and spas. In post-10/01/99 and pre-10/01/99 pools and spas, only chemicals registered and labeled for use in pools and spas by U.S. Environmental Protection Agency shall be used.

§265.204. Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas.

(a) Required water quality for post-10/01/99 and pre-10/01/99 pools and spas. Water quality for a post-10/01/99 or pre-10/01/99 pool or a spa shall meet the following criteria when the pool or spa is open for use. The water quality parameters in the following table apply to both pools and spas unless otherwise indicated.
Figure: 25 TAC §265.204(a)

(b) Water quality testing at post-10/01/99 and pre-10/01/99 pools and spas. A reliable means of testing for pH, free and total chlorine or total bromine residuals, and cyanuric acid (if used), total alkalinity, and hardness shall be maintained for post-10/01/99 and pre-10/01/99 pools and spas. The test method shall be capable of measuring chemical ranges as detailed in subsection (a) of this section.

(1) Free available chlorine residual shall be determined by the use of the DPD method or its equivalent.

(2) Test reagents shall be properly stored and changed at frequencies recommended by the manufacturer to assure accuracy of the tests.

(c) Testing frequency for post-10/01/99 and pre-10/01/99 pools and spas. When a post-10/01/99 or pre-10/01/99 Class A or B pool is open for use or when a post-10/01/99 or pre-10/01/99 Class D pool or spa is operated in conjunction with a Class A or B pool open for use, a test for disinfectant level and pH shall be conducted at least every 2 hours to assure compliance with subsection (a) of this section relating to required water quality parameters. In lieu of the above testing frequency, if a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made at least once per day. If necessary, tests shall be conducted more frequently to assure proper disinfectant level and pH.

(d) Other required tests for post-10/01/99 and pre-10/01/99 pools and spas. Test(s) for total chlorine, cyanuric acid, alkalinity and hardness at post-10/01/99 and pre-10/01/99 pools and spas shall be conducted as necessary to assure proper chemical control.

(e) Operational records for post-10/01/99 and pre-10/01/99 pools and spas. When tests are required, under this section, operational records of the tests shall be kept for two years and be made available during a governmental inspection.

§265.205. Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Spas.

(a) General construction standards for pre-10/01/99 spas. Pre-10/01/99 spas shall comply with good public health engineering practices for construction of post-10/01/99 built pools and spas prevailing at the time of original construction as required by Health and Safety Code, §341.064(g), and shall comply with applicable rules at the time of original construction.

(b) General construction standards for post-10/01/99 spas. Post-10/01/99 spas shall comply with good public health engineering practices for construction of post-10/01/99-built pools and spas prevailing at the time of original construction as required by Health and Safety Code, §341.064(g), and shall comply with ANSI/NSPI-2, 1992 Standards for Public Spas except as otherwise provided in these rules.

(c) General standards for circulation equipment in post-10/01/99 spas. Circulation equipment on post-10/01/99 spas, such as pumps, filters, skimmers, chemical feeders, and other circulation equipment, shall comply with ANSI and NSFI Standard-50-1996 (ANSI/NSFI-50-1996) except as otherwise noted in §265.190(h) of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(d) General standards for replacement of circulation equipment in pre-10/01/99 spas. Circulation equipment replaced on pre-10/01/99 spas shall comply with ANSI and NSFI Standard-50-1996 (ANSI/NSFI-50-1996) except as otherwise noted in §265.190(h) of this title (relating Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(e) Specific construction and operational standards for post-10/01/99 spas. The following standards apply to post-10/01/99 spas as specifically stated therein.

(1) §265.181 of this title (relating to General Provisions);

(2) §265.182 of this title (relating to Definitions);

(3) §265.183 of this title (relating to Plans, Permits and Instructions for Post-10/01/99 Pools and Spas);

(4) §265.185 of this title (relating to General Construction and Design for Post-10/01/99 Pools and Spas), and as follows:

(A) the maximum water depth shall be 4 feet from the design waterline except when approved by the local regulatory authority; and

(B) multi-level seating may be provided, but the maximum water depth of any seat or sitting bench shall be 24 inches, measured from the design waterline.

(5) §265.186(a) and (b) of this title (relating to Decks, Entry/Exit, Diving Facilities, and Other Deck Equipment for Post-10/01/99 and Pre-10/01/99 Pools and Spas). Also see ANSI/NSPI-2, 1992;

(6) §265.187 of this title (relating to Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(7) §265.188 of this title (relating to Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(8) §265.189 of this title (relating to Pumps and Motors at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(9) §265.190 of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(10) §265.191 of this title (relating to Surface Skimming and Perimeter Overflow (Gutter Systems for Post-10/01/99 Pools and Spas);

(11) §265.192 of this title (relating to Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards and Spa Yards);

(12) §265.193 of this title (relating to Heating of Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(13) §265.194 of this title (relating to Pool or Spa Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(14) §265.195 of this title (relating to Drinking Water at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(15) §265.196 of this title (relating to Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(16) §265.197 of this title (relating to Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(17) §265.198 of this title (relating to Gas Chlorination at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(18) §265.199 of this title (relating to Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(19) §265.200 of this title (relating to Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(20) §265.201 of this title (relating to Dressing and Sanitary Facilities at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(21) §265.202 of this title (relating to Food, Beverages, and Containers at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(22) §265.203 of this title (relating to Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(23) §265.204 of this title (relating to Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas); and

(24) air blowers and other devices and systems which induce or allow air to enter the spa either by means of a power pump or passive design and shall comply with the following:

(A) the air blower systems shall prevent water backflow that could cause electrical shock hazards in accordance with ANSI/UL 1563-1995;

(B) air intake sources shall not induce water external to the spa unit dirt or contaminants, into the spa;

(C) the air induction system shall be properly sized in accordance with the manufacturer's sizing specification;

(D) when installing an air blower indoors or within an enclosure, adequate ventilation is required. The air induction system shall be installed in accordance with the manufacturer's recommendations;

(E) the air blowers shall be installed in accordance with the NEC and any federal, state or local codes;

(F) the air blower shall be accessible for inspection and service;

(G) integral air passages shall be pressure tested at time of manufacture to provide structural integrity to a value of 1.5 times the intended working pressure; and

(H) if an air blower or other means of introducing air is provided, a manually operated timer switch located as to require the exiting of the spa to reset shall be provided. Such a timer shall operate the spa blower and circulation pump and shall automatically shut the blower and circulation pump off in 15 minutes or when manually switched to the off position.

(f) Other safety-related requirements for post-10/01/99 and pre-10/01/99 spas. Post-10/01/99 and pre-10/01/99 spas shall comply with the following.

(1) First aid kits. Post-10/01/99 and pre-10/01/99 spas operated in conjunction with a Class A or B pool shall be equipped with a standard, 24-unit first aid kit that meets OSHA requirements and is kept ready for use at all times. First aid kits shall be housed in a durable weather resistant container and kept filled and ready for use (including disease transmission barriers and cleansing kits that meet OSHA standards).

(2) Telephone. Post-10/01/99 and pre-10/01/99 spas shall provide a means of summoning help in an emergency, and a sign shall be provided in accordance with §265.199(j) of this title (relating to Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(3) Spa yard enclosures. Post-10/01/99 and pre-10/01/99 spas shall be provided with an enclosure as follows:

(A) a post-10/01/99 or pre-10/01/99 spa at a complex subject to Health and Safety Code, Chapter 757, shall be provided with an enclosure as required in that code;

(B) all other post-10/01/99 and pre-10/01/99 spas shall be provided with an enclosure required by §265.200 of this title (relating to Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(4) Deck depth markers. Deck depth markers for post-10/01/99 and pre-10/01/99 spas shall comply with the following:

(A) spas shall have permanent deck depth markers with numbers and units of measurement a minimum of 4 inches high plainly and conspicuously visible from all obvious points of entry;

(B) there shall be a minimum of 2 deck depth markers per spa, regardless of spa size or shape;

(C) deck depth markers shall be spaced at no more than 25-foot intervals and shall be uniformly located around the entry areas of the spa;

(D) deck depth markers and units of measurement shall be within 24 inches of the water edge and positioned to be read while standing on the deck facing the water;

(E) deck depth markers shall be positioned to be read while standing on the deck facing the water;

(F) deck depth markers in or on the deck surfaces shall be slip-resistant;

(G) units of measurement shall either spell out "feet" or "inches" or abbreviate "Ft.", "In. or feet and fractions of a foot. In addition to feet and inches the depth of water may also be displayed in meters. Units of measurement for meter depth markers may be spelled out "meters" or abbreviated "M"; and

(H) deck depth markers shall indicate the spa depth from the design water level to the floor of the spa with a vertical measurement taken 3 feet from the spa wall.

(5) Temperature and thermometers. Post-10/01/99 and pre-10/01/99 spas shall comply with the following temperature safeguards:

(A) the maximum temperature of the water in the spa shall not exceed 104 degrees Fahrenheit (40 degrees Centigrade);

(B) a break-resistant thermometer (plus or minus 1 degree Fahrenheit tolerance) that is designed for use in a spa environment shall be available for patrons and staff to monitor spa temperature; and

(C) the controls for the spa temperature shall not be accessible to the spa user.

(6) Maximum load limits. Maximum load limits for post-10/01/99 spas are set forth in §265.184(n)(2) of this title and for pre-10/01/99 spas are set forth at §265.185(e)(2) of this title.

(7) Signs. Signs for post-10/01/99 and pre-10/01/99 spas shall be securely mounted and readily visible to the spa user from inside the spa enclosure. Signage shall state the following:

(A) the location of the nearest telephone or emergency-summoning device;

(B) "DO NOT USE THE SPA, IF THE WATER TEMPERATURE IS ABOVE 104 DEGREES FAHRENHEIT (40 DEGREES CENTIGRADE)" in letters at least 1 inch high;

(C) "WARNING-NO LIFEGUARD ON DUTY" with clearly legible letters at least 4 inches high if no lifeguard is required;

(D) "CHILDREN SHOULD NOT USE SPA WITHOUT ADULT SUPERVISION" with clearly legible letters at least 2 inches high if no lifeguard is required; and

(E) the maximum load limit as required in §265.203(j) of this title.

§265.206. Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Therapeutic Pools and Spas.

(a) General construction standards for post-10/01/99 and pre-10/01/99 therapeutic pools and spas. Construction design and materials used in construction of post-10/01/99 and pre-10/01/99 therapeutic pools and spas shall comply with good public health engineering practices for construction of post-10/01/99-built therapeutic pools and spas prevailing at the time of original construction as required by Health and Safety Code, §341.064(g).

(b) General standards for circulation equipment in post-10/01/99 therapeutic pools and spas. Circulation equipment or post-10/01/99 therapeutic pools and spas, such as pumps, filters, skimmers, chemical feeders and other circulation equipment, shall comply with ANSI and NSFI Standard 50-1996 (ANSI/NSFI-50-1996) except as otherwise noted in Section 265.190(h).

(c) General standards for replacement of circulation equipment in pre-10/01/99 therapeutic pools and spas. Circulation equipment replaced on pre-10/01/99 therapeutic pools and spas shall comply with ANSI and NSFI Standard-50-1996 (ANSI/NSFI-50-1996) except as otherwise noted in §265.190(h) of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas).

(d) Specific construction and operational standards for post-10/01/99 therapeutic pools and spas. The following standards apply to post-10/01/99 therapeutic pools and spas as specifically stated therein.

(1) §265.181 of this title (relating to General Provisions);

(2) §265.182 of this title (relating to Definitions);

(3) §265.183 of this title (relating to Plans, Permits and Instructions for Post-10/01/99 Pools and Spas);

(4) §265.187 of this title (relating to Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas). If the therapeutic pool contains less than 1,000 gallons, the water turnover rate shall be 30 minutes or less;

(5) §265.188 of this title (relating to Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(6) §265.189 of this title (relating to Pumps at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(7) §265.190 of this title (relating to Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(8) §265.192 of this title (relating to Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards and Spa Yards);

(9) §265.193 of this title (relating to Heating of Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(10) §265.194 of this title (relating to Pool or Spa Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(11) §265.195 of this title (relating to Drinking Water Supply at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(12) §265.196 of this title (relating to Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(13) §265.197 of this title (relating to Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(14) §265.204 of this title (relating to Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas);

(15) §265.207 of this title (relating to Compliance, Inspections and Investigations); and

(16) §265.208 of this title (relating to Enforcement).

§265.207. Compliance, Inspections, and Investigations.

(a) A department or local regulatory representative, upon presenting the department credentials, shall have the right to enter at all

reasonable times any area or environment, including but not limited to the pool or spa facility, building, storage, equipment room, or office area to inspect and investigate for compliance with these sections, to review records, to question any person, or to locate, to identify, and to assess the condition of pool or spa facility.

(b) Advance notice or permission for inspections or investigations by the department or local regulatory authority is not required.

(c) A department or local regulatory representative shall not be impeded or refused entry in the course of his official duties by reason of any state or federal law or company policy. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department or local regulatory representative.

§265.208. Enforcement.

(a) If inspections by the department or the local regulatory authority determine that a person has caused, suffered, allowed, or permitted a violation of Health and Safety Code §341.064 or any of these rules the department or the local regulatory authority may, in accordance with Health and Safety Code, §341.092, assess civil penalties, seek injunctive relief in district court, or both.

(b) The department may also seek a criminal penalty under Health and Safety Code, §341.091.

(c) The department or local regulatory authority may take all appropriate legal remedies available to it including immediately closing the pool or spa either through voluntary compliance or an injunction.

(d) If a pool or spa closes either voluntarily or by court order all access to the pool or spa shall be restricted and a notice posted notifying the public that the pool or spa is closed until further notice.

(e) In the case of voluntary closure and upon presentation of evidence that the deficiencies that caused closure have been corrected, operation can be resumed if explicitly authorized by the department or local regulatory authority in writing. Such evidence may be in the form of a reinspection by the regulatory authority, or by other evidence acceptable to the regulatory authority.

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

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.232

The Texas Department of Health (department) proposes an amendment to §289.232, concerning radiation control regulations for dental radiation machines.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.232 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary as outlined in this preamble.

The department published a Notice of Intention to Review for §289.232 regarding Government Code, §2001.039, in the *Texas Register* (28 TexReg 9549) on October 31, 2003. No comments were received by the department on this section following publication of the notice.

The proposed revision incorporates legislation passed by the 78th Legislature, Regular Session, 2003. House Bill (HB) 2292, which added Health and Safety Code, §§12.0111 and 12.0112, requires two-year terms for certificates of registration and requires recovery through fees of 100% of regulatory program costs for the two-year term of the certificate of registration. Therefore, references to annual fees are deleted throughout the section. The department is also simplifying its fee structure for certificates of registration. Dental registrants now have one specified fee of $300 every two years, rather than a base fee plus machine fee. References to base fee and machine fee are deleted throughout the section. The registrant will be required to renew the certificate of registration every two years by paying the required fee and having a satisfactory compliance history. Registrants will receive a fee bill from the department every two years rather than every year. The requirement for an annual late payment fee is deleted. Failure to pay the fee means the certificate of registration is expired and the registrant is subject to compliance procedures provided in subsection (k)(2) regarding hearing and enforcement procedures. Senate Bill 1152, 78th Legislature, Regular Session, 2003, which amended Government Code, Chapter 2054, directs the department to participate in Texas Online, an electronic fee payment system developed and maintained by the Texas Online Authority. Wording is added that authorizes the department to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. The changes to the rule are reflected in revised subsections (g) and (h)(6).

The revision changed references to the Formal Hearing Procedures throughout the rule to properly cite the references. In current subsection (a)(4), the sentence "No radiation may be deliberately applied to human beings except by or under the supervision of an individual licensed by the Texas State Board of Dental Examiners." is deleted in this paragraph and moved to subsection (b)(1) as this sentence is addressed more appropriately within this paragraph. Paragraph (5) is added to subsection (b) to clarify that registrants who are also licensed by the agency to receive, possess, use, and transfer radioactive materials must also comply with the applicable requirements of other sections of this title. A definition of "Act," which is the statutory authority for the radiation control rules, is added as it was inadvertently omitted from a previous version. The definitions of "leakage radiation," "medical research," "notice of violation," "radiation," "shallow dose equivalent," and "supervision" are revised to be consistent with language used in other sections in this title. The definitions of "mobile services" and "x-ray equipment" are revised to more clearly state the intent of the rule. The definitions of "interested person," "mobile x-ray equipment," and "requestor" are deleted as these terms are not used in this section.

Subsequent definitions are renumbered as a result of the deleted definitions. The wording in the requirements concerning occupational dose in subsection (i)(4), including the definition of shallow dose equivalent, is being revised for clarification and to be compatible with the United States Nuclear Regulatory Commission (NRC), and as an agreement state, Texas must adopt these requirements. The word "registrant" was replaced with "person" in several subsections because the applicable requirements are not limited to registrants. The requirements apply to any person not complying with the provisions of this chapter.

House Bill 253, 78th Legislature, Regular Session, 2003, which amended Health and Safety Code, §401.110, requires the department to deny a certificate of registration application, amendment or renewal if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of the Radiation Control Act or the department's radiation control rules. The department has defined "a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations..." by adding a requirement that states the department will deny an application if at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant or that revoke or suspend the certificate of registration. The change to the rule is reflected in new subsection (h)(4)(F).

New subparagraph (G) is added to subsection (h)(4) to specify that registrants must ensure that any person they hire to provide services is registered with the department. This is consistent with language in other sections of this title. Subsection (h)(5)(A) is revised to clarify that the registrant shall notify the department in writing of the new requirements in clauses (i)-(iv). Subsection (h)(5)(B)(i) is revised to more clearly state that if a person has a valid certificate of registration and radiation machines are being used for clinical trial evaluations and loaner or demonstration for more than 60 days, then the person shall register the radiation machines with the department. Subsection (h)(5)(C)(i) is revised to be consistent with language used throughout this chapter. In subsection (h)(5)(D), new requirements are added to specify what information is to be included on the inventory of radiation machines and changes regarding inventory that the registrant is required to report to the department. New paragraph (8) of subsection (h) is added to be consistent with modification, suspension, and revocation procedures in other sections of this title. Subsection (h)(9)(A)(vii) and (h)(9)(G) is revised to expand the requirements for requesting reciprocal recognition to be consistent with language used throughout this chapter. New paragraph (10) is revised to consolidate the requirements for the radiation safety officer. Subsection (i)(3) adds subparagraph (A) to specify that a registrant shall document that each individual operating a radiation machine has read the operating and safety procedures. The requirements for radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines are revised to reflect changes in the notification requirements. Language is also added to the expiration and termination subsections to clarify requirements for the disposition or transfer of radiation machines if a registrant terminates a certificate of registration or it expires. Subsection (i)(6)(E) is deleted because this is a manufacturing requirement rather than a use requirement. Subsequent subparagraphs are renumbered as a result of this deleted subparagraph. Language is added to subsection (i)(8) for clarification and to be consistent with language used in other sections of this title. Subparagraph (13) of subsection (i) is also revised to be consistent with language used throughout his chapter. Subparagraph (16) is added to subsection (i) to require that users of digital imaging acquisition systems follow quality assurance/quality control protocols, that such protocols be included in the registrant's operating and safety procedures, and that the frequency at which the protocols are performed be documented. The revision adds language to subsection (k)(1)(T)(iii) to clearly state that the registrant shall submit documentation of the most recent equipment performance evaluation and the inventory. In subsection (k)(2)(C)(iii), subclause (IV) is added to state that a certificate of registration may also be modified, suspended, or revoked in whole or in part as a result of existing conditions that constitute a substantial threat to the public health or safety or the environment to be consistent with language used in other sections of this title. Subsection (k)(2)(D)(iii)(I), (iv), and (G)(i) and (iv) are also revised to be consistent with language used throughout this chapter. Current subsection (k)(2)(H)(ii)-(v) are deleted as these requirements do not apply to dental registrants.

Concerning the entire section, several changes were made to state the correct rule citations and for renumbering purposes as needed due to language being added or deleted throughout the section. Other minor grammatical changes have been made throughout the section.

This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, other factors, or to incorporate requirements that are items of compatibility with NRC regulations because as an agreement state, Texas must adopt compatible requirements.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed. The subscription and convenience fees for electronic payment of fees as determined by Texas Online will be collected by the department and paid directly to the Texas Online Authority to offset the costs to state government for operating Texas Online.

Mrs. McBurney has also determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that rules are clear and specific and that those persons required to operate radiation machines do so in ways that ensure such protection. There will be fiscal impact on applicants/licensees that are small businesses, micro-businesses or other persons required to comply with the rule. The fee amounts will increase for some registrants and will decrease for others because the department is implementing one specified fee, rather than a base fee plus a machine fee. Approximately 68% of dental registrants will have an average decrease in fee of $40. Approximately 32% will have an average increase in fee of $22. When implemented, the subscription and convenience fees determined by Texas Online will be $10 for credit card use by registrants. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189,

Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 10:00 a.m., Tuesday, April 13, 2004, in Conference Room N-218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, §401.051, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects Health and Safety Code, Chapters 12 and 401. The review of the rule implements Government Code, §2001.039.

§289.232. Radiation Control Regulations for Dental Radiation Machines.

(a) Purpose. This section establishes the following.

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

(3) Requirements [~~These requirements are~~] intended to control the receipt, possession, use, and transfer of radiation machines by any person so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(4) Requirements for the use of dental radiation machines. [~~No radiation may be deliberately applied to human beings except by or under the supervision of an individual licensed by the Texas State Board of Dental Examiners.~~] The registrant shall assure that the requirements of this section are met in the operation of such radiation machines.

(5) (No change.)

(6) Requirements for providing notices to employees and instructions and options available to such individuals in connection with agency inspections of registrants to ascertain compliance with the provisions of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, and requirements of this chapter [~~rules~~], orders, and certificates of registration issued thereunder regarding radiological working conditions.

(7) Governing of the following in accordance with the Texas Radiation Control Act, the Texas Administrative Procedure Act, Health and Safety Code, Chapter 401; Texas Government Code, Chapter 2001; [~~,~~] Title 1 Texas Administrative Code (TAC), Chapter 155; and the Formal Hearing Procedures, [~~Chapter 1,~~] §§1.21, 1.23, 1.25, and 1.27 [~~§§1.21-1.34~~] of this title (relating to the Texas Board of Health):

(A)-(D) (No change.)

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer dental radiation machines. The dose limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of dental diagnosis, to exposure from individuals administered radioactive material and released in accordance with this chapter, or to voluntary participation in medical research programs. No radiation may be deliberately applied to human beings except by or under the supervision of a dentist licensed by the Texas State Board of Dental Examiners.

(2) (No change.)

(3) Dental radiation machines located in a facility that also has other healing arts radiation machines will be inspected at the intervals specified in §289.231(ll)(1) of this title (relating to General Provisions and Standards for Protection Against [~~Radiation~~] Machine-Produced Radiation) and equipment performance evaluations shall be performed at the interval specified for a medical facility in subsection §289.227(q)(1) of this title (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine).

(4) The agency may, by requirements in this chapter [~~rule~~], an order, or a condition of certificate of registration, impose upon any registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or the environment.

(5) Registrants who are also licensed by the agency to receive, possess, use, and transfer radioactive materials must also comply with the applicable requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.252 of this title (relating to Licensing of Radioactive Material), §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

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

(3) Act - Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(4) [~~(3)~~] Administrative law judge (ALJ) - A judge employed by the State Office of Administrative Hearings.

(5) [~~(4)~~] Administrative penalty - A monetary penalty assessed by the agency in accordance with the Texas Radiation Control Act, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(6) [~~(5)~~] Adult - An individual 18 or more years of age.

(7) [~~(6)~~] Agency - The Texas Department of Health.

(8) [~~(7)~~] Agreement State - Any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under the Atomic Energy Act of 1954 (42 United States Code et seq.), as amended.

(9) [~~(8)~~] As low as is reasonably achievable (ALARA) - Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this section as is practical, consistent with the purpose for which the registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and radiation machines in the public interest.

(10) [~~(9)~~] Automatic exposure control - A device that automatically controls one or more technique factors in order to obtain a

required quantity of radiation at preselected locations (See definition for phototimer.)

(11) [~~(10)~~] Background radiation - Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material; and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the registrant. "Background radiation" does not include radiation from sources of radiation regulated by the agency.

(12) [~~(11)~~] Barrier - (See definition for protective barrier.)

(13) [~~(12)~~] Beam-limiting device - A device that provides a means to restrict the dimensions of the x-ray field.

(14) [~~(13)~~] Beam quality (diagnostic x-ray) - A term that describes the penetrating power of the x-ray beam. This is identified numerically by half-value layer and is influenced by kVp and filtration.

(15) [~~(14)~~] Board - The Texas Board of Health.

(16) [~~(15)~~] Certificate of registration - A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Texas Radiation Control Act and this section.

(17) [~~(16)~~] Certified equipment - Equipment that has been certified in accordance with Title 21, Code of Federal Regulations.

(18) [~~(17)~~] Coefficient of variation or C - The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.232(c)(18) [~~Figure: 25 TAC §289.232(c)(17)~~]

(19) [~~(18)~~] Collective dose - The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) [~~(19)~~] Contested case - A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(21) [~~(20)~~] Continuous pressure type switch - A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(22) [~~(21)~~] Control panel - The part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(23) [~~(22)~~] Declared pregnant woman - A woman who has voluntarily informed the registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(24) [~~(23)~~] Deep dose equivalent, that applies to external whole body exposure - The dose equivalent at a tissue depth of 1 centimeter (1000 milligrams per square centimeter)[~~.~~].

(25) [~~(24)~~] Dentist - An individual licensed by the Texas State Board of Dental Examiners.

(26) [~~(25)~~] Diagnostic source assembly - The tube housing assembly with a beam-limiting device attached.

(27) [~~(26)~~] Dose - For external exposure to x-ray radiation from radiation machines, a generic term that means absorbed dose, dose equivalent, or total effective dose equivalent. For purposes of this section, "radiation dose" is an equivalent term.

(28) [~~(27)~~] Dose equivalent - The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert and rem.

(29) [~~(28)~~] Dose limits - The permissible upper bounds of radiation doses established in accordance with this section. For purposes of this section, "limits" is an equivalent term.

(30) [~~(29)~~] Embryo/fetus - The developing human organism from conception until the time of birth.

(31) [~~(30)~~] Enforcement conference - A meeting held by the agency with management of a person [~~registrant~~] to discuss the following:

(A) safety or safeguards;

(B) compliance with regulatory registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(32) [~~(31)~~] Entrance exposure - The exposure expressed in roentgens (R), measured in air with the specified technique, calculated or adjusted to represent the exposure at the point where the center of the useful beam enters the patient.

(33) [~~(32)~~] Exposure - The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The International System of Units (SI) [~~SI~~] unit of exposure is the coulomb per kilogram. For purposes of this section, this term is used as a noun.

(34) [~~(33)~~] Exposure rate - The exposure per unit of time.

(35) [~~(34)~~] External dose - That portion of the dose equivalent received from any source of radiation outside the body.

(36) [~~(35)~~] Extremity - Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(37) [~~(36)~~] Field emission equipment - Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(38) [~~(37)~~] Filter - Material placed in the useful beam to preferentially absorb selected radiations.

(39) [~~(38)~~] Gray - The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram or 100 rad.

(40) [~~(39)~~] Half-value layer - The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value.

(41) [~~(40)~~] Healing arts - Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(42) [~~(41)~~] Hearing - A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(43) [~~(42)~~] Human use - For exposure to x-ray radiation from radiation machines, the external administration of radiation to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(44) [~~(43)~~] Image receptor - Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(45) [~~(44)~~] Individual - Any human being.

(46) [~~(45)~~] Individual monitoring - The assessment of dose equivalent to an individual by the use of:

(A) individual monitoring devices; or

(B) survey data.

(47) [~~(46)~~] Individual monitoring devices - Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this section, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters, optically stimulated luminescence dosimeters, pocket ionization chambers (pocket dosimeters), and electronic personal dosimeters.

(48) [~~(47)~~] Inspection - An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act and agency rules, orders, requirements, and conditions of the certificate of registration.

(49) [~~(48)~~] Institutional Review Board - Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

~~[(49) Interested person - A person who participates in a hearing concerning a contested case but who is not admitted as a party by the ALJ.]~~

(50)-(54) (No change.)

(55) Leakage radiation - Radiation emanating from the diagnostic assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(56)-(63) (No change.)

(64) Medical research - The investigation of various health risks and diseases [~~using radiation machines as part of the evaluation process~~].

(65)-(66) (No change.)

(67) Mobile service operation [~~services~~] - The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use. [~~The utilization of radiation machines in temporary locations for limited time periods. The radiation machines may be fixed inside a mobile van or transported to temporary locations.~~]

~~[(68) Mobile x-ray equipment - (See definition for x-ray equipment).]~~

(68) [~~(69)~~] Monitoring - The measurement of radiation and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(69) [~~(70)~~] Non-certified equipment - Equipment manufactured and assembled prior to certification requirements of Title 21, Code of Federal Regulations (CFR), effective as specified in Title 21, CFR, §1020.30(a).

(70) [~~(71)~~] Notice of violation - A written statement of one or more alleged infringements of a legally binding requirement. The notice [~~normally~~] requires the person receiving the notice [~~registrant~~] to provide a written statement describing the following:

(A) corrective steps taken by the person [~~registrant~~] and the results achieved;

(B) corrective steps to be taken to prevent recurrence; and

(C) the projected date for achieving full compliance. The agency may require responses to notices of violation to be under oath.

(71) [~~(72)~~] Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(72) [~~(73)~~] Order - A specific directive contained in a legal document issued by the agency.

(73) [~~(74)~~] Party - A person designated as such by the ALJ. A party may consist of the following:

(A) the agency; and

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer. [~~; and~~]

~~[(C) any person affected.]~~

(74) [~~(75)~~] Patient - An individual subjected to dental examination, diagnosis, or treatment.

(75) [~~(76)~~] Peak tube potential - The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(76) [~~(77)~~] Person - Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, and other than federal government agencies licensed or exempted by the United States Nuclear Regulatory Commission.

(77) [~~(78)~~] Personnel monitoring equipment - (See definition for individual monitoring devices.)

(78) [~~(79)~~] Phototimer - A method for controlling radiation exposures to image receptors by the amount of radiation that reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).

(79) [~~(80)~~] Portable x-ray equipment - (See definition for x-ray equipment).

(80) [~~(81)~~] Primary protective barrier - (See definition for protective barrier).

(81) [~~(82)~~] Protective barrier - A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) Primary [~~primary~~] protective barrier - A barrier sufficient to attenuate the useful beam to the required degree; or [~~.~~]

(B) Secondary [~~secondary~~] protective barrier - A barrier sufficient to attenuate the stray radiation to the required degree.

(82) [~~(83)~~] Public dose - The dose received by a member of the public from exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(83) [~~(84)~~] Rad - The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 gray).

(84) [~~(85)~~] Radiation - One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) radiation emitted to energy density levels that could reasonably cause bodily harm from an electronic device [~~stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm~~]; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(85) [~~(86)~~] Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the radiation machine or from any surface that the radiation penetrates.

(86) [~~(87)~~] Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(87) [~~(88)~~] Radiation safety officer - An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who shall be specifically authorized on a certificate of registration, and who is the primary contact with the agency.

(88) [~~(89)~~] Radiograph - An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(89) [~~(90)~~] Registrant - Any person issued a certificate of registration by the agency in accordance with the Texas Radiation Control Act and this chapter.

(90) [~~(91)~~] Regulation - (See definition for rule.)

(91) [~~(92)~~] Rem - The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

(92) [~~(93)~~] Remote inspection - An examination by the agency of information submitted by the registrant on a form provided by the agency.

[~~(94) Requestor - A person claiming party status as a person affected.~~]

(93) [~~(95)~~] Research and development - Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(94) [~~(96)~~] Restricted area - An area, access to which is limited by the registrant for the purpose of protecting individuals against undue risks from exposure to radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(95) [~~(97)~~] Roentgen (R) - The special unit of exposure. One roentgen (R) equals 2.58 x 10^{-4} coulombs per kilogram of air. (See definition for exposure.)

(96) [~~(98)~~] Rule - Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(97) [~~(99)~~] Scattered radiation - Radiation that has been deviated in direction during passage through matter.

(98) [~~(100)~~] Secondary protective barrier (See definition for protective barrier).

(99) [~~(101)~~] Severity level - A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety.

(100) [~~(102)~~] Shallow dose equivalent - The dose equivalent at a tissue depth of 0.007 centimeters (7 milligrams per square centimeter) that applies to the external exposure of the skin of the whole body or the skin of an extremity [~~averaged over an area of 1 square centimeter (applies to the external exposure of the skin or an extremity)~~].

(101) [~~(103)~~] SI - The abbreviation for the International System of Units.

(102) [~~(104)~~] Sievert - The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 sievert = 100 rem).

(103) [~~(105)~~] Source of radiation - Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(104) [~~(106)~~] Source-to-image receptor distance - The distance from the source to the center of the input surface of the image receptor.

(105) [~~(107)~~] Source-to-skin distance - The distance from the source to the skin of the patient.

(106) [~~(108)~~] Special units - The conventional units historically used by registrants, i.e., rad (absorbed dose), and rem (dose equivalent).

(107) [~~(109)~~] Stationary x-ray equipment - (See definition for x-ray equipment).

(108) [~~(110)~~] Stray radiation - The sum of leakage and scattered radiation.

(109) [~~(111)~~] Supervision - The delegating of the task of applying radiation in accordance with this section to persons not licensed in dentistry, who perform tasks [~~provide services~~] under the dentist's control. The dentist assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(110) [~~(112)~~] Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, and/or disposal of radiation machines. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of equipment or radiation machines, and measurements of levels of radiation present, and evaluation of administrative and/or engineered controls.

(111) [~~(113)~~] Technique chart - A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs when the radiation machine is in manual mode.

(112) [~~(114)~~] Technique factors - The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kilovolt and quantity of charge in milliampere-second;

(B) for field emission equipment rated for pulsed operation, peak tube potential in kilovolt and number of x-ray pulses; and

(C) for all other equipment, peak tube potential in kilovolt and either tube current in milliamperes and exposure time in seconds or the product of tube current and exposure time in milliampere-second.

(113) [~~(115)~~] Termination - A release by the agency of the obligations and authorizations of the registrant under the terms of the certificate of registration. It does not relieve a person of duties and responsibilities imposed by law or rule.

(114) [~~(116)~~] Texas Regulations for Control of Radiation (TRCR) - All sections of Title 25 Texas Administrative Code, Chapter 289.

(115) [~~(117)~~] Total effective dose equivalent - For external exposures only to x-ray radiation from radiation machines, the total effective dose equivalent is equal to the deep dose equivalent.

(116) [~~(118)~~] Traceable to a national standard - This indicates that a quantity or a measurement has been compared to a national standard, for example, the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(117) [~~(119)~~] Tube - An x-ray tube, unless otherwise specified.

(118) [~~(120)~~] Tube housing assembly - The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(119) [~~(121)~~] Unrestricted area (uncontrolled area) - An area, access to which is neither limited nor controlled by the registrant. For purposes of this section, "uncontrolled area" is an equivalent term.

(120) [~~(122)~~] Useful beam - Radiation that passes through the window, aperture, core, or other collimating device of the source housing. Also referred to as the primary beam.

(121) [~~(123)~~] Violation - An infringement of any rule, license or registration condition, order of the agency, or any provision of the Texas Radiation Control Act.

(122) [~~(124)~~] X-ray control - A device that controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes components such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(123) [~~(125)~~] X-ray equipment - An x-ray system, subsystem, or component thereof. For the purposes of this rule, types [~~Types~~] of x-ray equipment are as follows:

(A) portable x-ray equipment [~~mobile x-ray equipment~~] - x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled or equipment designed to be hand-carried; or

[~~(B) portable x-ray equipment - x-ray equipment designed to be hand-carried; or~~]

(B) [~~(C)~~] stationary x-ray equipment - x-ray equipment that is installed in a fixed location.

(124) [~~(126)~~] X-ray field - That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(125) [~~(127)~~] X-ray high-voltage generator - A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(126) [~~(128)~~] X-ray system - An assemblage of components for the controlled production of x rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(127) [~~(129)~~] X-ray subsystem - Any combination of two or more components of an x-ray system.

(128) [~~(130)~~] X-ray tube - Any electron tube that is designed to be used primarily for the production of x rays.

(129) [~~(131)~~] Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(130) [~~(132)~~] Worker - An individual engaged in work under a certificate of registration issued by the agency and controlled by a registrant, but does not include the registrant.

(131) [~~(133)~~] Year - The period of time beginning in January used to determine compliance with the provisions of this chapter. The registrant may change the starting date of the year used to determine compliance by the registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

(f) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written legal interpretation by the agency [~~Office of General Counsel, Texas Department of Health~~], will be considered binding upon the agency.

(g) Fees for Certificates of Registration for Dental Facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration [~~for which a fee is prescribed in paragraph (2) of this subsection~~] shall be accompanied by a nonrefundable fee of $300 [~~equal to the appropriate annual fee~~]. No application will be accepted for filing or processed prior to payment of the full amount specified. [~~For facilities possessing ten or more machines at a single authorized use location, the fee is specified in paragraph (2) of this subsection.~~]

(B) A nonrefundable fee of $300 [~~, in accordance with paragraph (2) of this subsection,~~] shall be paid [~~annually~~] for each certificate of registration for radiation machines used in dentistry. The fee shall be for the two-year term of the certificate of registration. The fee shall be paid in full on or before the last day of the expiration month and year of the certificate of registration.

(i) For each additional use location authorized on a single certificate of registration, the registrant will pay an additional $90.

(ii) In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(h) of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services) and assigned the higher fee will be used. If this certificate of registration also has additional authorized use sites, the registrant shall pay an additional 30% of the highest fee category. [~~For facilities possessing one to nine machines at a single authorized use location, the fee consists of a base fee plus a fee for each machine possessed.~~]

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (h)(9) of this section shall be accompanied by the $300 [~~applicable annual~~] fee, provided that no such fee has been submitted within 24 [~~12~~] months of the date of commencement of the proposed activity.

(D) (No change.)

[~~(2) Schedule of annual fees for certificates of registration for dental radiation machines. The annual fees for certificates of registration for dental radiation machines include the following:~~]
[~~Figure: 25 TAC §289.232(g)(2)~~]

(2) [~~(3)~~] Failure to pay prescribed fees.

(A) In any case where the agency finds that an applicant for a certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

[~~(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the registrant shall pay a late payment fee of 20% of the annual fee prescribed in paragraph (2) of this subsection, in addition to the annual registration fee. The late payment fee shall not exceed $10,000 for each registrant who fails to pay the fees prescribed by this section.~~]

(B) [~~(C)~~] In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the certificate of registration expires and the agency may implement compliance procedures as provided in subsection (k)(2)(C) of this section.

(3) Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) Registration of Radiation Machine Use.

(1) Application for registration.

(A) Each person having a radiation machine used in dentistry shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with paragraph (2) of this subsection and clinical trial evaluations that shall be registered in accordance with paragraph (5)(B) of this subsection.

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

(J) Each application shall be accompanied by a completed BRC Form 226-1, Business Information Form [~~Franchise Tax Information Form, shall be submitted with the application to confirm that no tax owed to the state under Tax Code, Chapter 171, is delinquent~~].

(K) (No change.)

(2) Application for registration of mobile service operation [~~services~~] used in dentistry. In addition to the requirements of paragraph (1) of this subsection, each applicant shall apply for and receive authorization for mobile service operation [~~services~~] before beginning mobile service operation. The following shall be submitted.

(A) An established main location where the machine(s) [~~machine~~], records, etc. will be maintained for inspection. This shall be a street address, not a post office box number.

(B) A sketch or description of the normal configuration of each radiation [~~x-ray~~] machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed radiation machine inside, furnish the floor plan indicating protective shielding and the operator's location.

(C) (No change.)

(3) Issuance of certificate of registration.

(A) Upon a determination that an application meets the requirements of the Texas Radiation Control Act and the requirements of this chapter [~~rules of the agency~~], the agency may issue a certificate of registration authorizing the proposed activity in such form and containing such conditions and limitations as the agency [~~it~~] deems appropriate or necessary.

(B) (No change.)

(4) Specific terms and conditions of certificates of registration.

(A) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Texas Radiation Control Act, now or hereafter in effect, and to the applicable requirements of this chapter [~~rules~~] and orders of the agency.

(B)-(E) (No change.)

(F) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance

history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(G) No registrant shall engage any person for services described in §289.226(j) of this title (relating to Registration of Radiation Machine Use and Services) until such person provides evidence to the registrant of registration with the agency.

(5) Responsibilities of the registrant.

(A) The registrant shall notify the agency in writing within 30 days of any of the following changes that would render the information contained in the application for registration and/or the certificate of registration inaccurate: [.]

(i) name and mailing address;

(ii) street address where machine will be used;

(iii) RSO; or

(iv) name of entity contracted for "provider of equipment" registered in accordance with §289.226 of this title.

(B) The following criteria applies to loaner or demonstration radiation machines and radiation machines used for clinical trial evaluations. For persons having a valid certificate of registration, radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines may be used for up to 60 days. After 60 days, the registrant shall notify the agency of the following:

(i) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized dental radiographic machine); or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

~~*[(i)* Radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines may be used for up to 60 days without adding the radiation machines to an existing certificate of registration. If the use period will exceed 60 days, the facility will be required to add the radiation machine to their certificate of registration and a fee will be assessed. Radiation machines will be registered in accordance with paragraph (1) of this subsection.]~~

~~*[(ii)* No fees will be assessed for the operation of radiation machines for clinical trial evaluations or loaner or demonstration radiation machines used for a period of 60 days or less at a facility with a current certificate of registration.]~~

(C) The following applies to voluntary or involuntary petitions for bankruptcy.

(i) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company. This notification shall include:

(I) the bankruptcy court in which the petition for bankruptcy was filed; and

(II) the date of the filing of the petition.

~~*[(ii)* The notification specified in clause (i) of this subparagraph shall include:]~~

~~*[(I)* the bankruptcy court in which the petition for bankruptcy was filed; and]~~

~~*[(II)* the date of the filing of the petition.]~~

(ii) [~~(iii)~~] A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(D) Inventory.

(i) Each registrant shall [~~annually~~] inventory all radiation machines at an interval not to exceed one year. [~~possessed.~~] The inventory shall [~~include the manufacturer's name and model and serial number of the control panel and shall~~] be made and maintained for inspection by the agency in accordance with subsection (k)(1)(X)(i) of this section and shall include: [.]

(I) manufacturer's name;

(II) model and serial number of the control panel; and

(III) location of radiation machine(s), for example, room number.

(ii) Notification to the agency concerning radiation machine inventory is required within 30 days of either of the following:

(I) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized dental radiographic machine); or

(II) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

~~*[(ii)* Notification is required within 30 days of any change of radiation machine inventory. This includes installation or removal and the disposition of any machine disposed of or transferred. The assembler's notification of installation may be accepted in lieu of notification by the registrant. This does not relieve the registrant of the responsibility to assure that proper notification has been made.]~~

(E) (No change.)

(F) Records of training and experience required by this section shall be maintained for inspection by the agency until disposal is authorized by the agency.

(6) Expiration of certificates of registration.

(A) Effective September 1, 2004, the term of the certificate of registration is two years. Each certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration. Upon payment of the fee required by subsection (g)(1)(B) of this section, and if the agency does not deny the renewal in accordance with subsection (h)(4)(F) of this section, the certificate of registration will be renewed. [~~Except as provided by paragraph (8) of this subsection, each certificate of registration that specifies an expiration date expires at the end of the day on that date. Expiration of the certificate of registration does not relieve the registrant of the requirements of this section.~~]

(B) If the fee is not paid and the certificate of registration is not renewed in accordance with subparagraph (A) of this paragraph, the certificate of registration expires, and the registrant is in violation of the requirements in this chapter and is subject to administrative penalties in accordance with §289.205 of this title.

(i) If the registrant pays the fee required by §289.204 of this title within 30 days after expiration of the certificate of registration, the certificate of registration will be reinstated and the registrant will not be required to file an application in accordance with subsection (h) of this section.

(ii) If the registrant fails to pay the fee within 30 days after expiration of the certificate of registration, the registrant shall file an application in accordance with subsection (h) of this section.

(C) [~~(B)~~] If a registrant does not pay the fee required by subsection (g) of this section and the certificate of registration is not renewed, [~~submit an application for renewal of the certificate of registration under paragraph (8) of this subsection, as applicable,~~] the registrant shall [~~on or before the expiration date specified in the certificate of registration~~]:

(i) terminate use of all radiation machines within 30 days following the expiration date; and

(ii) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred within 30 days following the expiration date. [~~; and~~]

~~*[(iii)* pay any outstanding fees in accordance with subsection (g) of this section.]~~

(D) Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(7) Termination of certificates of registration. When a registrant decides to terminate all activities involving radiation machines authorized under the certificate of registration, the registrant shall notify the agency immediately and:

(A) (No change.)

(B) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred; and

(C) (No change.)

(8) Modification, suspension, and revocation of certificate of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(i) any material false statement in the application or any statement of fact required under provisions of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(iii) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(iv) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

~~[(8) Renewal of certificate of registration.]~~

~~[(A) Application for renewal of registration shall be filed in accordance with paragraph (1) of this subsection.]~~

~~[(B) If a registrant files an application in proper form before the existing certificate of registration expires, such existing certificate of registration shall not expire until the application status has been determined by the agency.]~~

(9) Reciprocal recognition of out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(i) completed BRC Form 226-1 (Business Information Form) [~~(Franchise Tax Form)~~];

(ii)-(iv) (No change.)

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use; [~~and~~]

(vi) the [~~annual~~] fee as specified in subsection (g)(2) of this section; and [~~.~~]

(vii) qualifications of personnel who will be operating the machines.

(B)-(C) (No change.)

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(i)-(iii) (No change.)

(iv) copy of the applicable rules [~~regulations~~] as specified in the notice granting reciprocity.

(E)-(F) (No change.)

(G) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) name and Texas licensing board number of the dentist if the radiation machines are used to irradiate humans;

(iv) copy of the applicant's current state certificate of registration or equivalent document;

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(vi) the fee as specified in subsection (g)(1) of this section; and

(vii) qualifications of personnel who will be operating the machines.

[(i) a completed BRC Form 226-1 if the information is changed;]

[(ii) a completed BRC Form 252-3; and]

[(iii) the annual fee as specified in subsection (g)(2) of this section.]

(H) (No change.)

(10) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application.

(A) The RSO shall have the following qualifications:

(i) knowledge of potential hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used; and

(B) In addition to the qualifications in subparagraph (A) of this paragraph, documentation of the following shall be submitted to the agency:

(i) dentist radiation safety officers shall provide documentation of licensing board number and their signature on the application; or

[(10) Qualification requirements for radiation safety officers.]

[(A) All radiation safety officers shall meet the following qualification requirements:]

[(i) educational courses related to ionizing radiation safety or a radiation safety officer course;]

[(ii) experience in the use and familiarity of the type of radiation machine used; and]

[(iii) knowledge of potential radiation hazards or emergency precautions.]

[(B) Licensed dentist radiation safety officers shall provide documentation of licensing board number and their signature on the application; or]

(ii) [(C)] non-practitioner [Non-practitioner] radiation safety officers shall provide any one of the following:

(I) [(i)] evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised use of radiation machines;

(II) [(ii)] evidence of a valid limited general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised use of radiation machines;

(III) [(iii)] evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least two years of supervised use of radiation machines;

(IV) [(iv)] evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised use of radiation machines;

(V) [(v)] evidence of registration with the Board of Nurse Examiners as a Registered Nurse or a Registered Nurse with an extended scope of practice (Nurse Practitioner) performing radiologic procedures, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VI) [(vi)] evidence of registration with the Texas State Board of Physician Assistant Examiners, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VII) [(vii)] evidence of:

(-a-) [(I)] registration with the Texas State Board of Dental Examiners to perform radiologic procedures under a dentist's instruction and direction or evidence of a valid certificate as a registered dental hygienist; and

(-b-) [(II)] at least four years of supervised use of radiation machines in the respective dentists' specialty;

(VIII) [(viii)] evidence of bachelor's (or higher) degree in a natural or physical science, health physics, radiological science, nuclear medicine, or nuclear engineering; or

(IX) [(ix)] evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in medical health physics, diagnostic radiological physics, or medical nuclear physics for diagnostic x-ray facilities.

(C) [(D)] Academic institutions and/or research and development facilities shall have radiation safety officers who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. (This individual may also serve as the radiation safety officer over the dental section of the facility).

(D) [(E)] The radiation safety officer identified on a certificate of registration issued before September 1, 1993, need not comply with the qualification requirements in this subsection.

(11) (No change.)

(i) Use of Dental Radiation Machines.

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

(3) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures. These procedures shall be made available to each individual operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular x-ray system.

(A) The registrant shall document that each individual operating a radiation machine has read the operating and safety procedures and shall maintain this documentation for inspection by the agency in accordance with subsection (k)(1)(X)(i) of this section. The documentation shall include the following:

(i) name and signature of individual;

(ii) date individual read the operating and safety procedures; and

(iii) initials of the RSO.

(B) The operating and safety procedures [~~These procedures~~] shall include, but are not limited to, the following procedures as applicable.

(i) [~~(A)~~] use of a technique chart in accordance with paragraph (6)(A) of this subsection;

(ii) [~~(B)~~] radiation dose requirements in accordance with paragraph (4)(A) of this subsection;

(iii) [~~(C)~~] holding of patients or film in accordance with paragraph (13)(A), (C), and (D) of this subsection;

(iv) [~~(D)~~] film processing program or digital image processing in accordance with paragraphs (14)-(16) [~~(14) and (15)~~] of this subsection;

(v) [~~(E)~~] posting notices to workers in accordance with paragraph (5)(B) of this subsection;

(vi) [~~(F)~~] instructions to workers in accordance with paragraph (4)(D) of this subsection;

(vii) [~~(G)~~] notifications and reports to individuals in accordance with subsection (j)(2)(B) and (C) of this section;

(viii) [~~(H)~~] ordering x-ray exams in accordance with subsection (b)(1) of this section; and

(ix) [~~(I)~~] posting of a radiation area in accordance with paragraph (5)(D) and (E) of this subsection.

(4) Personnel requirements.

(A) Occupational dose limits.

(i) The registrant shall control the occupational dose to individuals, to the following dose limits.

(I) (No change.)

(II) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of any extremities shall be:

(-a-) (No change.)

(-b-) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

(III)-(V) (No change.)

(ii) The assigned deep dose equivalent [~~and shallow dose equivalent~~] shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 cm^2 of the skin receiving the highest exposure.

(iii) The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys [~~, calculations,~~] or radiation measurements for the purpose of demonstrating compliance with the occupational dose limits.

(iv) (No change.)

(B)-(D) (No change.)

(5) Facility requirements.

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

(C) Notice to employees. The following form, or an equivalent as stated in subparagraph (B)(ii) of this paragraph, shall be posted.

Figure: 25 TAC §289.232(i)(5)(C) [~~Figure: 25 TAC §289.232(i)(5)(C)~~]

(D)-(E) (No change.)

(6) Radiation machine requirements.

(A)-(D) (No change.)

[~~(E) Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 2 millirem in one hour at 5 centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Measurement is averaged over an area of 100 square centimeter with no linear dimension greater than 20 centimeters.~~]

(E) [~~(F)~~] Beam quality. The following requirements apply to beam quality.

(i) Half-value layer.

(I) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table I. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table I, linear interpolation may be made.

Figure: 25 TAC §289.232(i)(6)(E)(i)(I) [~~Figure: 25 TAC §289.232(i)(6)(F)(i)(I)~~]

(II) For capacitor energy storage equipment, compliance with the requirements of this subparagraph shall be determined with the maximum quantity of charge per exposure.

(ii) Filtration controls. For x-ray systems that have variable kilovolt peak and variable filtration for the useful beam, a device shall link the kilovolt peak selector with the filters and shall prevent an exposure unless the minimum amount of filtration required by clause (i) of this subparagraph is in the useful beam for the given kilovolt peak that has been selected.

(iii) Any other system having removable filters shall be required to have the minimum amount of filtration as required by clause (i)(I) of this subparagraph permanently located in the useful beam during each exposure.

(F) [~~(G)~~] Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes that have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly that has been selected.

(G) [~~(H)~~] X-ray control. An x-ray control shall be incorporated into each x-ray system such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 second or less. [~~Each x-ray control shall be located in such a way as to permit the operator to remain in an area of less than 2 millirem in any one hour during the entire exposure.~~] The exposure switch shall be of the continuous pressure type.

(H) [~~(I)~~] Timer.

(i) The accuracy of the timer shall meet the manufacturer's specifications. If the manufacturer's specifications are not obtainable, the timer accuracy shall be (10% of the indicated time with testing performed at 0.5 second.

(ii) Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(I) [~~(J)~~] Exposure interval reproducibility. When all technique factors are held constant, including control panel selections

associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

(J) [~~(K)~~] Kilovolt peak. If the registrant possesses documentation of the appropriate manufacturer's kilovolt peak specifications, the radiation machine shall meet those specifications. If the registrant does not possess documentation of the appropriate manufacturer's kilovolt peak specifications, the indicated kilovolt peak shall be accurate to within ±10% of the indicated setting(s). For radiation machines with fewer than three fixed kilovolt peak settings, the radiation machine shall be checked at those settings.

(K) [~~(L)~~] Tube stability. The x-ray tube shall remain physically stable during exposures. In cases where tubes are designed to move during exposure, the registrant shall assure proper and free movement of the radiation machine.

(L) [~~(M)~~] Collimation. Field limitation shall meet the requirements of paragraph (12) of this subsection.

(M) [~~(N)~~] Radiographic entrance exposure limits for dental facilities. The in-air exposure determined for the technique used by the registrant for the specified average human adult patient thickness for routine intraoral (bite wing) dental radiography shall not exceed the following entrance exposure limits.

(i) 450 millirem for dental intraoral at 60 kilovolt peak and above; and

(ii) 600 millirem for dental intraoral less than 60 kilovolt peak.

(N) [~~(O)~~] Security and control of radiation machines.

(i) The registrant shall secure radiation machines from unauthorized removal.

(ii) The registrant shall use devices and/or administrative procedures to prevent unauthorized use of radiation machines.

(7) Equipment performance evaluations.

(A) For all dental radiation machines, the registrant shall perform, or cause to be performed, tests necessary to assure proper function of equipment with the indicated standard for each item specified in paragraph (6)(H)-(M) [~~(6)(I)-(N)~~] of this subsection. After installation, the tests listed shall be performed every four years.

(B) (No change.)

(C) Any items not meeting the specifications of the tests shall be corrected or repaired. Correction or repair shall begin within 30 days following the check and shall be performed according to a plan designated by the registrant. Correction or repair shall be completed no longer than 90 days from discovery unless authorized by the agency. Records of corrections or repairs shall be maintained by the registrant in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(D) (No change.)

(8) Dental research. In addition to the requirements of subsection (h)(1) of this section, any [~~Any~~] research using radiation machines on humans shall receive prior approval from the agency and shall be approved by an Institutional Review Board as required by Title 45, CFR, Part 46 and Title 21, CFR, Part 56. The Institutional Review Board shall include at least one dentist to direct any use of radiation in accordance with subsection (a)(4) of this section.

(9)-(12) (No change.)

(13) Additional operational controls.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits except in individual cases in which the registrant has determined that the holding devices are contraindicated.

(B) The registrant's written operating and safety procedures required by paragraph (3) of this subsection shall include the following:

(i) a list of circumstances in which mechanical holding devices cannot be routinely utilized [~~exceptions to using mechanical holding devices may apply~~]; and

(ii) a procedure used for selecting an individual to hold or support the patient or image receptor. [~~; and~~]

~~*(iii)* a procedure the individual must follow when holding or supporting the patient or image receptor.~~]

(C) The operator position during the exposure shall be such that the operator's exposure is as low as reasonably achievable and the operator is a minimum of [~~shall stand at least~~] six feet from the useful beam or behind a protective barrier. The operator shall maintain verbal, aural, and visual contact with the patient.

(D) In no case shall an individual hold the tube or tube housing assembly support during any radiographic exposure. [~~The tube housing support shall be constructed and adjusted so that the tube housing shall not drift from its set position during an exposure. Neither the tube housing nor support housing shall be hand-held during an exposure.~~]

(14) Automatic and manual film processing for dental facilities and mobile dental services.

(A)-(D) (No change.)

(E) Corrections or repairs of the light leaks or other deficiencies in subparagraphs (B)-(D) of this paragraph shall be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. Records of the corrections or repairs shall include the date and initial of the individual performing these functions and should be maintained in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(F) (No change.)

(15) (No change.)

(16) Digital imaging acquisition systems. Users of digital imaging acquisition systems shall follow quality assurance/quality control protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant shall include the protocols, whether established by the registrant or the manufacturer, in its operating and safety procedures. The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(j) Records and reports.

(1) General provisions for records and reports.

(A)-(G) (No change.)

(H) Each registrant shall maintain records of receipt, transfer, and disposal of radiation machines for inspection by the agency.

The records shall include the following information and shall be kept until disposal is authorized by the agency:

(i) manufacturer's name;

(ii) model and serial number from the control panel;

(iii) date of the receipt, transfer, and disposal; and

(iv) name of the individual recording the information.

(I) [~~(H)~~] Copies of records required in subsections (h)(5)(D) and (E), (i)(7), and (i)(14)(F) of this section and by certificate of registration condition that are relevant to operations at an additional authorized use location shall be maintained at that location in addition to the main location specified on a certificate of registration in accordance with subsection (k)(1)(X)(i) of this section.

(J) [~~(I)~~] The registrant shall maintain adequate safeguards against tampering with and loss of records.

(K) [~~(J)~~] Subject to the limitations provided in the Texas Public Information Act, Government Code, Chapter 552, all information and data collected, assembled, or maintained by the agency are public records open to inspection and copying during regular office hours.

(L) [~~(K)~~] Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(i) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(I) The words "NOT AN OPEN RECORD" shall be placed conspicuously at the top and bottom of each page containing information claimed to fall within one of the exceptions.

(II) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.232(j)(1)(L)(i)(II) [~~Figure: 25 TAC §289.232(j)(1)(K)(i)(II)~~]

(ii) The agency requests, whenever possible, that all information submitted under the claim of an exception to the Texas Public Information Act be extracted from the main body of the application and submitted as a separate annex or appendix to the application.

(iii) Failure to comply with any of the procedures described in subparagraphs (A) and (B) of this paragraph may result in all information in the agency file being disclosed upon an open records request.

(M) [~~(L)~~] The agency will determine whether information falls within one of the exceptions to the Texas Public Information Act. The agency [~~Office of General Counsel~~] will determine [~~be queried as to~~] whether or not there has been a previous determination that the information falls within one of the exceptions to the Texas Public Information Act. If there has been no previous determination and the agency believes that the information falls within one of the exceptions, an opinion of the Attorney General will be requested. If the agency agrees in writing to the request, the information shall not be open for public inspection unless the Attorney General's office subsequently determines that it is not an exception.

(N) [~~(M)~~] Requests for information.

(i) All requests for open records information shall be in writing and refer to documents currently in possession of the agency.

(ii) The agency will ascertain whether the information may be released or whether it falls within an exception to the Texas Public Information Act.

(I) The agency may take a reasonable period of time to determine whether information falls within one of the exceptions to the Texas Public Information Act.

(II) If the information is determined to be public, it will be presented for inspection and/or copies of documents will be furnished within a reasonable period of time. A fee will be charged to recover agency costs for copies.

(iii) Original copies of public records may not be removed from the agency. Under no circumstances shall material be removed from existing records.

(2) Reports.

(A) (No change.)

(B) Reports of incidents.

(i) Notwithstanding other requirements for notification, each registrant shall immediately report each event involving a radiation machine possessed by the registrant that may have caused or threatens to cause an individual to receive:

(I)-(II) (No change.)

(III) a shallow dose equivalent to the skin of the whole body or to the skin of any extremities of 250 rads (2.5 grays) or more.

(ii) Each registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a radiation machine possessed by the registrant that may have caused, or threatens to cause an individual to receive, in a period of 24 hours:

(I)-(II) (No change.)

(III) a shallow dose equivalent to the skin of the whole body or to the skin of any extremities exceeding 50 rems (0.5 sievert).

(iii)-(iv) (No change.)

(C)-(D) (No change.)

(k) Compliance and hearing procedures.

(1) Inspections.

(A)-(S) (No change.)

(T) For remote inspection of radiation machines, each registrant shall:

(i)-(ii) (No change.)

(iii) return to the agency the completed remote inspection forms including [~~with~~] documentation of the most recent equipment performance evaluation performed in accordance with subsection (i)(7) of this section and an inventory in accordance with subsection (h)(5)(D) of this section by the deadline indicated on the forms.

(U) Each registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable surveys as the agency deems appropriate or necessary including, but not limited to, surveys of:

(i) (No change.)

(ii) facilities where [wherein] radiation machines are used; and

(iii) (No change.)

(V) (No change.)

(W) Training for agency inspectors of dental radiation machines.

(i) Objectives. Training of agency individuals who perform inspections [inspectors] of radiation machines will be conducted by the agency. Upon completion of training, the inspector will be able to:

(I)-(IX) (No change.)

(ii)-(iv) (No change.)

(X) Time requirement for record keeping. [Record/document requirements.]

(i) Each registrant shall maintain the following records/documents at each location and make available to the agency for inspection.

Figure: 25 TAC §289.232(k)(1)(X)(i) [Figure: 25 TAC §289.232(k)(1)(X)(i)]

(ii)-(iii) (No change.)

(2) Hearing and enforcement procedures.

(A) Violations. A court [An] injunction or [other] agency order may be issued [obtained] prohibiting any violation of any provision of the Texas Radiation Control Act , Health and Safety Code, Chapter 401, or any rule or order issued thereunder. Any person who violates any provision of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, or any rule or order issued thereunder may be subject to civil and/or administrative penalties. Such person may also be guilty of a misdemeanor.

(B) (No change.)

(C) Compliance procedures for registrants and other persons.

(i) A registrant or other person who commits a violation(s) will be issued a notice of violation.

(ii) (No change.)

(iii) Any certificate of registration may be modified, suspended, or revoked in whole or in part, for any of the following:

(I) (No change.)

(II) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application; [or]

(III) violation of, or failure to observe any of the [applicable] terms and conditions of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, this section, or of the certificate of registration, or order of the agency; or [.]

(IV) existing conditions that constitute a substantial threat to the public health or safety of the environment.

(iv)-(vi) (No change.)

(vii) Except in cases in which the occupational and public health[, interest,] or safety requires otherwise, no certificate of registration shall be [modified,] suspended [,] or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing, and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(viii) (No change.)

(ix) Any applicant or registrant against whom the agency contemplates an action described in clause (viii) of this subparagraph may request a hearing by submitting a written request to [writing] the director within 30 days of service of the notice [or date of mailing].

(I)-(II) (No change.)

(D) Assessment of Administrative Penalties.

(i) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Texas Radiation Control Act, Health and Safety Code, §401.384, Title 1, Texas Administrative Code, Chapter 155, and applicable sections of the Formal Hearing Procedures, [Chapter 1,] §§1.21, 1.23, 1.25, and 1.27 [§§1.21-1.34] of this title.

(ii) (No change.)

(iii) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(I) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed [will be considered] for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations [that could have been prevented by corrective action and for which the registrant did not take effective corrective action].

(II)-(IV) (No change.)

(iv) The agency [Office of General Counsel] may conduct settlement negotiations.

(E) Severity levels of violations for registrants or other persons.

(i) Violations for registrants or other persons shall be categorized by one of the following severity levels.

(I)-(V) (No change.)

(ii)-(iii) (No change.)

(F) Impoundment of radiation machines. Radiation machines shall be subject to impounding in accordance with the Texas Radiation Control Act, Health and Safety Code, §401.068 [of the Texas Radiation Control Act] and this paragraph.

(i)-(ii) (No change.)

(iii) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded radiation machine of the intention to dispose of the radiation machine. Notice shall be the same as provided in subparagraph (C)(viii) of this paragraph. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing under Title 1, Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures, [Chapter 1,] §§1.21, 1.23, 1.25, and 1.27 [§§1.21-1.34] of this title, and in accordance with subparagraph (C)(ix) of this paragraph, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(iv) Upon agency disposition of a source of radiation, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested. [If the owner/possessor desires to contest the amount of such charge, the owner/possessor may request a hearing under the Formal Hearing Procedures, Chapter 1, §§1.21-1.34 of this title and in accordance with paragraph (2)(I) of this subsection.]

(v) (No change.)

(G) Emergency orders [for certificates of registration].

(i) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency. [These emergency orders shall apply to certificates of registration.]

(ii)-(iii) (No change.)

(iv) The person [registrant] shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person [registrant] by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director [makes a written application to the agency for a hearing] within 30 days of the date of the order [date].

(I)-(III) (No change.)

(H) Miscellaneous provisions.

(i) (No change.)

[(ii) Interested person.]

[(I) An interested person may:]

[(-a-) make sworn or unsworn statements;]

[(-b-) attend a hearing and may present evidence after the presentation of evidence by the parties; or]

[(-c-) be represented by an attorney.]

[(II) An interested person may not:]

[(-a-) cross-examine the witnesses of the parties;]

[(-b-) object to evidence presented by the parties; or]

[(-c-) appeal a decision rendered by the agency.]

[(III) An interested person is not responsible for sharing the costs of the transcription of the hearing, but may purchase a transcript.]

[(IV) The parties may cross-examine witnesses presented by an interested person.]

[(V) At the discretion of the ALJ an interested person may make an unsworn statement. Such statement shall not be made a part of the record.]

(ii) [(iii)] Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

[(iv) Prior testimony. Testimony and evidence presented in the hearing to determine standing have the same weight at the hearing on the merits if a tape recording or written transcript of the standing hearing is available.]

(iii) [(v)] Non-party witness and mileage fees.

(I) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

(II) The person requesting the attendance of the witness or deponent shall deposit with the agency the funds [estimated by the ALJ] to accrue in accordance with subclause (I) of this clause when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(iv) [(vi)] Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

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

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402071
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.260

The Texas Department of Health (department) proposes an amendment to §289.260, concerning licensing of uranium recovery and byproduct material disposal facilities.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.260 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary as outlined in this preamble.

The department published a Notice of Intention to Review for §289.260 regarding Government Code, §2001.039, in the *Texas Register* (29 TexReg 1231) on February 6, 2004. No comments were received by the department on this section following publication of the notice.

The proposed revision incorporates legislation passed by the 78th Legislature, Regular Session, 2003. House Bill (HB) 2292, which added Health and Safety Code, §12.0112, requires two-

year terms for radioactive material licenses. The department has historically required renewal of specific licenses that includes submission to the department of updated technical information regarding the radioactive material possessed, operating, safety and emergency procedures, and personnel responsible for the security of safe use of the radioactive materials. In order to incorporate the provisions of HB 2292 concerning two-year terms and to continue requiring a renewal that includes pertinent technical information, the department is implementing an administrative renewal and a technical renewal. The licensee will be required to renew the license every two years by paying the required fee and having a satisfactory compliance history. This administrative renewal will not involve review of technical information regarding the license. At a longer interval, the licensee will be required to submit certain technical information for review. This technical renewal date will be specified in the license and will be for an interval of an even number of years in order to eventually coincide with the fee renewal. Maintaining the more resource-intensive technical renewal allows the department to ensure continued security and safe use of radioactive material. The change to the rule is reflected in revised subsections (h) and (i).

The proposed revision deletes the definition of "fund" as it is defined in another applicable section of this title and as a result, subsequent definitions are renumbered. Throughout the section, the revision deletes requirements for: filing application for specific licenses; general requirements for the issuance of specific licenses; issuance of specific licenses; specific terms and conditions of licenses; and modification and revocation of licenses. These requirements are currently addressed in §289.252 of this title (relating to Licensing of Radioactive Material). All applicants for radioactive material licenses and radioactive material licensees are required to comply with §289.252 of this title, as stated in this section and other sections of this title, as applicable. Subsection (f)(2) is revised to prohibit commencement of construction prior to issuance of a license. This requirement is an item of compatibility with the United States Nuclear Regulatory Commission (NRC) and as an agreement state, Texas must adopt it. In subsections (m)(5), (n)(1), and (n)(3), the word "Fund" is replaced with "Account" after "Care" to accurately state the name of the account as a result of changes authorized by House Bill 1678, 78th Legislature, Regular Session, 2003, which amended Health and Safety Code, Chapter 401.

Concerning the entire section, several changes were made to rule citations to state the correct citations and for renumbering purposes due to language being added or deleted throughout the section. Other minor grammatical changes have been made throughout the section.

This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, other factors, or to incorporate requirements that are items of compatibility with NRC regulations because as an agreement state, Texas must adopt compatible requirements.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Mrs. McBurney has also determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring adequate requirements relative to the risk associated with uranium recovery and byproduct material disposal facilities. There will be no fiscal impact on applicants/licensees that are small businesses, micro-businesses or other persons required to comply with the rule. No additional costs will be incurred because the additional requirements are relatively minor changes to the process for renewing licenses. In addition, the revisions correct reference citations and clarify the intent. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 1:30 p.m., Wednesday, April 14, 2004, in Conference Room N-218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, §401.051, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects Health and Safety Code, Chapters 12 and 401. The review of the rule implements Government Code, §2001.039.

§289.260. Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.

(a) (No change.)

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials [~~Material~~]), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title, and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

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

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-

term government ownership and care in accordance with subsection (p) [~~(r)~~] of this section.

(2) - (10) (No change.)

(11) Disposal area--The area containing byproduct materials to which the requirements of subsection (o)(16)-(27) [~~(q)(16)-(27)~~] of this section apply.

(12) Existing portion--As used in subsection (o)(9)(A) [~~(q)(9)(A)~~] of this section, "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of byproduct materials had been placed prior to September 30, 1983.

(13) Factors beyond the control of the licensee--Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with subsection (o)(24) [~~(q)(24)~~] of this section. These factors may include but are not limited to:

(A) - (I) (No change.)

(14) Final radon barrier--The earthen cover (or approved alternative cover) over byproduct material constructed to comply with subsection (o)(16)-(27) [~~(q)(16)-(27)~~] of this section (excluding erosion protection features).

~~[(15) Fund--The Radiation and Perpetual Care Fund.]~~

(15) [~~(16)~~] Groundwater--Water below the land surface in a zone of saturation. For purposes of this section, groundwater is the water contained within an aquifer as defined in paragraph (1) of this subsection.

(16) [~~(17)~~] Hazardous constituent--Subject to subsection (o)(10)(E) [~~(q)(10)(E)~~] of this section, "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 CFR Part 40, Appendix A, Criterion 13.

(17) [~~(18)~~] Leachate--Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the byproduct material.

(18) [~~(19)~~] Licensed site--The area contained within the boundary of a location under the control of persons generating or storing byproduct materials under a license.

(19) [~~(20)~~] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

(20) [~~(21)~~] Maximum credible earthquake--That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(21) [~~(22)~~] Milestone--An action or event that is required to occur by an enforceable date.

(22) [~~(23)~~] Operation--The period of time during which a byproduct material disposal area is being used for the continued placement of byproduct material or is in standby status for such placement. A disposal area is in operation from the day that byproduct material is first placed in it until the day final closure begins.

(23) [~~(24)~~] Point of compliance--The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(24) [~~(25)~~] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(25) [~~(26)~~] Reclamation plan--For the purposes of subsection (o)(16)-(27) [~~(q)(16)-(27)~~] of this section, "reclamation plan" is the plan detailing activities to accomplish reclamation of the byproduct material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of byproduct material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(26) [~~(27)~~] Security (surety)--The following are examples of security:

(A) cash deposits;

(B) surety bonds;

(C) certificates of deposit;

(D) deposits of government securities;

(E) irrevocable letters of credit; or

(F) other security acceptable to the agency.

(27) [~~(28)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

(28) [~~(29)~~] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, solution extracting, or refining.

(29) [~~(30)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(30) [~~(31)~~] Uranium recovery--Any uranium extraction or concentration activity that results in the production of "byproduct material" as it is defined in this subsection. As used in this definition, "uranium recovery" has the same meaning as "uranium milling" in 10 CFR 40.4.

(d) Filing application for specific licenses. Unless otherwise specified, an applicant for a license is subject to the requirements in §289.252(d) of this title. The applicant shall also comply with the following additional filing requirements.

(1) Applications for specific licenses shall be filed in seven copies in a manner specified by the agency [~~on BRC Form 252-2, "Application for Radioactive Material License."~~]

[~~(2) The agency may, at any time after the filing of the original application, require further statements or data to enable the agency to determine whether the application should be denied or the license should be issued.~~]

[~~(3) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.~~]

[~~(4) An application for a license may include a request for one or more activities. The agency may require the issuance of separate licenses for those activities.~~]

(2) [~~(5)~~] Each [~~The~~] applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, before the agency issues or renews a license. The requirement is different from those in subsection (m) [~~(o)~~] of this section for financial security.

(A) An applicant or licensee shall show financial qualification by submitting one of the following:

(i) the bonding company report or equivalent (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph) that was used to obtain the financial security instrument used to meet the financial security requirement specified in subsection (m) [~~(o)~~] of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial security specified in subsection (m) [~~(o)~~] of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in clause (ii) or (iii) of this subparagraph;

(ii) SEC documentation (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph), if the applicant or licensee is a publicly-held company; or

(iii) a self-test (for example, an annual audit report, certifying a company's assets and liabilities and resulting ratio (as described in subparagraph (B) of this paragraph) or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(B) Each applicant or licensee must declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to-liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph.

(3) [~~(6)~~] An application for a license shall contain written specifications relating to the uranium recovery facility operations and the disposition of the byproduct material.

(4) [~~(7)~~] Each application shall clearly demonstrate how the requirements of subsections (d)-(g) and (m)-(p) [~~(d)-(h) and (o)-(r)~~] of this section have been addressed.

[~~(8) Each application for a license shall be accompanied by the fee prescribed in §289.204 of this title.~~]

[~~(9) Each application shall be accompanied by a completed BRC Form 252-1, (Business Information Form).~~]

(5) [~~(10)~~] Applications for new licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by Government Code, Chapters 2001 and 2002.

(6) [~~(11)~~] Notwithstanding the provisions of §289.204(d)(1) [~~§289.204(e)(1)~~] of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (5) [~~(10)~~] of this subsection, the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with Title 1, Texas Administrative Code, Chapter 155 (relating to Rules of Procedure) and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health).

[~~(12) Applications for licenses may be denied for the following reasons:~~]

[~~(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);~~]

[(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or]

[(C) failure to clearly demonstrate how the requirements in this chapter have been addressed.]

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that the applicant has met the requirements of §289.252(e) of this title and the following:

[(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these requirements in such a manner as to minimize danger to occupational and public health and safety and the environment;]

[(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and public health and safety and the environment;]

[(3) the issuance of the license will not be inimical to occupational and public health and safety nor have a long-term detrimental impact on the environment;]

(1) [(4)] qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested in the application and include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test; and

(B) training and experience necessary to supervise the radiation safety aspects of the licensed activity;

(2) [(5)] the applicant satisfies all applicable special requirements in this section. [; and]

[(6) there is no reason to deny the license as specified in subsection (d)(12) of this section.]

(f) Special requirements for a license application for uranium recovery and byproduct material disposal facilities. In addition to the requirements in subsection (e) of this section, a license will be issued if the applicant submits the items in paragraph (1) of this subsection for agency approval and meets the conditions in paragraphs (2) and (3) of this subsection.

(1) An application for a license shall include the following:

(A) (No change.)

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the byproduct material disposal areas in accordance with the technical requirements of subsection (o) [(q)] of this section;

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of subsection (m) [(o)] of this section;

(D) procedures describing the means employed to meet the requirements of subsections (g)(1) and (2) and (o)(15) [(h)(7) and (8) and (q)(15)] of this section during the operational phase of any project;

(E) - (F) (No change.)

(2) Unless otherwise exempted, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license. [commencement of major construction is prohibited until 30 days after the agency has given notice that a license is proposed to be granted. If a hearing is requested, the commencement of major construction is prohibited until notice of the contested case hearing is noticed in accordance with the Act. Commencement of major construction subsequent to issuance of the notices is at the economic risk of the applicant.]

(3) (No change.)

[(g) Issuance of specific licenses.]

[(1) When the agency determines that an application meets the requirements of the Act and the requirements of the agency, the agency will issue a license authorizing the proposed activity in such form and containing the conditions and limitations as it deems appropriate or necessary.]

[(2) The agency may incorporate in any license at the time of issuance or thereafter by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as it deems appropriate or necessary in order to:]

[(A) minimize danger to occupational and public health and safety or the environment;]

[(B) require reports and the keeping of records, and to provide for inspections of activities in accordance with the license as may be appropriate or necessary; and]

[(C) prevent loss or theft of radioactive material subject to this chapter.]

[(3) The agency may request and the licensee shall provide additional information after the license has been issued to enable the agency to determine whether the license should be modified in accordance with subsection (n) of this section.]

(g) [(h)] Specific terms and conditions of licenses. Unless otherwise specified, each license issued in accordance with this section is subject to the requirements of §289.252(x) of this title and the following. [license.]

[(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act and to applicable rules, now or hereafter in effect, and orders of the agency.]

[(2) No license issued in accordance with this section and no right to possess or utilize radioactive material authorized by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and to applicable rules, now and hereafter in effect, and orders of the agency, and shall give its consent in writing.]

[(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive material to the locations and purposes authorized in the license.]

[(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company.]

[(5) The notification in paragraph (4) of this subsection shall include:]

[(A) the bankruptcy court in which the petition for bankruptcy was filed; and]

[(B) the date of the filing of the petition.]

[~~(6) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.~~]

(1) [~~(7)~~] Daily inspection of any byproduct material retention systems shall be conducted by the licensee. General qualifications for individuals conducting inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(2) [~~(8)~~] In addition to the applicable requirements of §289.202(ww)-(yy) of this title, the licensee shall immediately notify the agency of the following:

(A) any failure in a byproduct material retention system that results in a release of byproduct material into unrestricted areas;

(B) any release of radioactive material that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title and that extends beyond the licensed boundary;

(C) any spill that exceeds 20,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title; or

(D) any release of solids that exceeds the limits in subsection (h)(6) [~~(i)(4)~~] of this section and that extends beyond the licensed boundary.

(3) [~~(9)~~] In addition to the applicable requirements of §289.202(ww)-(yy) of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that exceeds 2,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title.

(4) [~~(10)~~] A licensee shall submit to the agency at five year intervals from the issuance of the license or at the time of technical renewal, if renewal and re-evaluation occur in the same year, continued proof of the licensee's financial qualifications.

(h) [~~(i)~~] Expiration and termination of licenses and administrative renewal; decommissioning of sites, separate buildings[~~,~~] or outdoor areas.

(1) Effective September 1, 2004, the term of the specific license is two years. Except as provided in paragraph (4) [~~(2)~~] of this subsection and subsection (i)(2) [~~(j)(2)~~] of this section, each specific license expires at the end of the day, in the month and year stated in the license. Upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with §289.252(x)(7) of this title, the specific license will be administratively renewed.

(2) If the fee is not paid and the license is not renewed in accordance with paragraph (1) of this subsection, the license expires, and the licensee is in violation of the rules and is subject to administrative penalties in accordance with §289.205 of this title.

(A) If the licensee pays the fee required by §289.204 of this title within 30 days after expiration of the license, the license will be reinstated and the licensee will not be required to file an application in accordance with subsection (d) of this section.

(B) If the licensee fails to pay the fee within 30 days after expiration of the license, the licensee shall file an application in accordance with subsection (d) of this section.

(3) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(4) [~~(2)~~] All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of paragraph (6) [~~(4)~~] of this subsection.

(5) [~~(3)~~] Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in subsection (f)(1)(B) of this section, so that the buildings or outdoor areas are suitable for release in accordance with paragraph (6) [~~(4)~~] of this subsection if:

(A) the license has expired in accordance with paragraph (1) of this subsection; or

(B) the licensee has decided to permanently cease principal activities, as defined in subsection (c)(24) [~~(c)(25)~~] of this section, at the entire site or in any separate building or outdoor area; or

(C) no principal activities have been conducted for a period of 24 months in any building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(6) [~~(4)~~] Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(A) The concentration of radium-226 or radium-228 in soil, averaged over any 100 square meters (m^2), shall not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(ii) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(B) The contamination of vegetation shall not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(C) The concentration of natural uranium in soil, with no daughters present, averaged over any 100 m^2, shall not exceed the background level by more than:

(i) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(ii) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(7) [~~(5)~~] Coincident with the notification required by paragraph (5) [~~(3)~~] of this subsection, the licensee shall maintain in effect all

decommissioning financial security established by the licensee in accordance with subsection (m) [~~(o)~~] of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (13)(E) [~~(11)(E)~~] of this subsection.

[~~(A) Any licensee who has not provided financial security to cover the detailed cost estimate submitted with the closure plan shall do so on or before September 1, 1998.~~]

[~~(B) Following approval of the closure plan, a licensee may reduce the amount of the financial security, with the approval of the agency, as decommissioning proceeds and radiological contamination is reduced at the site.~~]

(8) [~~(6)~~] In addition to the provisions of paragraph (7) [~~(5)~~] of this subsection, each licensee shall submit an updated closure plan to the agency within 12 months of the notification required by paragraph (5) [~~(3)~~] of this subsection. The updated closure plan shall meet the requirements of subsections (f)(1)(B) and (m) [~~(o)~~] of this section. The updated closure plan shall describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(9) [~~(7)~~] The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (5) [~~(3)~~] of this subsection. The schedule for decommissioning in paragraph (5) [~~(3)~~] of this subsection may not begin until the agency has made a determination on the request.

(10) [~~(8)~~] A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(11) [~~(9)~~] The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (5) [~~(3)~~] of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(12) [~~(10)~~] The procedures listed in paragraph (10) [~~(8)~~] of this subsection may not be carried out prior to approval of the decommissioning plan.

(13) [~~(11)~~] The proposed decommissioning plan for the site or separate building or outdoor area shall include:

(A) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (17) [~~(15)~~] of this subsection.

(14) [~~(12)~~] The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(15) [~~(13)~~] Except as provided in paragraph (17) [~~(15)~~] of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(16) [~~(14)~~] Except as provided in paragraph (17) [~~(15)~~] of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(17) [~~(15)~~] The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(C) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(18) [~~(16)~~] As the final step in decommissioning, the licensee shall:

(A) certify the disposition of all radioactive material, including accumulated byproduct material;

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with paragraph (6) [~~(4)~~] of this subsection. The licensee shall, as appropriate;

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(19) [~~(17)~~] The agency will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with paragraph (4) [~~(2)~~] of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(D) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of paragraph (6) [~~(4)~~] of this subsection;

(E) all records required by §289.202(nn)(2) of this title have been submitted to the agency;

(F) the licensee has paid any outstanding fees required by §289.204 of this title and has resolved any outstanding notice(s) of violation issued to the licensee;

(G) the licensee has met the applicable technical and other requirements for closure and reclamation of a byproduct material disposal site; and

(H) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(20) [~~(18)~~] Licenses for uranium recovery and/or byproduct material disposal are exempt from paragraphs (5)(C), (8), and (9) [~~(3)(C), (6), and (7)~~] of this subsection with respect to reclamation of byproduct material impoundments and/or disposal areas. Timely reclamation plans for byproduct material disposal areas shall be submitted and approved in accordance with subsection (o)(16)-(27) [~~(q)(16)-(27)~~] of this section.

(21) [~~(19)~~] A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in paragraph (6) [~~(4)~~] of this subsection and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

(i) [~~(j)~~] Technical renewal of licenses [~~Renewal of license~~].

(1) Application [~~Request~~] for a technical renewal of specific licenses shall be filed in accordance with subsections (d)(1)-(5) [~~(d)(1)-(8) and (10),~~] and (f)(1) of this section. Application for a technical renewal of a specific license shall be filed by the date specified in the existing license. If the licensee fails to apply for a technical renewal and fails to pay the fee required by §289.204 of this title, the license expires and the licensee shall comply with the requirements of subsection (h) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) In any case in which a licensee, [~~not less than 30 days~~] prior to expiration of the existing license, has filed a request in proper form for a technical renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the agency. In any case in which a licensee, not more than 30 days after the expiration of an existing license, has filed an application for technical renewal or for a new license authorizing the same activities and paid the fee required by §289.204 of this title, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency.

(3) An application for technical renewal of a license will be approved if the agency determines that the requirements of subsection (e) of this section have been satisfied.

(4) If the application for technical renewal of the license is not approved in accordance with paragraph (3) of this subsection, the license expires, and the former licensee is subject to enforcement action by the agency.

(5) Expiration of the specific license does not relieve the former licensee of the requirements of this chapter.

(j) [~~(k)~~] Amendment of licenses at request of licensee. Requests for amendment of a license shall be filed in accordance with subsection (d) of this section and §289.252(d)(1)-(3) of this title [~~, except that the requirements of subsection (d)(1), (d)(7), and (d)(8) of this section may be waived at the discretion of the agency~~]. Such requests shall be signed by the RSO and [~~also~~] specify how the licensee desires the license to be amended and the basis for such amendment.

(k) [~~(l)~~] Agency action on applications to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the appropriate criteria in subsections (e) and (f) of this section.

(l) [~~(m)~~] Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency after receiving prior approval from the agency;

(B) to the United States Department of Energy;

(C) to any person exempt from the licensing requirements of the Act and these requirements or exempt from the licensing

requirements of the NRC or an agreement state, to the extent permitted by these exemptions;

(D) to any person authorized to receive such material in accordance with terms of a general license or its equivalent, a specific license or equivalent licensing document issued by the agency, NRC, any agreement state, any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, or the agency;

(E) to any person abroad pursuant to an export license issued under Title 10, Chapter 1, CFR Part 110; or

(F) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, NRC, an agreement state, a licensing state, or to a general licensee who is required to register with the agency, the licensee transferring the radioactive material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification of paragraph (3) of this subsection are acceptable:

(A) the transferor may possess and have read a current copy of the transferee's specific license or registration certificate;

(B) the transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(C) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days; or

(D) when none of the methods of verification described in subparagraphs (A)-(C) of this paragraph are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, or the NRC, that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of §289.257 of this title.

~~[(n) Modification and revocation of licenses.]~~

~~[(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.]~~

~~[(2) Any license may be revoked, suspended, or modified, in whole or in part for any of the following:]~~

~~[(A) any material false statement in the application or any statement of fact required under provisions of the Act;]~~

~~[(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to issue a license on an original application; or]~~

~~[(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the agency.]~~

~~[(3) Except in cases in which occupational and public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.]~~

~~[(4) Each specific license revoked by the agency expires at the end of the day on the date of the agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by agency order.]~~

(m) [~~(o)~~] Financial security requirements.

(1) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any byproduct material disposal areas. The amount of funds to be ensured by such security arrangements shall be based on agency-approved cost estimates in an agency-approved closure plan for:

(A) decontamination and decommissioning of buildings and the site to levels that allow unrestricted use of these areas upon decommissioning; and

(B) the reclamation of byproduct material disposal areas in accordance with technical criteria delineated in subsection (o) [~~(q)~~] of this section.

(2) The licensee shall submit this closure plan in conjunction with an environmental report that addresses the expected environmental impacts of the licensee's operation, decommissioning and reclamation, and evaluates alternatives for mitigating these impacts.

(3) The security shall also cover the payment of the charge for long-term surveillance and control for byproduct material disposal areas required by subsection (n)(3) [~~(p)(3)~~] of this section.

(4) In establishing specific security arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the agency may accept financial securities that have been consolidated with financial or security arrangements established to meet requirements of other federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the security that covers the decommissioning and reclamation of the buildings, site, and byproduct material disposal areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(5) The security shall be continuous for the term of the license and shall be payable in the State [~~state~~] of Texas to the Radiation and Perpetual Care Account [~~Fund~~].

(6) The licensee's security mechanism will be reviewed annually by the agency to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of security liability should

be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

(7) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of security liability shall be retained until final compliance with the reclamation plan is determined. This will yield a security that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license technical renewal. The term of the security mechanism shall be open ended. This assurance would be provided with a security instrument that is written for a specified period of time (for example, five years) yet which shall be automatically renewed unless the security notifies the agency and the licensee some reasonable time (for example, 90 days) prior to the renewal date of their intention not to renew. In such a situation the security requirement still exists and the licensee would be required to submit an acceptable replacement security within a brief period of time to allow at least 60 days for the agency to collect.

(8) Proof of forfeiture shall not be necessary to collect the security so that in the event that the licensee could not provide an acceptable replacement security within the required time, the security shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any security instrument, and shall be agreed upon by all parties.

(9) Self-insurance, or any arrangement that essentially constitutes self insurance (for example, a contract with a state or federal agency), will not satisfy the security requirement since this provides no additional assurance other than that which already exists through license requirements.

(n) [~~(p)~~] Long-term care and maintenance requirements.

(1) Unless otherwise provided by the agency, each licensee licensed in accordance with this part for disposal of byproduct material shall make payments into the Radiation and Perpetual Care Account [~~Fund~~] in amounts specified by the agency. The agency shall make such determinations on a case-by-case basis.

(2) The final disposition of byproduct material should be such that the need for ongoing active maintenance is eliminated to the maximum extent practicable.

(3) A minimum charge of $250,000 (1978 dollars) or more, if demonstrated as necessary by the agency, shall be paid into the Radiation and Perpetual Care Account [~~Fund~~] to cover the costs of long-term care and maintenance. The total charge shall be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge shall be covered during the term of the license by additional security meeting the requirements of subsection (m) [~~(o)~~] of this section. If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (for example, if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge shall be such that, with an assumed 1.0% annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(4) The requirements of this subsection shall apply only to those sites whose ownership is subject to being transferred to the state or the federal government. The total amount of funds collected by the agency in accordance with this subsection shall be transferred to the federal government if title and custody of the byproduct material disposal site is transferred to the federal government upon termination of the license.

(o) [~~(q)~~] Technical requirements.

(1) Byproduct material handling and disposal systems shall be designed to accommodate full-capacity production over the lifetime of the facility. When later expansion of systems or operations may be likely, capability of the disposal system to be modified to accommodate increased quantities without degradation in long-term stability and other performance factors shall be evaluated.

(2) In selecting among alternative byproduct material disposal sites or judging the adequacy of existing sites, the following site features which would assure meeting the broad objective of isolating the tailings and associated contaminants without ongoing active maintenance shall be considered:

(A) remoteness from populated areas;

(B) hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from usable groundwater sources; and

(C) potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

(3) The site selection process shall be an optimization to the maximum extent reasonably achievable in terms of these site features.

(4) In the selection of disposal sites, primary emphasis shall be given to isolation of the byproduct material, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits (e.g., minimization of transportation of land acquisition costs). While isolation of byproduct material will also be a function of both site and engineering design, overriding consideration shall be given to siting features.

(5) Byproduct material should be disposed of in a manner such that no active maintenance is required to preserve conditions of the site.

(6) The applicant's environmental report shall evaluate alternative sites and disposal methods and shall consider disposal of byproduct material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it shall be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the byproduct material from natural erosional forces.

(7) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(8) The following site and design requirements shall be adhered to whether byproduct material is disposed of above or below grade:

(A) the upstream rainfall catchment areas shall be minimized to decrease erosion potential by flooding that could erode or wash out sections of the byproduct material disposal area;

(B) the topographic features shall provide good wind protection;

(C) the embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades that are as close as possible to those that would be provided if byproduct material was disposed of below grade. Slopes shall not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions that make such slopes acceptable shall be identified;

(D) a full self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels;

(E) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The agency will consider relaxing this requirement for extremely gentle slopes, such as those that may exist on the top of the pile;

(F) the following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(i) shape, size, composition, gradation of rock particles (excepting bedding material, average particles size shall be at least cobble size or greater);

(ii) rock cover thickness and zoning of particles by size; and

(iii) steepness of underlying slopes.

(G) individual rock fragments shall be dense, sound, and resistant to abrasion, and shall be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(H) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; there is negligible drainage catchment area upstream of the pile; and there is good wind protection;

(I) all impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are no ongoing or potential processes, such as gully erosion, which would lead to impoundment instability;

(J) the impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand; and

(K) the impoundment should be designed to incorporate features that will promote deposition. Design features that promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized. The object of such a design feature would be to enhance the thickness of cover over time.

(9) Groundwater protection. The following groundwater protection requirements and those in paragraphs (10) and (11) of this subsection and subsection (q) [~~(s)~~] of this section apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by paragraphs (28) and (29) of this subsection.

(A) The primary groundwater protection standard is a design standard for surface impoundments used to manage byproduct material. Unless exempted under paragraph (9)(C) of this subsection, surface impoundments (except for an existing portion) shall have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. If the liner is constructed of materials that may allow wastes to migrate into the liner during the active life of the facility, impoundment closure shall include removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(B) The liner required by subparagraph (A) of this paragraph shall be:

(i) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(C) The applicant or licensee will be exempted from the requirements of subparagraph (A) of this paragraph if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(i) the nature and quantity of the wastes;

(ii) the proposed alternate design and operation;

(iii) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) all other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(D) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-off; from malfunctions of level controllers, alarms, and other equipment; and from human error.

(E) When dikes are used to form the surface impoundment, the dikes shall be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it shall not be presumed that the liner system will function without leakage during the active life of the impoundment.

(10) Byproduct materials shall be managed to conform to the following secondary groundwater protection requirements:

(A) hazardous constituents, as defined in subsection (c)(16) [~~(c)(17)~~] of this section, entering the groundwater from a licensed site shall not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period.

(B) specified concentration limits are those limits established by the agency as indicated in subparagraph (G) of this paragraph.

(C) the agency will also establish the point of compliance and compliance period on a site-specific basis through license conditions and orders.

(D) when the detection monitoring established under paragraphs (28) and (29) of this section indicates leakage of hazardous constituents from the disposal area, the agency will perform the following:

(i) identify hazardous constituents;

(ii) establish concentration limits;

(iii) set the compliance period; and

(iv) may adjust the point of compliance if needed in accordance with developed data and site information regarding the flow of groundwater or contaminants.

(E) even when constituents meet all three tests in the definition of hazardous constituent, the agency may exclude a detected constituent from the set of hazardous constituents on a site-specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the agency will consider the following:

(i) potential adverse effects on groundwater quality, considering the following:

(I) physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity of groundwater and the direction of groundwater flow;

(IV) proximity of groundwater users and groundwater withdrawal rates;

(V) current and future uses of groundwater in the area;

(VI) existing quality of groundwater, including other sources of contamination and cumulative impact on the groundwater quality;

(VII) potential for human health risks caused by human exposure to waste constituents;

(VIII) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(IX) persistence and permanence of potential adverse effects.

(ii) potential adverse effects on quality of hydraulically-connected surface water, considering the:

(I) volume and physical and chemical characteristics of the byproduct material in the licensed site;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity and quality of groundwater and the direction of groundwater flow;

(IV) patterns of rainfall in the region;

(V) proximity of the licensed site to surface waters;

(VI) current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(VII) existing quality of surface water, including potential impacts from other sources of contamination and the cumulative impact on surface water quality;

(VIII) potential for human health risks caused by human exposure to waste constituents;

(IX) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(X) persistence and permanence of the potential adverse effects.

(F) In making any determinations under subparagraphs (E) and (H) of this paragraph about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality.

(G) At the point of compliance, the concentration of a hazardous constituent shall not exceed the following:

(i) the agency approved background concentration in the groundwater of the constituents listed in 10 CFR 40, Appendix A, Criterion 13;

(ii) the respective value given in subsection (q) [~~(s)~~] of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(iii) an alternate concentration limit established by the agency.

(H) Alternate concentration limits to background concentration or to the drinking water limits in subsection (q) [~~(s)~~] of this section that present no significant hazard may be proposed by licensees for agency consideration. Licensees shall provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency shall consider. The agency will establish a site-specific alternate concentration limit for a hazardous constituent,

as provided in subparagraph (G) of this paragraph, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in subparagraph (D) of this paragraph.

(11) If the groundwater protection standards established under subparagraph (D) of this paragraph are exceeded at a licensed site, a corrective action program shall be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for agency approval prior to putting the program into operation, unless otherwise directed by the agency. The licensee's proposed program shall address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and downgradient licensed site boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The agency will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(12) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(A) where synthetic liners are used, a leakage-detection system shall be installed immediately below the liner to ensure detection of any major failures. This is in addition to the groundwater monitoring program conducted as provided in paragraph (29) of this subsection. Where clay liners are proposed or relatively thin, in situ clay soils are to be relied upon for seepage control, tests shall be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to byproduct material solutions. Tests shall be run for a sufficient period of time to reveal any effects that may occur;

(B) mill process designs that provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the byproduct material impoundment;

(C) dewatering of byproduct material solutions by process devices and/or in situ drainage systems. At new sites, byproduct material solutions shall be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show byproduct material solutions are not amenable to such a system. Where in situ dewatering is to be conducted, the impoundment bottom shall be graded to assure that the drains are at a low point. The drains shall be protected by suitable filter materials to assure that drains remain free-running. The drainage system shall also be adequately sized to assure good drainage; and

(D) neutralization to promote immobilization of hazardous constituents.

(13) Technical specifications shall be prepared for installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, shall be established to assure that specifications are met. If adverse groundwater impacts or conditions conducive to adverse groundwater impacts occur due to seepage, action shall be taken to alleviate the impacts or conditions and restore groundwater quality to levels consistent with those before operations began. The specific seepage control and groundwater protection method, or combination of methods, to be used shall be worked out on a site-specific basis.

(14) In support of a byproduct material disposal system proposal, the applicant/licensee shall supply the following information:

(A) the chemical and radioactive characteristics of the waste solutions;

(B) the characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This shall include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations shall be determined. This information shall be gathered by borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes shall include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability shall not be determined on the basis of laboratory analysis of samples alone. A sufficient amount of field testing (e.g., pump tests) shall be conducted to assure actual field properties are adequately understood. Testing shall be conducted to make possible estimates of chemisorption attenuation properties of underlying soil and rock; and

(C) location, extent, quality, capacity, and current uses of any groundwater at and near the site.

(15) If ore is stockpiled, methods shall be used to minimize penetration of radionuclides and other substances into underlying soils.

(16) In disposing of byproduct material, licensees shall place an earthen cover over the byproduct material at the end of the facility's operations and shall close the waste disposal area in accordance with a design that provides reasonable assurance of control of radiological hazards to the following:

(A) be effective for 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years; and

(B) limit releases of radon-222 from uranium byproduct materials and radon-220 from thorium byproduct materials to the atmosphere so as not to exceed an average release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined in accordance with subparagraph (A) of this paragraph. This average applies to the entire surface of each disposal area over a period of at least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and cover materials. Radon emissions from cover materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

(17) In computing required byproduct material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the byproduct material should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. Cover shall not include materials that contain elevated levels of radium. Soils used for near-surface cover shall be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee shall demonstrate

that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(18) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20pCi/m^2s averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(19) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in subsection (c)(25) [~~(c)(26)~~] of this section, the verification of radon-222 release rates required in paragraph (30) of this subsection shall be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(20) Within 90 days of the completion of all testing and analysis relevant to the required verification in paragraphs (30)(C) and (30)(D) of this subsection, the uranium recovery licensee shall report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s when averaged over the entire pile or impoundment. The licensee shall maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with subsection (p) [~~(r)~~] of this section.

(21) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover shall be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(22) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2), that, as a result of byproduct material, does not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) of radium-226, or in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(B) 15 pCi/g of radium-226, or in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below surface.

(23) The licensee shall also address the nonradiological hazards associated with the waste in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to groundwater or surface waters or to the atmosphere.

(24) For impoundments containing uranium byproduct materials, the final radon barrier shall be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in subsection (c)(25) [~~(c)(26)~~] of this section, approved by the agency, by license amendment. (The term "as expeditiously as practicable considering technological feasibility" includes "factors beyond the control of the licensee.") Deadlines for completion of the final radon barrier and applicable interim milestones shall be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown byproduct material and placement on the pile and the interim stabilization of the byproduct material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the byproduct material shall also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(25) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in paragraph (18) of this subsection that releases of radon-222 do not exceed an average of 20 pCi/m^2s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m^2s, a verification of radon levels, as required by paragraph (18) of this subsection, shall be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "available technology," and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(26) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m^2s averaged over the entire impoundment. The verification required in paragraph (18) of this subsection may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m^2s averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only byproduct material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, shall be completed in a timely manner after disposal operations cease in accordance with paragraph (16) of this subsection. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(27) The licensee's closure plan shall provide reasonable assurance that institutional control will be provided for the length of time found necessary by the agency to ensure the requirements of paragraph (16) of this subsection are met.

(28) Prior to any major site construction, a preoperational monitoring program shall be conducted for one full year to provide complete baseline data on the site and its environs. Throughout the construction and operating phases of the project, an operational monitoring program shall be conducted to measure or evaluate compliance with applicable standards and rules; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

(29) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in paragraph (10)(D) of this subsection. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information shall provide a sufficient basis to identify those hazardous constituents that require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring program shall be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with paragraph (10)(D) of this subsection, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(30) Systems shall be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

(A) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of byproduct materials shall be kept as low as is reasonably achievable.

(B) Checks shall be made and logged hourly of all parameters which determine the efficiency of emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency. Corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the uranium dryer stack. Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts shall be reported to the agency in writing within ten days of the subsequent restart.

(C) To control dusting from byproduct material, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if byproduct material are effectively sheltered from wind, as in the case of below-grade disposal. Consideration shall be given in planning byproduct material disposal programs to methods for phased covering and reclamation of byproduct material impoundments. To control dusting from diffuse sources, applicants/licensees shall develop written operating procedures specifying the methods of control that will be utilized.

(D) Uranium recovery facility operations producing or involving thorium byproduct material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems (mrem) to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials to the general environment, radon-220 and its daughters excepted.

(E) Byproduct materials shall be managed so as to conform to the applicable provisions of 40 CFR 440, as codified on January 1, 1983.

(31) Licensees/applicants may propose alternatives to the specific requirements in subsections (m)-(p) [~~(o)-(r)~~] of this section. The alternative proposals may take into account local or regional conditions including geology, topography, hydrology, and meteorology.

(32) The agency may find that the proposed alternatives meet the agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level that would be achieved by the requirements of subsections (m)-(p) [~~(o)-(r)~~] of this section and the standards promulgated by EPA in 40 CFR Part 192, Subparts D and E.

(33) All site-specific licensing decisions based on the criteria in subsections (m)-(p) [~~(o)-(r)~~] of this section, or alternatives proposed by licensees/applicants shall take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the agency determines to be appropriate.

(34) Any proposed alternatives to the specific requirements in subsections (m)-(p) [~~(o)-(r)~~] of this section shall meet the requirements of 10 CFR 150.31(d).

(35) No new site shall be located in a 100-year floodplain or wetland as defined in "Floodplain Management Guidelines for Implementing Executive Order 11988."

(p) [~~(r)~~] Land ownership of byproduct material disposal sites.

(1) These criteria relating to ownership of byproduct material and their disposal sites apply to all licenses terminated, issued, or renewed after November 8, 1981.

(2) Unless exempted by NRC, title to land (including any affected interests therein) that is used for the disposal of byproduct material or that is essential to ensure the long-term stability of the disposal site and title to the byproduct material shall be transferred to the State of Texas or the United States prior to the termination of the license. Material and land transferred shall be transferred without cost to the State of Texas or the United States. In cases where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, NRC may take into account the status of the ownership of the land and interests therein, and the ability of a licensee to transfer title and custody thereof to the State.

(3) Any uranium recovery facility license shall contain terms and conditions as the agency determines necessary to assure

that, prior to termination of the license, the licensee will comply with ownership requirements of this subsection for sites used for tailings disposal.

(4) For surface impoundments only, the applicant/licensee shall demonstrate a serious effort to obtain severed mineral rights and shall, in the event that fee simple title including all mineral rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to a NRC license prohibiting the disruption and disturbance of the tailings.

(5) If NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the state or federal government will not endanger the public health and safety or the environment, NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If NRC permits the use of such land, it will provide the person who transferred the land with the first refusal with respect to the use of such land.

(q) [~~(s)~~] Maximum values for use in groundwater protection. The following is a list of the maximum concentration values to be used for groundwater protection.
Figure: 25 TAC §289.260(q)
[~~Figure: 25 TAC §289.260(s)~~]

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

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402063
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 458-7236

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CHAPTER 337. WATER HYGIENE
SUBCHAPTER B. DESIGN STANDARDS FOR PUBLIC SWIMMING POOL CONSTRUCTION

25 TAC §§337.71 - 337.96

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

The Texas Department of Health (department) proposes the repeal of §§337.71 - 337.96, concerning the design standards for public swimming pool construction. The repeal is necessary in order to eliminate duplication of design standards for public swimming pools rules, which are being adopted into a more appropriate section in the Texas Administrative Code (TAC), §§337.71 - 337.96, was adopted pursuant to Health and Safety Code, §341.064, Swimming Pools and Bathhouses.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections §§337.71 - 337.96 have been reviewed, and the department has determined that the reasons for adopting the sections no longer exist. In a companion rulemaking, applicable public swimming pool design and construction standards from this chapter are being incorporated into 25 TAC, Part 1, Chapter 265, Subchapter L, Standards for Public Pools and Spas.

The department published a Notice of Intent to Review for §§337.71 - 337.96, in the March 29, 2002, issue of the *Texas Register* (27 TexReg 2541). No comments were received following publication of the notice.

Elias Briseno, Director, General Sanitation and Product Safety Division, has determined that for each year of the first five years the repeal is in effect there will be no fiscal impact on state or local governments as a result of enforcing or administering the repeal as proposed because obsolete rules will be eliminated.

Mr. Briseno, has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefits will be the elimination of obsolete rules from the Texas Administrative Code. Because applicable rules in Chapter 337 will be adopted into Chapter 265 and obsolete rules from Chapter 337 will be eliminated, there will be no additional fiscal impact on micro-businesses or small businesses. This determination was based on a careful evaluation of micro-businesses, small businesses and large businesses associated with the public pool and spa industry. There are no costs to persons who are affected by the repeal. There will be no impact on local employment.

Comments on the proposal may be submitted to Elias Briseno, Director, General Sanitation and Product Safety Division, Bureau of Environmental Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, phone (512) 834-6600, by fax to (512) 834-6635 or by e-mail to katie.moore@tdh.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Health and Safety Code, §341.002, which provides the Texas Board of Health (board) with the authority to adopt rules consistent with the establishment of standards and procedures for the management and control of sanitation and health protection measures; Health and Safety Code §341.064 that authorizes standards for public swimming pools and bathhouses; and Health Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeals affect Health and Safety Code, Chapters 341 and 12. The review of the rules implements Government Code, §2001.039.

§337.71. Definitions.
§337.72. Purpose.
§337.73. Examination and Approval of Plans.
§337.74. Plans and Specifications.
§337.75. Engineering Report
§337.76. Water Supply.
§337.77. Sewer System.
§337.78. Swimming Pool Construction Materials.
§337.79. Design Detail and Structural Stability.
§337.80. Depth Markings and Lines.
§337.81. Inlets and Outlets.
§337.82. Slope of Bottom.
§337.83. Side Walls.
§337.84. Overflow Gutters.
§337.85. Skimmers.
§337.86. Recirculation Systems.

§337.87. Sand Type Filters.

§337.88. Diatomaceous Earth-Type Filters.

§337.89. Ladders, Recessed Treads, and Stairs.

§337.90. Decks and Walkways.

§337.91. Diving Areas.

§337.92. Disinfectant and Chemical Feeders.

§337.93. Lighting, Ventilation, and Electrical Requirements.

§337.94. User Loading.

§337.95. Bathhouses, Toilets, and Showers.

§337.96. Safety Requirements--Lifesaving Equipment.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes amendments to §§34.506, 34.515 and 34.516, concerning the licensing and qualifying tests for Type A, Type B and Type PL licenses; §34.606 and §§34.613 - 34.615, concerning the licensing and qualifying tests for fire alarm technicians, fire alarm monitoring technicians, residential fire alarm superintendent single stations, fire alarm planning superintendent and residential fire alarm superintendents; §34.706 and §§34.713 - 34.715, concerning the licensing and qualifying tests for responsible managing employees; and §§34.808, 34.811, 34.813 and 34.814, concerning the licensing and qualifying tests for pyrotechnic operators, pyrotechnic special effects operators and flame effects operators. The proposal is designed to implement legislation enacted by the 78th Legislature in House Bill (HB) 472. HB 472 amends Articles 5.43-1, 5.43-2 and 5.43-3, Insurance Code, by allowing the state fire marshal to increase the initial fee for certain licenses and to provide for the testing of certain license applicants by an external testing service, pursuant to a written agreement between the State Fire Marshal's Office (SFMO) and the testing service. HB 472 also amends Chapter 2154, Occupations Code, by requiring the state fire marshal to establish the scope and type of the qualifying tests for pyrotechnic operator and pyrotechnic special effects operator licenses and to permit the testing to be administered directly or by agreement with an external testing service. The proposed amendments are necessary to establish the outsourcing of testing for certain licenses and clarify certain portions of the rules. The proposed amendments throughout replace "examination" with "test" to more clearly explain the licensing process and capitalizes "State Fire Marshal's Office" for consistency.

The proposed amendments add a definition for outsource testing service to §§34.506, 34.606, 34.706, and 34.808, a definition for department to §34.706 and §34.808 and renumber the remaining definitions of all the above cited sections after adding the two new definitions. The proposed amendments to §§34.515, 34.614, 34.714, and 34.814 increase the fees for initial licenses and late fees, provide for the payment of fees to an outsource testing service, and replace all fee schedule graphics with text. The proposed amendments to §34.614 and §34.714 make these sections consistent with other provisions by providing that only overpayments resulting from mistakes of law or fact will be refunded.

The proposed amendments to §34.516 state that the (SFMO) shall designate the outsource testing service, clarify that one test may be given per license, the test consists of specific topics, and place a limit on the number of times a test may be scheduled during a twelve-month period. The proposed amendments to §34.613 change the wording of certain paragraphs indicating that the SFMO designates the qualifying tests and clarify that an applicant has 180 days from the department's receipt of the initial application to complete the application, which includes the submission of the appropriate fees and all required information. The proposed amendments to §34.614 clarify the qualifying test fees if administered by the SFMO. The proposed amendments to §34.615 provide that the qualifying test for the various fire alarm licenses can be given by an outsource testing service.

The proposed amendments to §34.713 provide that the qualifying test for a responsible managing employee (RME) for dwelling and underground fire main licenses can be given by an outsource testing service and a copy of the confirmation letter from the testing service must accompany the application as evidence of technical qualifications for the license. Additionally, the amendments clarify that an applicant has 180 days from the department's receipt of the initial application to complete the application, which includes the submission of the appropriate fees and all required information. The proposed amendments to §34.714 clarify the qualifying test fees if administered by the SFMO. The proposed amendments to §34.715 sets out the number of times an applicant may schedule a test.

The proposed amendments to §34.811 clarify the licensing process and set out the number of times a test may be scheduled. The proposed amendments to §34.813 clarify that an applicant has 180 days from the department's receipt of the initial application to complete the application, which includes the submission of the appropriate fees and all required information. The proposed amendments to §34.814 provide that the qualifying test for pyrotechnic operator, pyrotechnic special effects operator and flame effects operator licenses can be given by an outsource testing service. Additionally, the proposed amendments to §34.814 set forth the payment amount for the various pyrotechnic and flame effects licenses as well as the qualifying test fees if administered by the SFMO.

G. Mike Davis, State Fire Marshal, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Mr. Davis has also determined that there will be no adverse effect on local employment or the local economy as a result of the proposal.

Mr. Davis also has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit from enforcing and administering the amended sections will be the location of testing facilities that are familiar and convenient to the applicants, reduction in costs to successful applicants for their licenses, and potentially increase in the number of licensees who were previously unable to travel to Austin for testing. Currently, all license tests affected by HB 472 are administered at the SFMO which requires all licensees to travel to Austin, Texas to take the test. The proposed amendments will permit the applicant to take the licensing exam at one of the outsource testing service facilities located throughout the state. This flexibility will save the applicant travel time as well as reduce costs encountered by over-night accommodations. The cost to a business in the fire extinguisher, fire alarm, fire sprinkler and pyrotechnic industry qualifying as a small business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the cost per specific type of license. Because licenses are required for individuals in the industry, it is neither legal nor feasible to waive the proposed amendments for small or micro businesses because minimum standards for safety must be applied consistently to large, small and micro businesses. Although the costs to businesses is dependent on the number of licensees it employs, the licensee now has the option of taking the qualifying test at a local outsource testing facility which may cost the licensee or his employer less as he will not be required to travel to Austin to take the test.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 3, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. Requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.506, 34.515, 34.516

The amended sections are proposed pursuant to the Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupations Code §2154.052 and the Insurance Code §36.001. Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3 mandate the adoption of rules necessary to implement the requirements of these articles. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits. 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.

The following statutes are affected by the proposed amendments: Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupation Code §§2154.052, 2154.103 and 2154.155.

§34.506. Definitions.

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

(1) - (12) (No change.)

(13) Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(14) [~~(13)~~] Person--A natural person.

(15) [~~(14)~~] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of detection or suppression devices and appurtenances in accordance with either fire protection standards adopted in this subchapter or specifications specially designed by a Texas registered professional engineer acting solely in his professional capacity.

(16) [~~(15)~~] Registered firm--A person, partnership, corporation, or association holding a current certificate of registration.

(17) [~~(16)~~] Shop--A facility of a registered firm where servicing, repairing, or hydrostatic testing is performed and where parts and equipment are maintained.

(18) [~~(17)~~] Test--The act of subjecting a portable or fixed system to any procedure necessary to determine whether it is properly installed or operates correctly.

§34.515. Fees.

(a) Every fee payable to the department and required in accordance with the provisions of the Insurance Code, Article 5.43-1, and [~~the sections of~~] this subchapter must be paid by cash, money order, or check. Money orders and checks must be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, all fees are non-refundable.

(b) Fees payable to the department must be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal.

(c) Fees are as follows.

(1) Certificates of registration (Type A, B, and PL):

(A) initial fee--$450;

(B) renewal fee (for two years)--$600;

(C) renewal late fee (expired 1 day to 90 days)--$225;

(D) renewal late fee (expired 91 days to two years)--$450;

(E) [~~(C)~~] branch office initial fee--$100;

(F) [~~(D)~~] branch office renewal fee (for two years)--$200;[~~.~~]

(G) branch office late fee (expired 1 day to 90 days)--$50;

(H) branch office late fee (expired 91 days to two years)--$100.

(2) Certificate of registration (Type C):

(A) initial fee--$250;

(B) renewal fee (for two years)--$300;[~~.~~]

(C) renewal late fee (expired 1 day to 90 days)--$125;

(D) renewal late fee (expired 91 days to two years)--$250.

(3) Fire extinguisher license (Type A and B):

(A) initial fee--$70 [~~$50~~];

(B) renewal fee (for two years)--$100;[~~.~~]

(C) renewal late fee (expired 1 day to 90 days)--$35;

(D) renewal late fee (expired 91 days to two years)--$70.

(4) Fire extinguisher license (Type PL):

(A) initial fee--$70 [$50];

(B) renewal fee (for two years)--$100;[.]

(C) renewal late fee (expired 1 day to 90 days)--$35;

(D) renewal late fee (expired 91 days to two years)--$70.

(5) Apprentice permit fee--$30.

(6) Duplicate or revised certificates, licenses, permits, or other requested changes to certificates, licenses, or permits--$20.

(7) Initial test [examination] fee (if administered by the SFMO) [(nonrefundable and nontransferable)]--$20.

(8) Retest [Reexamination] fee (if administered by the SFMO) [(nonrefundable and nontransferable)]--$20.

(d) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(e) [(d)] Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license.

[(e) Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees and must be determined in accordance with the following schedule.]
[Figure: 28 TAC §34.515(e)]

§34.516. Tests [Examinations].

(a) Applicants for licenses are required to take a test [an examination] and obtain at least a grade of 70% on [in each appropriate section of] the test [examination]. Tests [Examinations] may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, [and] location and outsource testing service [of the examination] shall be designated [set] by the state fire marshal.

(1) The Type B license test [examination] will include questions on the following:

(A) [a section on] this subchapter and the Insurance Code, Article 5.43-1; and

(B) [a section on] installing[,] and servicing of portables.

(2) The Type A license test [examination] will include the topics [sections] described in paragraph (1)(A) and (B) of this subsection and [a section on] fixed systems.

(3) The Type PL license test [examination] will include the topics [section] described in paragraph (1)(A) of this subsection and a technically qualifying test [examination] to be conducted through NICET.

(b) The standards used in the tests [examinations] will be adopted by the State Fire Marshal's Office [commission].

(c) Examinees who fail any topic on the test [section] must file a retest [reexamination] application accompanied by the required fee.

(d) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test [examination]. No test [examination] is required for a licensee whose license is renewed within two years of expiration.

(e) An examinee who is scheduled for a test [an examination] to be conducted on a religious holy day by the State Fire Marshal's Office [state fire marshal's office] and who wishes to observe the religious holy day may request the rescheduling of the test [examination] to an alternate date.

(f) An applicant may only schedule each type of test three times within a twelve-month period.

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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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.606, 34.613 - 34.615

The amended sections are proposed pursuant to the Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupations Code §2154.052 and the Insurance Code §36.001. Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3 mandate the adoption of rules necessary to implement the requirements of these articles. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits. 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.

The following statutes are affected by the proposed amendments: Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupation Code §§2154.052, 2154.103 and 2154.155.

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

(1) - (11) (No change.)

(12) Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(13) [(12)] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of fire alarm or detection devices, equipment, and appurtenances, including monitoring equipment, in accordance with standards adopted in this subchapter [chapter].

(14) [(13)] Primary registered firm--The registered fire alarm company with the responsibility for the fire alarm system certification.

(15) [(14)] Repair--To restore to proper operating condition.

(16) [~~(15)~~] Test--The act of subjecting a fire detection or alarm device or system, including monitoring equipment, to any procedure required by applicable standards or manufacturers' recommendations to determine whether it is properly installed or operates correctly.

§34.613. Applications.

(a) (No change.)

(b) Fire alarm licenses.

(1) In order to be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by the Insurance Code, Article 5.43-2, and [~~the sections of~~] this subchapter [~~chapter~~]. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test [~~examination~~] regarding Insurance Code, Article 5.43-2, and the Fire Alarm Rules as designated [~~to be conducted~~] by the State Fire Marshal's Office [~~office~~].

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from NICET confirming the applicant's successful completion of the test [~~examination~~] requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated [~~examination to be conducted~~] by the State Fire Marshal's Office [~~office~~].

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated [~~examination to be conducted~~] by the State Fire Marshal's Office [~~office~~] or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated [~~examination to be conducted~~] by the State Fire Marshal's Office [~~office~~].

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET confirming the applicant's successful completion of the test [~~examination~~] requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated [~~examination to be conducted~~] by the State Fire Marshal's Office [~~office~~].

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's notification letter confirming the applicant's successful completion of the test [~~examination~~] requirements [~~for certification at Level II until January 1, 1998, at which time all applicants and renewal applicants must demonstrate successful completion of the examination requirements~~] for NICET certification at Level III for fire alarm systems. [~~All current licenses expiring after January 1, 1998, shall be held as valid until their normal expiration date.~~]

(c) Renewal applications.

(1) In order to be complete, renewal applications for certificates and licenses must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by the Insurance Code, Article 5.43-2, and [~~the sections of~~] this subchapter [~~chapter~~]. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date which is before the expiration of the certificate or license being renewed.

(2) A license may not be renewed if the applicant is not currently an employee or an agent of a registered firm.

(d) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by the Insurance Code Article 5.43-2 and this subchapter, or a new application must be submitted including all applicable fees.

§34.614. Fees.

(a) Every fee payable to the department and required in accordance with the provisions of the Insurance Code, Article 5.43-2, and [~~the sections of~~] this subchapter [~~chapter~~] must be paid by cash, money order, or check. Money orders and checks must be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, all fees are non-refundable.

(b) Fees payable to the department must be paid at the Office of the State Fire Marshal in Austin, Texas, or mailed to an addressed specified by the state fire marshal.

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Fees are as follows:

(1) Certificates of registration:

(A) initial fee--$500;

(B) renewal fee (for two years)--$1,000;

(C) renewal late fee (expired 1 day to 90 days)--$125;

(D) renewal late fee (expired 91 days to two years)--$500;

(E) branch office initial fee--$150;

(F) branch office renewal fee (for two years)--$300;

(G) branch office late fee (expired 1 day to 90 days)--$37.50;

(H) branch office late fee (expired 91 days to two years)--$150;

(2) Certificates of registration--Single Station:

(A) initial fee--$250;

(B) renewal fee (for two years)--$500;

(C) renewal late fee (expired 1 day to 90 days)--$62.50;

(D) renewal late fee (expired 91 days to two years)--$250;

(E) branch office initial fee--None;

(F) branch office renewal fee (for two years)--None;

(3) Fire alarm licenses (Fire alarm technician license, Fire alarm monitoring technician license, Residential fire alarm superintendent (single station) license, Residential fire alarm superintendent license, Fire alarm planning superintendent license):

(A) initial fee--$120;

(B) renewal fee (for two years)--$200;

(C) renewal late fee (expired 1 day to 90 days)--$30;

(D) renewal late fee (expired 91 days to two years)--$120;

(4) Duplicate or revised certificate or license or other requested changes to certificates, or licenses--$20;

(5) Initial test fee (If administered by the State Fire Marshal's Office)--$20;

(6) Retest fee (if administered by the State Fire Marshal's Office)--$20.

(e) All fees are forfeited if the applicant does not appear for the scheduled test.

~~[(c) Fees are as follows:]~~
~~[Figure: 28 TAC §34.614(c)]~~

(f) [~~(d)~~] Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license except as provided in the Insurance Code, Article 5.43-2, §5C(c).

(g) [~~(e)~~] Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees [~~and must be determined in accordance with the following schedule~~].
[~~Figure: 28 TAC §34.614(e)~~]

§34.615. Test ~~[Examination]~~.

(a) Each applicant for a license must pass the appropriate tests [~~examinations~~]. Tests [~~Examinations~~] may be supplemented by practical tests or demonstrations necessary to determine the applicant's knowledge and ability.

(1) The license test [~~examination~~] will include a section on this subchapter [~~chapter~~] and the Insurance Code, Article 5.43-2, and a technical qualifying test to be conducted by [~~examination~~]:

(A) [~~to be conducted by~~] the State Fire Marshal's Office [~~state fire marshal's office~~]; [~~or~~]

(B) [~~to be conducted by~~] NICET; or[~~.~~]

(C) an outsource testing service.

(2) The standards used in tests [~~examinations~~] will be those adopted in §34.607 of this title (relating to Adopted Standards).

(b) Examinees who fail must file a retest [~~reexamination~~] application accompanied by the required fee in order to be retested [~~reexamined~~] on the next scheduled test [~~examination~~] date.

(c) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test [~~examination~~]. No test [~~examination~~] is required for a licensee whose license is renewed within two years of expiration.

(d) An applicant may only schedule each type of test [~~examination~~] three times within a twelve-month period.

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

Filed with the Office of the Secretary of State on March 18, 2004.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 463-6327

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.706, 34.713 - 34.715

The amended sections are proposed pursuant to the Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupations Code §2154.052 and the Insurance Code §36.001. Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3 mandate the adoption of rules necessary to implement the requirements of these articles. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits. 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.

The following statutes are affected by the proposed amendments: Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupation Code §§2154.052, 2154.103 and 2154.155.

§34.706. Definitions.

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

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

(5) Department--The Texas Department of Insurance.

(6) [~~(5)~~] Firm--A person or organization as defined in this section.

(7) [~~(6)~~] Full-time--The number of hours that represents the regular, normal, or standard amount of time per week employees of the firm devote to work-related activities.

(8) [~~(7)~~] Full-time employment basis--An employee is considered to work on a full-time basis if the employee works per week at least the average number of hours worked per week by all other employees of the firm.

(9) [~~(8)~~] Inspector--A licensed responsible managing employee for a registered firm that is authorized by this chapter to conduct a premium reduction certification inspection of a fire protection sprinkler system in a one- or two-family dwelling.

(10) [~~(9)~~] NFPA--National Fire Protection Association, a nationally recognized standards-making organization.

(11) [~~(10)~~] NICET--National Institute for the Certification in Engineering Technologies.

(12) [~~(11)~~] Organization--A corporation, partnership or other business association, or governmental entity.

(13) Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(14) [~~(12)~~] Person--A natural person.

(15) [~~(13)~~] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of underground and overhead piping and appurtenances in accordance with either adopted fire protection standards or specifications especially designed by an engineer.

(16) [~~(14)~~] Registered firm--A person or organization holding a current certificate of registration.

(17) [~~(15)~~] Repair--Any work performed after initial installation on fire protection sprinkler systems, not including inspecting or testing.

(18) [~~(16)~~] Responsible managing employee--A responsible managing employee, as defined in the Insurance Code, Article 5.43-3, §1(10), and also known within this subchapter as an RME.

(19) [~~(17)~~] RME--A responsible managing employee, as defined in the Insurance Code, Article 5.43-3, §1(10).

(20) [~~(18)~~] Sprinkler system--A sprinkler system, for fire protection purposes which:

(A) is an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards;

(B) is an installation including a water supply such as a gravity tank, fire pump, reservoir or pressure tank, and/or connection by underground piping to a city main from the point of connection or valve where the primary purpose of the water is for a fire protection sprinkler system;

(C) includes, as the portion of the sprinkler system aboveground, a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern;

(D) includes a controlling valve and a device for actuating an alarm when the system is in operation; and

(E) is usually activated by heat from a fire and discharges water over the fire area.

(21) [~~(19)~~] Test--The act of subjecting a fire protection sprinkler system to any procedure necessary to determine whether it is properly installed or operates correctly.

§34.713. Applications.

(a) (No change.)

(b) Responsible managing employee licenses.

(1) (No change.)

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of NICET's notification letter confirming the applicant's successful completion of the test [~~examination~~] requirements for certification at Level III for fire protection automatic sprinkler systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer and evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office [~~state fire marshal's office~~], on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system; or

(ii) a copy of the notification letter confirming at least a 70% grade on the test [~~examination~~] covering dwelling fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service [~~state fire marshal's office~~], and either:

(I) proof of license as a "RME-General" and evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office [~~state fire marshal's office~~], on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system; or

(II) evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office [~~state fire marshal's office~~], on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system and a copy of NICET's notification letter confirming the applicant's successful completion of the test [~~examination~~] requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of a current Texas master plumber license; or

(III) evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office [~~state fire marshal's office~~], on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system and a copy of NICET's notification letter confirming the applicant's successful completion of the test [~~examination~~] requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

(C) RME-Underground Fire Main:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70% grade on the test [~~examination~~] covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service [~~state fire marshal's office~~].

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by the Insurance Code Article 5.43-3 and this subchapter, or a new application must be submitted including all applicable fees.

§34.714. Fees.

(a) Every fee payable to the department and required in accordance with the provisions of the Insurance Code, Article 5.43-3, and this subchapter [~~chapter~~] must be paid by cash, money order, or check. Money orders and checks must be made payable to the Texas Department of Insurance [~~Texas Commission on Fire Protection~~]. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and non-transferable.

(b) Fees payable to the department shall be paid at the Office of the State Fire Marshal in Austin or mailed to an address specified by the state fire marshal.

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) [~~(c)~~] Fees are as follows:

[~~Figure: 28 TAC §34.714(c)~~]

(1) Certificates of registration:

(A) all initial applications shall include an application fee of--$50;

(B) initial fee--$900;

(C) renewal fee (for two years)--$1,800;

(D) renewal late fee (expired 1 day to 90 days)--$450;

(E) renewal late fee (expired 91 days to two years)--$1,800;

(2) Certificates of registration--(Dwelling or Underground fire main):

(A) all initial applications shall include an application fee of--$50;

(B) initial fee--$300;

(C) renewal fee (for two years)--$600;

(D) renewal late fee (expired 1 day to 90 days)--$150;

(E) renewal late fee (expired 91 days to two years)--$300;

(3) Responsible managing employee license (General):

(A) initial fee--$200;

(B) renewal fee (for two years)--$350;

(C) renewal late fee (expired 1 day to 90 days)--$100;

(D) renewal late fee (expired 91 days to two years)--$200;

(4) Responsible managing employee licenses (Dwelling, or Underground fire main):

(A) initial fee--$150;

(B) renewal fee (for two years)--$200;

(C) renewal late fee (expired 1 day to 90 days)--$75;

(D) renewal late fee (expired 91 days to two years)--$150;

(5) Duplicate or revised certificate or license or other requested changes to certificates, or licenses--$35;

(6) Test fee (if administered by the State Fire Marshal's Office)--$50.

(e) [~~(d)~~] Late fees are required of all certificate or license holders who fail to submit renewal applications before their expiration dates.

(f) [~~(e)~~] A license or registration shall expire at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant shall have 30 days from the time the applicant is notified by the State Fire Marshal's Office [~~state fire marshal's office~~] of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(g) [~~(f)~~] Holders of certificates and licenses which have been expired for less than two years cannot be issued new certificates or licenses.

(h) [~~(g)~~] Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees [~~and shall be determined in accordance with the following schedule~~]. [~~Figure: 28 TAC §34.714(g)~~]

§34.715. Tests [~~Examinations~~].

(a) Each applicant for a license shall take and pass with at least 70% grade a test [~~an examination~~] covering this subchapter [~~chapter~~] and the Insurance Code, Article 5.43-3 and if applicable, a technical qualifying test [~~examination~~] as specified in §34.713(b) of this title (relating to Applications). The content, frequency, and location of the test [~~examination~~] shall be designated [~~set~~] by the State Fire Marshal's Office [~~state fire marshal's office~~].

(b) Examinees who fail must file a retest [~~re-examination~~] application accompanied by the required fee.

(c) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test [~~examination~~]. No test [~~examination~~] is required for a licensee whose license is renewed within two years of expiration.

(d) An examinee who is scheduled for a test [~~an examination~~] to be conducted on a religious holy day by the State Fire Marshal's Office [~~state fire marshal's office~~] and who wishes to observe the religious holy day may request the rescheduling of the test [~~examination~~] to an alternate date.

(e) An applicant may only schedule each type of test three times within a twelve-month period.

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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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER H. STORAGE AND SALES OF FIREWORKS

28 TAC §§34.808, 34.811, 34.813, 34.814

The amended sections are proposed pursuant to the Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupations Code §2154.052 and the Insurance Code §36.001. Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3 mandate the adoption of rules necessary to implement the requirements of these articles. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits. 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.

The following statutes are affected by the proposed amendments: Insurance Code Articles 5.43-1, 5.43-2 and 5.43-3, Occupation Code §§2154.052, 2154.103 and 2154.155.

§34.808. Definitions.

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

(1) - (13) (No change.)

(14) Department--The Texas Department of Insurance.

(15) [~~(14)~~] Donor building--A process building from which embers and burning debris are emitted during a fire.

(16) [~~(15)~~] DOT--The United States Department of Transportation.

(17) [~~(16)~~] Fireworks plant--All lands, and building thereon, used for or in connection with the manufacture or processing of fireworks. It includes storage facilities used in connection with plant operation.

(18) [~~(17)~~] Firm--A person, partnership, corporation, or association.

(19) [~~(18)~~] Flame effects operator--An individual who, by experience, training, or examination, has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(20) [~~(19)~~] Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(21) [~~(20)~~] Highway--The paved surface, or where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(22) [~~(21)~~] Indoor retail fireworks site--A retail fireworks site other than a retail stand which sells Fireworks 1.4G from a building or structure.

(23) [~~(22)~~] License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in the business.

(24) [~~(23)~~] Licensed firm--A person, partnership, corporation, or association holding a current license.

(25) [~~(24)~~] Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(26) [~~(25)~~] Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when such operation is otherwise lawful.

(27) [~~(26)~~] Master electric switch--A manually operated device designed to interrupt the flow of electricity.

(28) [~~(27)~~] Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(29) [~~(28)~~] Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(30) [~~(29)~~] Nonprocess building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(31) [~~(30)~~] Open flame--Any flame that is exposed to direct contact.

(32) Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(33) [~~(31)~~] Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

(34) [~~(32)~~] Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location and during a designated time period.

(35) [~~(33)~~] Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale.

(36) [~~(34)~~] Retail stand--A retail site which sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(37) [~~(35)~~] Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(38) [~~(36)~~] School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school, or institution of higher education.

(39) [~~(37)~~] Selling opening--An open area including the counter, through which fireworks are viewed and sold at retail.

(40) [~~(38)~~] Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(41) [~~(39)~~] Supervisor--A person 16 years or older who is responsible for the retail fireworks site during operating hours.

(42) [~~(40)~~] Walk door--An opening through which retail stand attendants can freely move and which can be secured to keep the public from the interior of the stand.

§34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license or flame effects operator license, shall take a written test [~~examination~~] and obtain at least a passing grade of 70%. Written tests [~~examinations~~] may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, type, frequency, and location of the tests [~~examinations~~] shall be designated [~~set~~] by the state fire marshal.

(b) Examinees [~~Applicants~~] who fail may file a retest application accompanied by the required fee [~~an application and take a reexamination~~].

(c) An applicant may only schedule each type of test three times within a twelve-month period.

(d) [~~(c)~~] The state fire marshal may waive a test [~~an examination~~] requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(e) [~~(d)~~] A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test [~~examination~~].

(f) [~~(e)~~] A pyrotechnic operator license shall not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in the State of Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(g) [~~(f)~~] The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when engaged in the business.

§34.813. Applications for Licenses and Permits.

(a) - (f) (No change.)

(g) Complete applications. The application form for a license or permit must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by the Texas Occupations Code Chapter 2154 and this subchapter, or a new application must be submitted including all applicable fees.

§34.814. Fees.

(a) Fees payable to the department and required by the Occupations Code Chapter 2154 and this subchapter, shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable and non-transferable.

(b) Fees payable to the department shall be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal. Retail permits may also be obtained through participating licensed firms. See §34.815 of this title (relating to Retail Permits).

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) [~~(c)~~] Fees shall be as follows:

(1) manufacturer license:

(A) initial fee $1,000;

(B) renewal fee (prior to expiration) $1,000;

(C) renewal late fee (expired 1 day to 90 days) $500;

(D) renewal late fee (expired 91 days to two years) $1,000;

(2) distributor license:

(A) initial fee $1,500;

(B) renewal fee (prior to expiration) $1,500;

(C) renewal late fee (expired 1 day to 90 days) $750;

(D) renewal late fee (expired 91 days to two years) $1,500;

(3) jobber license:

(A) initial fee $1,000;

(B) renewal fee (prior to expiration) $1,000;

(C) renewal late fee (expired 1 day to 90 days) $500;

(D) renewal late fee (expired 91 days to two years) $1,000;

(4) pyrotechnic special effects operator license:

(A) initial fee $45 [~~$25~~];

(B) renewal fee (prior to expiration) $25;

(C) renewal late fee (expired 1 day to 90 days) $22.50 [~~initial examination fee $20~~];

(D) renewal late fee (expired 91 days to two years) $45 [~~reexamination fee $20~~];

(5) pyrotechnic operator license:

(A) initial fee $45 [~~$25~~];

(B) renewal fee (prior to expiration) $25;

(C) renewal late fee (expired 1 day to 90 days) $22.50 [~~initial examination fee $20~~];

(D) renewal late fee (expired 91 days to two years) $45 [~~reexamination fee $20~~];

(6) multiple public display permit:

(A) initial fee $400;

(B) renewal fee (prior to expiration) $400;

(7) retail permit $20;

(8) single public display permit $50;

(9) agricultural, industrial, and wildlife control permits $10; [~~and~~]

(10) flame effects operator:

(A) initial fee $45 [~~$25~~];

(B) renewal fee (prior to expiration) $25;

(C) renewal late fee (expired 1 day to 90 days) $22.50 [~~initial examination fee $20~~];

(D) renewal late fee (expired 91 days to two years) $45; [~~reexamination fee $20.~~]

(11) Tests administered by the State Fire Marshal's Office:

(A) initial test fee $20;

(B) retest fee $20.

(e) [~~(d)~~] A renewal application for a license deposited with the United States Postal Service is deemed to be timely filed when its envelope bears a legible postmark on or before the expiration date of the license being renewed. Any renewal application postmarked after the expiration date must be accompanied by the renewal fee and the appropriate late fee.

(f) [~~(e)~~] Holders of licenses which have been expired for less than two years cannot be issued new licenses.

[~~(f) Late fees are as follows.~~]
[~~Figure: 28 TAC §34.814(f)~~]

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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Gene C. Jarmon
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Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21, 87.25, 87.31, 87.33, 87.34

The Employees Retirement System of Texas proposes amendments to Chapter 87, §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21, 87.25, 87.31, 87.33 and 87.34 concerning the Deferred Compensation Plan. Section 87.1 changes are made to revise certain definitions due to regulations that are now final and applicable to the plan. Section 87.3 changes are made to modify (b)(3)(E) to change the annual deferral limit to $13,000 for 2004 per federal law. Section 87.5 changes are made with regard to the annual deferral limit, and changes applicable to the Over age 50 catch-up limit to $3000 for 2004 per federal law.

Section 87.7 changes are made to delete the requirement that the plan administrator send a disapproval notice. This notice no longer is useful or necessary and thus is being eliminated. Section 87.9 changes are made to include the stable value account and the self-directed brokerage account in the list of eligible investment products to reflect products the Board has chosen to be eligible for investment under the Plan, and this change will clarify that these additional choices are available to participants. Section 87.13 changes are made to require a vendor's disclosure on each product held by participants and to require such vendors to include any date that applicable fees or penalties will expire. Disclosures of this additional information will assist the plan administrator in obtaining an understanding of the products in a more efficient manner. Section 87.15 changes are made to allow a post-severance plan-to-plan transfer to another eligible governmental plan. Federal tax law has increased the portability of funds between plans and this change will allow plan participants to take advantage of such portability when eligible for a post-severance distribution from the plan. Section 87.17 changes are made to add and delete terms and wording regarding the purchase of service credit and for clarification of that process. These changes better describe the process of purchasing service credit. Section 87.17 also removes the option to "annuitize" prior plan investment products after May 1, 2004. The prior plan investments are being incorporated into the revised plan in a manner intended to minimize the impact on participants, while also remaining consistent with the goal of moving forward with the revised plan. Section 87.19 changes are made to modify and to reference that the reporting required under this section is for the prior plan. This change is intended to clarify the applicability of the section. Section 87.19 also provides that participating vendors must remit any assessed fee on a quarterly basis along with their regular quarterly report. This change is intended to aid in the collection of required fees. Section 87.21 changes are made to clarify the Plan Administrator's ability to suspend or expel vendors based on their failure to comply with plan requirements in order to ensure compliance of vendors with plan requirements. Section 87.33 changes are made to modify the Purchase of Service provisions to conform to federal tax law regarding such transfers for the purposes of purchasing service credit. Additionally, the maximum amount of deferrals is increased to conform to current federal tax law. The federal limits are being phased in over time, thus there is a need to periodically change this amount. Throughout the aforementioned sections and in §§87.11, 87.25, 87.31, and 87.34, the terms "vendor" and "qualified vendor" are being clarified where appropriate to aid the application of the rules.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be added flexibility for State of Texas Deferred Compensation Plan participants. There are no known or anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is May 3, 2004, at 10:00 a.m.

The amendments are proposed under Government Code, Section 609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

§87.1. Definitions.

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

(1) Account--A record that a qualified vendor uses to account for deferrals and investment income on a participant-by-participant basis.

(2) Agency coordinator -- An employee of a state agency who has been designated by the agency to perform certain administrative functions with respect to the plan.

(3) Basic pension plan -- The retirement program in which an employee must participate.

(4) Beneficiary designation form--A form authorized and approved by the plan administrator to designate a participant's beneficiary.

(5) Board of Trustees--The Board of Trustees of the Employees Retirement System of Texas.

(6) Call-in day--The first five working days of the month.

(7) Change agreement--A contract signed by a participant to request certain changes concerning the participant's deferrals, investment income, and participation in the plan.

(8) Data collection center--A private entity used by the State Treasury Department to collect information from state depositories regarding deposits of state funds.

(9) Day--A calendar day.

(10) DCP--Deferred compensation plan.

(11) Deferral--The amount of compensation the receipt of which a participant has agreed to defer under the plan.

(12) Distribution agreement--A contract signed by a participant or beneficiary indicating the disposition of the participant's deferrals and investment income.

(13) Disclosure form--A document completed by a qualified vendor's [~~vendor~~] representative and signed by both the representative and an employee disclosing the rate of return, fees, withdrawal penalties, and payout options for the qualified investment product selected.

(14) Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of a [~~sudden and~~] unforeseeable emergency.

(15) Employee--A person who provides services as an officer or employee to a state agency.

(16) Executive director--The executive director of the Employees Retirement System of Texas.

(17) FDIC--The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(18) Fee--The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(19) Gross income--The total of:

(A) the present value of salary or wages;

(B) plus the present value of longevity pay, hazardous duty pay, imputed income, special duty pay, sick, vacation, back pay and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(20) Home office--The primary location at which a qualified vendor or vendor maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(21) Inactive qualified vendor--A qualified vendor is an inactive qualified vendor if no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months.

(22) Includes--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(23) Includible compensation--Compensation from a state agency that is includible in a participant's gross income under the Internal Revenue Code of 1986 as amended, the Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA") , [~~and~~] the Job Creation and Worker Assistance Act of 2002 and the final IRC §457 regulations. [~~The term excludes deferrals.~~]

(24) Investment income--The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(25) Investment product--The term includes a life insurance product, fixed or variable rate annuity, stable value account, mutual fund, certificate of deposit, money market account, self-directed brokerage account or passbook savings account. A vendor's or qualified vendor's investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(26) NCUA--National Credit Union Administration, a United States Government Agency, which regulates, charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(27) NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(28) Non-filer--A qualified vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to Reporting and Recordkeeping by Qualified Vendors).

(29) Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(30) One-time election form--A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA, as of the date of the election.

(31) Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation or has a balance in a qualified investment product.

(32) Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding qualified vendors, qualified investment products, and other matters.

(33) Plan--The deferred compensation program of the State of Texas that is governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA, and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(34) Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(35) Product approval notice--A written notice from the plan administrator to a vendor or qualified vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(36) Product contract--A contract between a vendor orqualified vendor and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(37) Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, stable value account, self-directed brokerage account and annuities.

(38) Qualified investment product--An investment product concerning which the plan administrator and the sponsoring qualified vendor or vendor have signed a product contract.

(39) Qualified vendor--A vendor in the previous plan with whom the plan administrator has signed a vendor contract. The term includes a qualified vendor's officers and employees. The vendor may

be an insurance company, bank, savings and loan, credit union, or mutual fund.

(40) Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(41) Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(42) State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003, other than a public junior college.

(43) TPA--Third Party Administrator--An entity under the direction of the Plan Administrator that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(44) Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(45) Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(46) Trustee--The Board of Trustees of the Employees Retirement System of Texas.

(47) Vendor--An insurance company, [~~bank, savings and loan association, credit union,~~] brokerage firm, or mutual fund distributor that sells investment products in the revised plan. The term includes a vendor's officers and/or employees.

(48) Vendor contract--A contract between the plan administrator and a vendor or qualified vendor concerning the vendor's participation in the plan.

(49) Vendor representative--An agent, independent agent, independent contractor, or other representative of a qualified vendor [~~vendor~~] who is not an employee or officer of the vendor.

(50) 401(a)(9), §401(a)(9) and § [~~Section~~] 401(a)(9)--These terms refer to Internal Revenue Code § [~~Section~~] 401(a)(9).

(51) 457, §457 and § [~~Section~~] 457--These terms refer to Internal Revenue Code § [~~Section~~] 457.

§87.3. Administrative and Miscellaneous Provisions.

(a) Plan administrator.

(1) The plan administrator shall administer all aspects of the plan.

(2) The plan administrator shall:

(A) act for the state in all administrative matters concerning the plan;

(B) adopt and amend rules that are consistent with state and federal law;

(C) enter into necessary contracts; and

(D) take whatever action is necessary to ensure compliance with state and federal law and the sections in this chapter.

(b) Participation by state agencies in the plan.

(1) Commencing participation in the plan.

(A) A state agency may commence participation in the plan by:

(i) sending a written notice from its head of agency to the plan administrator; and

(ii) complying with the plan administrator's documentary, training, and other requirements for participation in the plan.

(B) The plan administrator may determine the effective date of a state agency's participation in the plan.

(C) If the plan administrator does not determine the effective date in accordance with subparagraph (B) of this paragraph, this subparagraph applies.

(i) If the plan administrator receives the written notice on the first day of a month, then the state agency's participation in the plan is effective on the first pay date of the following month.

(ii) Otherwise, the state agency's participation in the plan is effective on the first pay date of the second month following the month in which the plan administrator receives the notice.

(2) Terminating participation in the plan.

(A) Voluntary termination.

(i) A state agency may terminate its participation in the plan by sending a written notice from its head of agency to the plan administrator.

(ii) If the plan administrator receives the notice on the first day of a month, then the state agency's participation in the plan terminates on the first pay date of the third month following the month in which the plan administrator receives the notice. Otherwise, the state agency's participation in the plan terminates on the first pay date of the fourth month following the month in which the plan administrator receives the notice.

(iii) A state agency's termination of its participation in the plan does not entitle the agency's participants to a distribution of their deferrals and investment income.

(iv) A participant who is employed by a state agency that has terminated its participation in the plan may not make additional deferrals until either the agency resumes participating in the plan or the participant becomes employed by a state agency participating in the plan.

(v) The agency coordinator of a state agency that has terminated its participation in the plan is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(B) Involuntary termination or suspension.

(i) The plan administrator may terminate or suspend a state agency's participation in the plan if the agency or the agency's coordinator violates the sections in this chapter.

(ii) The plan administrator may determine the length of a suspension after considering all relevant circumstances.

(iii) The plan administrator may reinstate a state agency that has been terminated from participation in the plan if the plan administrator determines that the best interests of the plan would be served.

(iv) If the plan administrator terminates or suspends a state agency's participation in the plan, the agency's participants are not entitled to a distribution of their deferrals and investment income by virtue of the termination or suspension.

(v) The participant of a state agency that the plan administrator has terminated or suspended from participation in the plan may not make additional deferrals until the plan administrator reinstates the agency, the suspension ends, or the participant becomes employed by a state agency participating in the plan.

(vi) The agency administrator of a terminated or suspended state agency is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(3) Agency coordinators. An agency coordinator's responsibilities may include:

(A) maintaining records concerning each participant as required by the plan administrator;

(B) keeping participation agreements on file;

(C) retaining the original copies of insurance policies and annuity contracts;

(D) ensuring that deferrals are properly deducted from a participant's salary and sent to the appropriate entity as directed by the plan administrator[~~qualified vendor~~] ;

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of the participant's gross income is not exceeded;

(F) calculating and monitoring catch-up limits and furnishing the plan administrator with the applicable catch-up forms;

(G) ensuring that all forms and other paperwork are properly completed and forwarded to the appropriate party;

(H) balancing participant records and reconciling those records with the data provided by qualified vendors and the plan administrator;

(I) informing employees and participants about the plan, including the necessity to file distribution agreements in accordance with §87.17 of this title (relating to Distributions);

(J) acting as a buffer between employees and participants on the one hand and qualified vendors on the other, although an agency coordinator is prohibited from providing investment advice;

(K) attempting to locate missing participants and beneficiaries in accordance with §87.17(q) of this title;

(L) assisting a participant who has retired or left state employment if the participant's last position in state government was with that particular agency that employs the agency coordinator;

(M) continuing to assist a participant with all deferred compensation matters if a participant transfers from a participating state agency to a non-participating state agency until the participant returns to a different participating agency;

(N) assisting the beneficiary of a participant whose last position in state government was with that particular state agency that employs the agency coordinator;

(O) notifying the plan administrator when a participant dies or separates from service; and

(P) performing any other duties specified in the sections in this chapter.

(c) Miscellaneous provisions.

(1) The participation in the plan of a vendor or qualified vendor, qualified investment product, state employee, vendor representative, or employee of a qualified vendor is subject to changes in federal law, federal regulations, state law, and the sections in this chapter.

(2) The fiscal year of the plan begins on January 1 of each year.

(3) The mailing address of the plan administrator is: Plan Administrator, Deferred Compensation §457 Plan, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, the plan administrator, or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the State of Texas for observance by state employees, the last day of the time period is the first business day after the weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

§87.5. Participation by Employees.

(a) Benefits of participation. The plan administrator shall cease to accept deferrals to investment products approved under the previous plan, with exception of life insurance products on or after September 1, 2000. Subject to any changes in federal law:

(1) a participant's deferrals are not subject to federal income taxation until the deferrals are paid or otherwise made available to the participant; and

(2) investment income is not subject to federal income taxation until it is paid or otherwise made available to the participant.

(b) Enrollment of participants in the plan.

(1) An employee may complete a participation agreement, enroll online or enroll through customer service representative at the TPA in the revised plan.

(2) If a participant has not selected an investment product to receive deferrals, the deferrals shall be invested in a product selected by the plan administrator at its sole discretion. [~~An employee may not initiate participation in the plan unless the employee simultaneously chooses a qualified investment product to receive the employee's deferrals.~~]

[~~(3) The plan administrator may not complete any forms provided by a qualified vendor in connection with initial participation.~~]

(c) Effective date of enrollment. A participant's enrollment in the Plan is effective for compensation earned beginning with the month following the month in which the participant enrolls.

(d) Contents of a participation agreement. A participation agreement must contain but shall not be limited to:

(1) the participant's consent for payroll deductions equal to the amount of deferrals during each pay period;

(2) the amount that will be deducted from the participant's compensation during each pay period;

(3) the qualified vendor and qualified investment product in which the participant's deferrals will be invested;

(4) the date on which the payroll deductions will begin or end, as appropriate;

(5) the signature of an individual with authority to bind the qualified vendor;

(6) the signature of an individual with authority to bind the participant; and

(7) an incorporation by reference of the requirements of state law and the sections in this chapter.

(e) Participants with existing life insurance products.

(1) This paragraph is effective until December 31, 1998. When a participant has deferrals and investment income in a life insurance product, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(2) This paragraph is effective January 1, 1999, and thereafter. When a participant has deferrals and investment income in a life insurance product, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(f) Normal maximum amount of deferrals.

(1) The amount a participant defers during each tax year may not exceed the normal maximum amount of deferrals.

(2) The normal maximum amount of deferrals is equal to the lesser of $13,000 [~~$12,000~~] (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)), EGTRRA and the Job Creation and Worker Assistance Act of 2002, or 100% of a participant's includible compensation.

(3) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of a participant's gross income is not exceeded. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the qualified vendor or TPA will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(g) Three-year catch-up exception to the normal maximum amount of deferrals.

(1) This subsection provides a limited exception to the normal maximum amount of deferrals.

(2) In the event that a participant chooses to begin the three-year catch-up option, the participant is required to complete and provide the plan administrator with a copy of the three-year catch-up provision agreement form.

(3) In this subsection, the term "normal retirement age" for any participant means a range of ages:

(A) beginning with the earliest age at which a person may retire under the participant's basic pension plan:

(i) without an actuarial or similar reduction in retirement benefits; and

(ii) without the state's consent for the retirement; and

(B) ending at age 70.5.

(C) A participant who is a police officer or firefighter (defined in Internal Revenue Code §415(b)), may designate a normal retirement age that is earlier than that described above, but in any event may not be earlier than age 40.

(4) If a participant works beyond age 70.5, the normal retirement age for the participant is the age designated by the participant which, in this instance, may not be later than the participant's separation from service.

(5) For any or all of the last three full taxable years ending before the taxable year in which a participant attains normal retirement age, the maximum amount that the participant may defer for each tax year is the lesser of:

(A) twice the annual 457(g) deferral limit as adjusted, or

(B) the sum of the normal maximum amount of deferrals that the participant did not use in prior tax years commencing January 1, 1979, provided the participant was eligible to participate in the plan during those years.

(6) The participant's employing agency will calculate and monitor all three-year catch-up limits and furnish the plan administrator with the applicable three-year catch-up forms. If a participant makes deferrals in excess of the participant's three-year catch-up limit, the following actions will be taken.

(A) Upon notification by the participant's agency, the qualified vendor or TPA will return to the participant's agency, the amount of deferrals in excess of the three-year catch-up limit without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(7) This subsection applies only if the participant has not previously used the three-year catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA.

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the qualified vendor or TPA will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the

lesser of $13,000 [~~$12,000~~] (as adjusted in accordance with Internal Revenue Code §457(e)(15) or 100% of a participant's includible compensation) without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's state agency will reimburse the participant through its payroll system.

(9) Over age 50 catch-up. A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Internal Revenue Code § [~~Section~~] 414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant may make an additional contribution over and above the applicable deferral limit. The additional contribution is $3,000 [~~$2,000~~] for 2004 [~~2003~~], increasing by $1,000 each year up to $5,000 in 2006. After 2006, the amount of the " Over age 50 and over catch-up" will be indexed in $500 increments based upon cost-of-living adjustments. A participant who elects to defer contributions under the normal three-year catch-up provisions may not also defer under the special Over age 50 catch-up and Code[~~code~~] § [~~Section~~] 414(v).

(h) Changes before a participant becomes entitled to a distribution.

(1) A participant may change the amount of deferral at any time.

(2) A participant must execute a change agreement for the prior 457 Plan funds and file the agreement with the participant's agency coordinator when the participant:

(A) initiates a transfer;

(B) changes the participant's primary or secondary beneficiary, or both; or

(C) performs a combination of the items specified in subparagraphs (A) or (B) of this paragraph.

(3) A participant must execute a change agreement and file the agreement directly with the plan administrator when the participant moves deferrals and investment income from a qualified vendor's qualified investment product to another qualified investment product offered by the same qualified vendor.

(4) Upon receipt of a participation agreement or change agreement, an agency coordinator shall review the agreement to determine whether it complies with the sections in this chapter.

(A) With a participant's enrollment, the agency coordinator shall take the action necessary for payroll initiation.

(B) If a change agreement complies, the agency coordinator shall send the agreement to the plan administrator.

(5) This paragraph applies to changes of beneficiaries, changes of the qualified vendor or qualified investment product that receives a participant's deferrals, and changes to the amount a participant defers per pay period. An executed change agreement or participation agreement is effective beginning with the month following the month in which the agency coordinator receives the agreement from the participant.

(6) This paragraph applies to transfers. An executed change agreement is effective on the date that the transfer procedures specified in §87.15 of this title (relating to Transfers) have been completed.

[~~(7) If a participant changes a primary or secondary beneficiary, or both, on the same change agreement that is used to make another type of change, the change of beneficiary applies only to the qualified investment product:~~]

[~~(A) that receives the transfer; or~~]

[~~(B) that is designated to receive the participant's future deferrals.~~]

(i) Conflict in beneficiary designations. The designation of a primary or secondary beneficiary, or both, in a beneficiary designation form, participation agreement, change agreement, or distribution agreement prevails over a conflicting designation in any other document.

(j) A beneficiary designation that names a former spouse is invalid unless the designation is completed after the date of divorce and received by the plan administrator.

(k) Paid leave of absence. Deferrals may continue during a participant's paid leave of absence.

(l) Unpaid leave of absence. If a Participant separates from service or takes a leave of absence from the State because of service in the military and does not receive a distribution of his/her account balances, the Plans will allow suspension of loan repayments until after the conclusion of the period of military service.

(m) Termination and resumption of deferrals.

(1) An employee may voluntarily terminate additional deferrals to the prior plan by completing a participation agreement or by contacting his or her agency coordinator.

(2) An employee who returns to active service after a separation from service must enroll in the revised plan before deferrals may resume. [~~execute a new participation agreement before deferrals may resume. Deferrals after a resumption of service may not be made to the same account that received the deferrals before the separation from service occurred.~~]

(n) Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Government Code and Internal Revenue Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Internal Revenue Code §457(g), §401(f) and EGTRRA. In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. Adoption of this rule shall constitute notice to vendors and qualified vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(o) Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant

if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of a vendor or qualified vendor; or

(C) the plan administrator's initiation of a transfer in accordance with the sections in this chapter.

(2) A participant is solely responsible for monitoring his or her own investments and being knowledgeable about:

(A) the financial status and stability of the qualified vendor in which the participant's deferrals and investment income are invested;

(B) market conditions;

(C) the resulting cost of making a transfer or distribution from a qualified investment product;

(D) the amount of the participant's deferrals and investment income that are invested in a qualified vendor's qualified investment products;

(E) the riskiness of a qualified investment product; and

(F) the federal tax advantages and consequences of participating in the plan and receiving distributions of deferrals and investment income.

(p) Alienation of deferrals and investment income. A participant's deferrals and investment income may not be:

(1) assigned or conveyed;

(2) pledged as collateral or other security for a loan;

(3) attached, garnished, or subjected to execution; or

(4) conveyed by operation of law in the event of the participant's bankruptcy, or insolvency.

§87.7. Vendor and Qualified Vendor Participation.

(a) Prohibited activities. A vendor may not solicit business from employees or participants or otherwise participate in the plan until the vendor or qualified vendor and the plan administrator have signed a vendor contract.

(b) New qualified vendors.

(1) Notwithstanding anything to the contrary in the sections in this chapter, other than §87.31 and paragraph (2) of this subsection, the plan administrator may not:

(A) approve a vendor as a qualified vendor; or

(B) sign a vendor contract.

(2) Paragraph (1)(B) of this subsection does not apply to a qualified vendor that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a vendor contract with a qualified vendor, the plan administrator and the qualified vendor shall execute a vendor contract no later than the 90th day after May 7, 1990. If a vendor contract is not executed, the plan administrator shall terminate the qualified vendor's participation in the plan.

(c) Eligibility to become a qualified vendor.

(1) Banks. The plan administrator shall disapprove a bank's application to become a qualified vendor if:

(A) the bank is not domiciled in the State of Texas;

(B) the FDIC does not insure deposits with the bank; or

(C) the bank is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations.

(2) Credit unions. The plan administrator shall disapprove a credit union's application to become a qualified vendor if:

(A) The credit union is not authorized to do business in the State of Texas under either the Texas Credit Union Act (Texas Civil Statutes, Article 2461-1.01 et seq.) or the Federal Credit Union Act (12 United States Code, §1751);

(B) the National Credit Union Administration and the National Credit Union Share Insurance Fund does not insure deposits with the credit union; or

(C) the credit union does not agree to collateralize deferrals and investment income to the extent that:

(i) they exceed the amounts insured by the National Credit Union Administration and National Credit Union Share Insurance Fund; and

(ii) collateralization is required by the sections in this chapter.

(3) Insurance companies.

(A) Upon receiving an application from an insurance company to become a qualified vendor, the plan administrator shall file a written request with the Texas Department of Insurance for information about the company.

(B) The plan administrator shall disapprove an insurance company's application to become a qualified vendor if the Texas Department of Insurance notifies the plan administrator that the insurance company:

(i) does not have a certificate of authority to transact business in the State of Texas;

(ii) is not a member of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or

(iii) is an impaired or insolvent insurer as defined in the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Insurance Code, Article 21.28-D).

(C) An insurance company shall report its A.M. Best, Standard & Poors, Moody's, and Duff & Phelps rating information to the plan administrator annually by January 1st and shall immediately report any change in its rating in the interim to the plan administrator.

(D) The plan administrator shall disapprove an insurance company's application to become a qualified vendor if the company uses the sex of the person insured or of the recipient to calculate premiums, payments, or benefits for any of its investment products.

(4) Savings and loan associations. The plan administrator shall disapprove a savings and loan association's application to become a qualified vendor if:

(A) the savings and loan association is a foreign association without a certificate of authority to transact business in the State of Texas as defined and required by the Texas Savings and Loan Act (Texas Civil Statutes, Article 852a);

(B) the FDIC does not insure deposits with the savings and loan association; or

(C) the savings and loan association is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations.

(5) Vendors of mutual funds. The plan administrator shall disapprove a vendor's application to become a qualified vendor if the vendor proposes to offer a mutual fund as a qualified investment product and the mutual fund is not:

(A) listed on the American Stock Exchange, Boston Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, or a stock exchange approved by the securities commissioner of the State Securities Board in accordance with the Securities Act (Texas Civil Statutes, Article 581-1 et seq.);

(B) designated or approved for designation on notice of issuance on the National Association of Securities Dealers Automated Quotation National Market System; or

(C) registered with the securities commissioner.

(d) Procedure for approving a vendor as a qualified vendor.

(1) The home office of each qualified vendor seeking participation in the plan must request an application package from the plan administrator. The plan administrator shall ensure that the application package contains a list of documents and other items that must be submitted to the plan administrator with the application.

(2) The plan administrator may not approve a qualified vendor for participation in the plan unless:

(A) the plan administrator and the vendor sign a product contract concerning at least one of the vendor's investment products;

(B) the vendor has a federal employers identification number; and

(C) the vendor agrees to accept both transfers to and the investment of deferrals in its qualified investment products.

(3) As a prerequisite to approving an application, the plan administrator shall require a qualified vendor to:

(A) execute an Employer Appointment of Agent form so that the vendor may file reports directly with the Internal Revenue Service; and

(B) prove to the plan administrator's satisfaction that the vendor is capable of filing [~~quarterly~~] reports as required by §87.19 of this title (relating to Reporting and Recordkeeping by Qualified Vendors).

(4) If the plan administrator approves an application, the plan administrator shall sign and send to the qualified vendor a vendor contract that complies with the sections in this chapter and applicable law.

~~[(5) If the plan administrator disapproves an application, the plan administrator shall send written notice of the disapproval to the vendor. The notice must contain the reasons for the disapproval.]~~

(e) Contacts.

(1) In the application package, a qualified vendor shall designate one individual who will be:

(A) receiving deferrals and investment income;

(B) acting as a vendor representative or agent and accepting Plan funds in accordance with instructions on Plan forms;

(C) answering questions about the balances of deferrals and investment income; and

(D) serving as liaison between the plan administrator and vendor management concerning matters of administration and vendor reporting.

(2) In addition to the requirements of paragraph (1) of this subsection, an out-of-state qualified vendor shall designate a responsible and knowledgeable individual in Texas who the plan administrator may contact for information about the vendor's activities in the plan.

(3) Each qualified vendor shall update the designations and information required by this subsection no later than the 30th day after a change.

(4) The designations and updates required by this subsection must contain the names, addresses, and business telephone numbers of the individuals designated.

(f) Change of name or legal status by a qualified vendor.

(1) If a qualified vendor's or vendor's name or legal status changes through merger, sale, dissolution, or any other means, the qualified vendor or vendor must notify the plan administrator in writing no later than the 30th day after the change. The notice must contain a detailed description of the transaction that causes the change.

(2) If a change in legal status results in the qualified vendor's or vendor'sparticipation in the plan being conducted by a different legal entity, the new entity must apply no later than the 90th day after the change for approval as a qualified vendor before the entity may participate in the plan. If the new entity is not approved participant [~~When the plan is not allowing any new vendors, then the vendor would be immediately put on hold to new business. Participant~~] funds would then be transferred to the revised plan. [~~another qualified vendor in the plan.~~] Transfers under this paragraph shall be made in accordance with §87.15(c) and (d) of this title (relating to Transfers) and shall not result in a fee or penalty being charged against the participant's account. Provided, however, that the plan administrator may, in its sole discretion, choose not to apply this paragraph, if it determines that it would be in the best interests of the plan and participants.

(3) If a change in legal status results in a qualified vendor's participation in the plan being conducted by a different legal entity that is also a qualified vendor, participant funds may [~~will~~] be transferred to that qualified vendor, who then becomes responsible for the reporting requirements of the transferred funds.

(g) Voluntary termination of participation in the plan.

(1) A qualified vendor may voluntarily terminate its participation in the plan after notifying, in writing, the plan administrator and all participants whose deferrals and investment income are invested in the vendor's qualified investment products. The qualifiedvendor must ensure that the plan administrator and the participants receive the written notice no later than the 60th day before the effective date of the termination.

(2) A qualified vendor may establish the effective date of its termination from the plan. The qualified vendor must clearly state the effective date in the written notice required by paragraph (1) of this subsection.

(3) Notwithstanding paragraph (2) of this subsection, if the terminating qualified vendor sponsors qualified investment products that have specific terms, such as a three-year certificate of deposit or a 30-day passbook account, the effective date of the qualified vendor's termination may not be before the terms of all those products have expired for every participant.

(4) After receiving notice of termination, the plan administrator shall request each affected participant to submit a Prior Transfer Funds form [~~change agreement~~] for the disposition of his or her deferrals and investment income. For each participant from whom the plan administrator has not received a Prior Transfer Funds form [~~change agreement~~] by the effective date of the termination, the plan administrator shall initiate a transfer of all deferrals and investment income from the terminating vendor's qualified investment products to the revised plan.

(5) When a qualified vendor voluntarily terminates its participation in the plan, the vendor may not charge a fee or penalty for the transfers made after the notice of termination.

(6) When a qualified vendor that is an insurance company voluntarily terminates its participation in the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) In this paragraph, the term "terminated life insurance product" means a life insurance product that is no longer a qualified investment product because the life insurance company offering the product has voluntarily terminated the company's participation in the plan.

(B) A participant whose deferrals and investment income have been invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the product.

(C) An insurance company that voluntarily terminates its participation in the plan must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(D) The premiums for continuing life insurance coverage must be paid by the participant directly to the insurance company and may not be paid with deferrals or investment income.

(E) A participant may exercise the right to continue life insurance coverage only if the participant mails to the insurance company written notice of the participant's intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the company's termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(F) When a participant elects to continue life insurance coverage, the insurance company with which coverage is continuing may not:

(i) refuse to continue the life insurance;

(ii) require a postponement or an interruption in coverage for any length of time;

(iii) require the participant to provide evidence of insurability;

(iv) require the participant to apply for coverage;

(v) require the participant to select a different life insurance product from the product in which the participant's deferrals and investment income were invested before the company's participation in the plan terminated;

(vi) discriminate in any manner against the participant because of the company's termination of its participation in the plan;

(vii) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(viii) increase the premiums charged to the participant solely because the company terminated its participation in the plan or because the participant elected to continue coverage.

(G) A qualified vendor must inform the participant in the written notice required by paragraph (1) of this subsection that the participant has the rights specified in this paragraph. A qualified vendor must send a copy of this notice to the plan administrator.

(H) If a qualified vendor does not comply with subparagraph (G) of this paragraph, then a participant may exercise the right to continue insurance up to the 120th day after the qualified vendor actually mails written notice to the participant, containing a full explanation of the participant's rights.

(h) Inactive qualified vendors. The plan administrator shall terminate the participation in the plan of an inactive qualified vendor. See §87.1 of this title (relating to Definitions).

(i) Refusal to accept additional deferrals.

(1) A qualified vendor may not refuse to accept additional deferrals to any or all its qualified investment products, even if the refusal would be temporary.

(2) If a qualified vendor refuses to accept additional deferrals to all its qualified investment products, the plan administrator shall terminate the qualified vendor's participation in the plan.

(3) If a qualified vendor refuses to accept additional deferrals to fewer than all its qualified investment products, the plan administrator shall terminate the participation in the plan of the qualified investment products that are not accepting additional deferrals.

(j) Collateralization by banks.

(1) This subsection applies only to qualified vendors that are banks.

(2) In this subsection, the term "deferred compensation information" means the cumulative total of all deferrals on deposit with the qualified vendor as of the end of the previous month.

(3) At the plan administrator's discretion, the plan administrator may require a qualified vendor to report deferred compensation information and additional information to the data collection center no later than 1:00 p.m., central time, on a call-in day that the plan administrator considers necessary to evaluate the collateralization requirement under this subsection.

(4) Once each quarter, a qualified vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 Code of Federal Regulations, Part 325, Subpart B, i.e., well capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent call report and/or other financial report that can be used to substantiate subparagraphs (A) - (D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the qualified vendor to accept brokered deposits.

(5) A qualified vendor shall immediately notify the plan administrator if the qualified vendor's capital category changes before its next call report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A qualified vendor must collateralize deferrals and investment income as required by the plan administrator. If a monthly report indicates that a qualified vendor will lose or has lost FDIC pass-through insurance, the qualified vendor shall immediately pledge additional collateral and comply with the directives of the plan administrator. The plan administrator may suspend or expel an under-collateralized qualified vendor in accordance with §87.21(a)(8) of this title (relating to Remedies).

(7) A qualified vendor may not require a participant to withdraw some or all of the participant's deferrals and investment income so that the qualified vendor may avoid the collateralization requirements imposed by the plan administrator. A qualified vendor may not establish a maximum amount of deferrals that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a qualified vendor's reinvestment of deferrals and investment income in investment products offered by the qualified vendor's trust department or by other qualified vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15(e) of this title. The vendor or qualified vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(k) Collateralization by savings and loan associations.

(1) This subsection applies only to a qualified vendor that is a savings and loan association.

(2) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds the amount insured by the FDIC; and

(B) the number of accounts whose balances exceed the amount insured by the FDIC.

(3) At the plan administrator's discretion, the plan administrator may require a qualified vendor to report deferred compensation information and additional information to the data collection center no later than 1 p.m., central time, on a call-in day that the plan administrator considers necessary to evaluate the collateralization requirement under this subsection.

(4) Once each quarter, a qualified vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 Code of Federal Regulations, Part 325, Subpart B, i.e., well-capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent call report and/or other financial report that can be used to substantiate subparagraphs (A) - (D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the qualified vendor to accept brokered deposits.

(5) A qualified vendor shall immediately notify the plan administrator if the qualified vendor's capital category changes before its next call report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A qualified vendor must collateralize deferrals and investment income as required by the plan administrator. If a monthly report indicates that a qualified vendor will lose or has lost FDIC pass-through insurance, the qualified vendor shall immediately pledge additional collateral and comply with the directives of the plan administrator. The plan administrator may suspend or expel an under-collateralized qualified vendor in accordance with §87.21(a)(8) of this title (relating to Remedies).

(7) A qualified vendor may not require a participant to withdraw some or all of the participant's deferrals and investment income so that the qualified vendor may avoid the collateralization requirements imposed by the plan administrator. A qualified vendor may not establish a maximum amount of deferrals that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a qualified vendor's reinvestment of deferrals and investment income in investment products offered by the qualified vendor's trust department or by other vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15(e) of this title. The vendor or qualified vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(l) Limits on account balances in credit unions.

(1) This subsection applies only to a qualified vendor that is a credit union.

(2) A qualified vendor may not accept deferrals to an account if the deferrals would cause the balance of the account to exceed $100,000 (as amended), the amount insured by the National Credit Union Administration and National Credit Union Share Insurance Fund unless the vendor or participant has complied with paragraph (6) of this subsection.

(3) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds $100,000 (as amended);

(B) the qualified investment product in which the participant's future deferrals will be invested, in lieu of investing them in the credit union's qualified investment products.

(C) the total amount by which the balances of all reported accounts exceed $100,000 (as amended).

(4) Once each month, a qualified vendor shall report deferred compensation information to the plan administrator no later than 1 p.m., central time, on a call-in day. If a qualified vendor has no accounts that exceed $100,000 (as amended), the qualified vendor must report that fact to the plan administrator.

(5) The plan administrator shall notify the agency coordinator for each participant whose account exceeds $100,000 (as amended). Upon receiving the notice, the agency coordinator shall request the participant to specify in a change agreement:

(A) the qualified investment product to which at least the amount in the account in excess of $100,000 (as amended) will be moved; and

(B) the qualified investment product in which the participant's future deferrals will be invested, in lieu of investing them in the credit union's qualified investment products.

(6) If a participant does not want funds in excess of $100,000 (as amended) transferred from the credit union, the participant may keep funds at the credit union if:

(A) the credit union will pledge collateral for all funds in excess of $100,000 (as amended) in accordance with plan administrator procedures; or

(B) the participant acknowledges and accepts the liability of uninsured funds through a signed statement on forms furnished by the plan administrator.

(7) If a participant does not submit a change agreement to the agency coordinator immediately after receiving a request from the participant's agency coordinator in accordance with paragraph (5) of this subsection and if paragraph (6) of this subsection is not complied with, the agency coordinator shall notify the plan administrator. Upon receiving the notification, the plan administrator shall:

(A) initiate a transfer of the amount in the account in excess of $100,000 (as amended) in accordance with §87.15(e)(1) of this title; and

(B) prohibit the participant from deferring additional amounts to the qualified vendor's qualified investment products.

(m) Audits.

(1) The plan administrator may audit or cause an audit to be performed of a vendor or qualified vendor concerning the qualified vendor's or vendor's participation in the plan.

(2) The plan administrator may audit or cause an audit to be performed of a vendor that was a qualified vendor at one time but has since lost its qualified status. The audit may cover the vendor's participation in the plan.

(n) The plan administrator may expel a vendor or qualified vendor that fails to maintain all requirements needed to become a qualified vendor. Such vendor may not charge a fee or penalty to participants for the transfers made due to expulsion.

§87.9. Investment Products.

(a) Prohibited activity. A qualified vendor or vendor representative may not solicit investments in an investment product after August 31, 2000.

(b) New qualified investment products.

(1) Notwithstanding anything to the contrary in the sections in this chapter, other than §87.31 and paragraph (2) of this subsection, the plan administrator may not:

(A) approve an investment product as a qualified investment product; or

(B) issue a product approval notice.

(2) Paragraph (1) (A) and (B) of this subsection do not apply to a qualified investment product that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a product contract with a qualified vendor that is sponsoring a qualified investment product, the plan administrator and the qualified vendor shall execute a product contract no later than the 90th day after May 7, 1990. If a product contract is not executed, the plan administrator shall terminate the qualified investment product's participation in the plan.

(c) Eligibility of investment products. The investment products that are eligible for approval as qualified investment products are:

(1) fixed and variable rate annuities;

(2) life insurance (except that new life policies may not be offered in the plan by any qualified vendor or vendor after December 31, 1992);

(3) stable value account; [~~mutual funds; and~~]

(4) self-directed brokerage account; [~~money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.~~]

(5) mutual funds; and

(6) money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.

(d) Review of investment products.

(1) General requirements. The plan administrator may not issue a product approval [~~notice~~] concerning an investment product unless:

(A) the qualified vendor offering the investment product submits to the plan administrator the documentation and information the plan administrator requires;

(B) the qualified vendor offering the product agrees to accept both transfers to and the investment of deferrals in its product;

(C) the plan administrator finds that the advertising material for the product, if any, complies with the sections in this chapter;

(D) the plan administrator determines that the disclosure form for the product complies with the sections in this chapter;

(E) the plan administrator finds that the investment product has a guaranteed minimum interest rate if the product has a variable interest rate;

(F) the plan administrator determines that the investment product complies with §87.7(c)(5) of this title (relating to Vendor Participation), if the product is a mutual fund;

(G) the plan administrator concludes that the inclusion of the investment product in the plan would be in the best interests of the plan; and

(H) the plan administrator ascertains that the vendor has obtained the necessary approvals from the appropriate regulatory agencies.

(2) Additional requirements for approving investment products offered by insurance companies. Before the plan administrator may sign a product contract, the plan administrator must:

(A) obtain written confirmation from the Texas Department of Insurance that the investment product has been approved for sale in Texas;

(B) determine that the amount of the investment product's premiums, payments, and benefits are not calculated with regard to the sex of the person insured or of the recipient of the benefits; and

(C) determine that the investment product does not insure anyone other than a participant.

(e) Product contracts.

(1) The plan administrator may not sign a product contract with a qualified vendor unless the plan administrator has already issued a product approval notice concerning the investment product that will be covered by the product contract.

(2) The plan administrator may not sign a product contract that does not comply with the sections in this chapter and applicable law.

(3) The plan administrator may, in its sole discretion, permit a qualified vendor to replace, substitute, or merge an existing plan product with another product, if procedures established by the plan administrator are met.

(f) Withdrawal of a qualified investment product from the plan.

(1) A qualified vendor may withdraw a qualified investment product from the plan after notifying, in writing, the plan administrator and all participants whose deferrals and investment income are invested in the qualified investment product. The qualified vendor must ensure that the plan administrator and the participants receive the written notice no later than the 60th day before the effective date of the withdrawal.

(2) A qualified vendor may establish the effective date of a withdrawal of the vendor's qualified investment product. The qualified vendor must clearly state the effective date in the written notice required by paragraph (1) of this subsection.

(3) Notwithstanding paragraph (2) of this subsection, if a qualified investment product has a specific term, such as a three-year certificate of deposit or a 30-day passbook account, the effective date of the withdrawal may not be before the term of the product has expired for every participant. The term of a product will be deemed expired if all participants have transferred their funds to another qualified investment product.

(4) After receiving notice of withdrawal, the plan administrator shall request that the agencies contact each affected participant to submit a change agreement for the disposition of their deferrals and investment income. For each participant from whom the plan administrator has not received a change agreement by the effective date of the withdrawal, the plan administrator shall initiate a transfer of all deferrals and investment income from the qualified investment product being withdrawn to other qualified investment products, in the revised plan.

(5) When a qualified vendor withdraws a qualified investment product from the plan, the vendor may not charge a fee or penalty for transfers made after the notice of withdrawal.

(6) When a qualified vendor that is an insurance company with existing life policies in the plan withdraws a life insurance product from the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) In this paragraph, the term "withdrawn life insurance product" means a life insurance product that is no longer a qualified investment product because the life insurance company offering the product has withdrawn the product from the plan.

(B) A participant whose deferrals and investment income have been invested in a withdrawn life insurance product may continue life insurance coverage with the insurance company offering the product.

(C) If the insurance company has a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The insurance company shall offer continuing coverage in:

(i) a qualified investment product that is comparable to the withdrawn life insurance product; and

(ii) a life insurance product that is not a qualified investment product but is comparable to the withdrawn life insurance product.

(D) If the insurance company does not have a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in the withdrawn life insurance product. The insurance company shall offer continuing coverage in a life insurance product that is comparable to the withdrawn life insurance product.

(E) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the coverage directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(F) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the insurance company written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the withdrawal of the life insurance product from the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(G) When a participant elects to continue life insurance coverage, the insurance company with which the coverage is continuing may not:

(i) refuse to continue the life insurance;

(ii) require a postponement or an interruption in coverage for any length of time;

(iii) require the participant to provide evidence of insurability;

(iv) require the participant to apply for coverage;

(v) require the participant to select a different life insurance product from the withdrawn life insurance product;

(vi) discriminate in any manner against the participant because of the company's withdrawal of the product;

(vii) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(viii) increase the premiums charged to the participant solely because the company withdrew a life insurance product from the plan or because the participant elected to continue coverage.

(H) A qualified vendor must inform the participant in the written notice required by paragraph (1) of this subsection that the participant has the rights specified in this paragraph.

(I) If a qualified vendor does not comply with subparagraph (H) of this paragraph, then a participant may exercise the participant's right to continue insurance up to the 120th day after the qualified vendor actually mails written notice to the participant containing a full explanation of the participant's rights.

§87.11. Advertising Material and Solicitation.

(a) Definition. In this subsection, the term "advertising material" includes:

(1) descriptive literature or advertisements of a vendor orqualified vendor [~~or vendor~~] representative that are published in newspapers, magazines, or other publications;

(2) material a qualified vendor or vendor representative encloses in mailing to participants or employees;

(3) scripts used in television or radio advertisements or in telephone solicitations;

(4) displays on billboards and similar media;

(5) scripts, displays and any other plan material used on the internet;

(6) descriptive literature, sales talks, and sales aids that a qualified vendor or vendor representative uses during presentations to participants or employees on a group or individual basis;

(7) all material used to solicit:

(A) increased deferrals from existing participants;

(B) renewals of investments in qualified investment products; or

(C) transfers; and

(8) material distributed by a qualified vendor to a participant who has invested deferrals and investment income in one or more of the vendor's qualified investment products.

(b) General requirements for advertising material.

(1) All advertising material must refer to the plan.

(2) A qualified vendor or vendor may not use or authorize a vendor representative to use advertising material without the [~~until the vendor has received the~~] plan administrator prior written approval. [~~administrator's written approval of the material.~~]

(3) If a qualified vendor does not intend to use or authorize a vendor representative to use any advertising material, the qualified vendor must provide written notice of that intention to the plan administrator.

(4) A qualified vendor representative may not use advertising material in connection with a qualified investment product until the qualified vendor offering the product has authorized the use of the material.

(5) In the previous plan, advertising [~~Advertising~~] material may not contain information or statements that conflict with or are misleading concerning the qualified investment product being advertised and it [~~. The advertising material~~] may not state that loans are permitted.

(6) An insurance company must tailor its advertising material to the plan.

(7) The plan administrator may not approve advertising material used by an insurance company or by a qualified vendor representative of an insurance company until the plan administrator has obtained the Texas Department of Insurance's written approval of the material.

(8) No marketing or solicitation is allowed on previous Plan products after August 31, 2000.

(c) Endorsements.

(1) If a qualified vendor receives an endorsement of one or more of its qualified investment products, the qualified vendor shall immediately send written notice of the endorsement to the plan administrator.

(2) An endorser of a qualified investment product may not use advertising material until the endorser has received the plan administrator's written approval of the material.

(3) Advertising material that contains information about an endorsement must state:

(A) the relationship between the qualified vendor and the endorser; and

(B) the basis for the endorsement.

[~~(d) General requirements for solicitation.~~]

[~~(1) A qualified vendor may solicit business from participants and employees through vendor representatives, the mail, or direct presentations.~~]

[~~(2) Qualified vendors and vendor representatives may solicit business at a state agency's office only with the prior permission of the agency.~~]

[~~(3) A qualified vendor or vendor representative may not conduct any activity with respect to a qualified investment product unless the appropriate license has been obtained.~~]

[~~(4) A qualified vendor or vendor representative may not make a representation about a qualified investment product that is contrary to any attribute of the product or that is misleading with respect to the product.~~]

[~~(5) A qualified vendor or vendor representative may not state, represent, or imply that its qualified investment product is endorsed or recommended by the plan administrator, the trustee, a state agency, the State of Texas, or an employee of the foregoing.~~]

[~~(6) A qualified vendor or vendor representative may not state, represent, or imply that its qualified investment product is the only product available under the plan.~~]

[~~(7) When soliciting business for a qualified investment product, a qualified vendor or vendor representative shall provide each participant a copy of the approved disclosure form for that product. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. The form must be provided regardless of whether the participant decides to invest in the product.~~]

[(8) A qualified vendor or vendor representative may not use the sales opportunities obtained through participation in the plan to solicit investments in non-qualified investment products. For example, in a presentation to participants, a qualified vendor or vendor representative may not solicit investments in both a non-qualified investment product and a qualified investment product even if the vendor or representative clearly states that the non-qualified investment product is being offered outside the plan.]

[(9) A qualified vendor is responsible for any violations of the sections in this chapter by a vendor representative who is marketing the vendor's qualified investment products.]

[(e) Solicitation methods.]

[(1) A qualified vendor shall notify the plan administrator in writing if the vendor will be marketing its qualified investment products directly. The vendor must ensure that the plan administrator receives the notice before the vendor commences the marketing of its products. If the vendor subsequently decides to use vendor representatives to market its products, the vendor shall notify the plan administrator in accordance with paragraph (2) of this subsection.]

[(2) A qualified vendor shall notify the plan administrator in writing if the vendor will be marketing its qualified investment products through vendor representatives. The notification must contain a complete identification of the vendor representatives who will be marketing the products. Every vendor representative and agent that enrolls participants in the plan and is authorized by the vendor to sign plan forms must be included on this notification. The vendor must ensure that the plan administrator receives:]

[(A) the notice before the vendor commences the marketing of its products; and]

[(B) a written update of the list of vendor representatives no later than November 1 of each year.]

§87.13. Disclosure.

(a) Approval of a disclosure form in prior plan.

(1) A [vendor or] qualified vendor shall complete an annual [a] disclosure form for each investment product in which a plan participant has an account balance. [that the vendor is submitting to the plan administrator for approval as a qualified investment product.] If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. A [vendor or] qualified vendor shall complete a disclosure on each investment product that has plan participant funds [(including those no longer offered)].

(2) [A vendor or qualified vendor must submit each disclosure form to the plan administrator for approval.]

[(3)] Upon receipt, the plan administrator shall review a disclosure form to determine whether it complies with the requirements of this section in addition to any other applicable state or federal regulatory requirements. The plan administrator must approve the disclosure form if it complies. Otherwise, the plan administrator shall disapprove the disclosure form.

[(4) The plan administrator shall notify the vendor or qualified vendor in writing as to whether the plan administrator approves the disclosure form. If the plan administrator disapproves a disclosure form, the plan administrator must include the reasons for disapproval in the notice to the vendor or qualified vendor.]

(3) [(5)]A qualified vendor shall submit [resubmit] its disclosure form to the plan administrator upon request [for approval by no later than March 1 of each year] even if the disclosure form has not changed.

(b) Contents of disclosure forms.

(1) A qualified vendor must uniformly state on all its disclosure forms basic information common to all qualified investment products offered by the qualified vendor and also disclose any other state or federal regulatory information required.

(2) A qualified vendor may not describe two or more qualified investment products on the same disclosure form.

(3) A qualified vendor must attach to a disclosure form any information that will not conveniently fit on the disclosure form itself. Information that a qualified vendor may attach to a disclosure form includes schedules of payments, fees, cash values, or any other items required to be disclosed.

(4) A disclosure form must contain the current interest rate and the date on which the rate could or will change. A disclosure form must include any date the fees or penalties will expire for participants, if applicable.

(5) If a qualified investment product has a variable interest rate, the disclosure form for that product must contain:

(A) the word "variable"; and

(B) a blank for the qualified vendor or vendor representative to enter the current interest rate.

(6) A prospectus must be submitted for each of those qualified investment products (if applicable).

(c) Use of disclosure forms.

(1) [A qualified vendor shall supply each agent authorized to do business with the plan a copy of each product's approved disclosure form. Vendor representatives will then be required to use the disclosure information in completing the plan participant's disclosure form.]

[(2) A qualified vendor or vendor representative may solicit business from participants only with respect to qualified investment products for which the plan administrator has approved the disclosure forms.]

[(3)] A qualified vendor or vendor representative must enter the fees/charges and product information on a disclosure form when a participant and the qualified vendor or representative sign the participation agreement and/or change agreement and the disclosure form.

(2) The qualified vendor or vendor representative must enter the current interest rate and the effective date of that rate in the appropriate blanks.

[(4) When a qualified vendor or vendor representative provides to a participant a disclosure form for a qualified investment product that has a variable interest rate, this paragraph applies. The qualified vendor or vendor representative must enter the current interest rate and the effective date of that rate in the appropriate blanks.]

(3) [(5)] A qualified vendor or vendor representative fails to provide a disclosure form if the vendor or representative does not enter all the required information.

(4) [(6)] If a qualified vendor or vendor representative misstates the current interest rate on a disclosure form, the plan administrator may:

(A) consider the qualified vendor or representative as having failed to provide a disclosure form; or

(B) bind the qualified vendor to the interest rate as stated on the form.

(d) Life insurance products.

(1) This subsection applies when an employee of a qualified vendor or a vendor representative sells an existing replacement life insurance product to a participant.

(2) The employee or representative shall deliver to the qualified vendor offering the product and to the participant a written statement containing:

(A) the specific reasons why the participant's best interests would benefit from the [~~additional or~~] replacement product;

(B) the exact time that will be necessary for the cash value of the replacement life product to reach the cash value of the original life product as of the date of the replacement, if applicable; and

[~~(C) the earliest date on which the participant could withdraw funds from the replacement life product if an emergency withdrawal is needed.~~]

(3) Before a transfer or new deferral may become effective, the written statement must be filed with the plan administrator.

(4) An employee of a qualified vendor or a vendor representative does not satisfy paragraph (2) of this subsection unless the participant signs the statement. If the participant refuses to sign the statement, then the employee or representative may not sell an existing replacement life product to the participant. The employee and [~~or~~] representative shall permanently retain a copy of the signed written statement.

§87.15. Transfers.

(a) Transfers initiated by participants. A participant may initiate a transfer of all or part of the participant's deferrals and investment income at any time. The number of transfers that a participant may initiate per year is unlimited.

(b) Transfers initiated by the plan administrator.

(1) Generally.

(A) The plan administrator may initiate a transfer of all or part of a participant's deferrals and investment income if the plan administrator determines that the transfer would be in the best interests of the plan or the participant.

(B) Without limiting the plan administrator's authority to initiate a transfer as specified elsewhere in the sections in this chapter, the plan administrator may initiate a transfer of all deferrals and investment income that are invested in:

(i) the qualified investment products of inactive qualified vendors;

(ii) the qualified investment products of qualified vendors whose participation in the plan has terminated; and

(iii) qualified investment products whose participation in the plan has terminated.

(2) Transfers from credit unions.

(A) The plan administrator shall initiate a transfer of a participant's deferrals and investment income from a credit union's qualified investment product in accordance with §87.7(l)(7) of this title (relating to Vendor Participation).

(B) The authority to initiate a transfer under this paragraph is in addition to the authority under paragraph (1) of this subsection.

(c) Value of amounts involved in a transfer initiated by the plan administrator.

(1) This subsection applies only when the plan administrator initiates a transfer from a qualified investment product because the qualified vendor sponsoring the product:

(A) has become an inactive vendor; or

(B) has violated a section in this chapter.

(2) The qualified vendor who offers the qualified investment product from which the transfer is being made may not charge a fee.

(3) The amount involved in a transfer must be equal to the total amount of deferrals and investment income that were invested in the qualified investment product as of the date on which the plan administrator initiates the transfer.

(4) Notwithstanding paragraph (3) of this subsection:

(A) an insurance company may deduct from the amount involved in a transfer the actual cost of insuring the participant whose deferrals and investment income are being moved. The period of insurance coverage that may be considered while calculating the actual cost of insuring the participant:

(i) starts on the day on which the deferrals and investment income were invested in the product; and

(ii) ends on the day on which the plan administrator initiates the transfer; and

(B) the amount involved in a transfer from a mutual fund must be equal to the current market value of the deferrals and investment income as defined in §87.19(a)(2) of this title (relating to Reporting and Recordkeeping by Qualified Vendors) without considering the deduction of any fees.

(5) This subsection prevails over a conflicting provision in a vendor contract, product contract, disclosure agreement, or any other document.

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

(1) This subsection applies when the plan administrator initiates a transfer of all deferrals and investment income of every participant from a qualified investment product.

(2) The plan administrator shall send a written notice to the qualified vendor who is sponsoring the qualified investment product. The notice must require the qualified vendor to:

(A) immediately issue a check or cause a wire-transfer to be made in a lump-sum amount equal to the deferrals and investment income being moved or the plan administrator may choose:

(i) to not immediately exercise the requirement of paragraph (2)(A) of this subsection if it is in the best interest of participants; or

(ii) to request the vendor to issue separate checks or cause separate wire transfers in behalf of each affected participant; and

(B) promptly send a list to the plan administrator containing:

(i) the name of each participant whose deferrals and investment income were moved;

(ii) the amount of the deferrals and investment income that was moved, on a participant-by-participant basis;

(iii) the social security number of each affected participant; and

(iv) the name of the employing state agency of each affected participant.

(3) If a check is used to make a transfer, this paragraph applies.

(A) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be the revised plan or [another qualified vendor or] an eligible plan in the case of a plan-to-plan [plan to plan] transfer. An eligible post-severance plan to plan transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the qualified vendor to send funds directly to the revised plan, [another qualified vendor,] the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another qualified vendor, the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the qualified vendor receives notification of the transfer.

(B) If the check is sent to the plan administrator, the plan administrator must endorse the check and deposit the check with the TPA selected by [a qualified vendor selected by] the plan administrator.

(C) Upon [After or before] receiving verification of a completed transfer from the qualified vendor selected by the plan administrator, and receiving a list of affected participants from the qualified vendor, the plan administrator shall [direct the agency coordinators for the participants to:]

[(i)] notify each affected participant concerning the transfers. [; and]

[(ii) request that each affected participant submit a change agreement to the participant's agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.]

[(D) Promptly after receiving the requested change agreements and determining that the agreements have been properly executed, an agency coordinator shall send the change agreements to the plan administrator.]

[(E) After receiving a completed change agreement, the plan administrator shall initiate a transfer of the participant's deferrals and investment income in accordance with the agreement.]

(4) If a wire-transfer is used to make a transfer, this paragraph applies.

(A) The qualified vendor must ensure that the TPA [qualified vendor] selected by the plan administrator to hold these funds receives the wire-transfer.

(B) The TPA [qualified vendor] selected by the plan administrator shall promptly deposit the wire-transfer into the applicable account previously agreed upon, and notify the plan administrator concerning the deposit.

[(C) After or before the plan administrator receives notice that the qualified vendor chosen by the plan administrator to hold these funds has deposited the wire-transfer and after the plan administrator has received a list of affected participants from the vendor, the plan administrator shall direct the agency coordinators for the participants to:]

[(i) notify each affected participant concerning the transfers; and]

[(ii) request that each affected participant submit a change agreement to the participant's agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.]

[(D) Promptly after receiving the requested change agreements and determining that the agreements have been properly executed, an agency coordinator shall send the change agreements to the plan administrator.]

[(E) After receiving a completed change agreement, the plan administrator shall initiate a transfer of the participant's deferrals and investment income in accordance with the agreement.]

(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product.

(1) This subsection applies only when subsection (d) of this section does not apply.

(2) If the plan administrator initiates a transfer, this paragraph applies.

(A) The plan administrator shall send a written notice to the qualified vendor that is sponsoring the qualified investment product. The notice must require the qualified vendor to issue a check or a wire transfer in an amount equal to the deferrals and investment income being moved. The notice may be sent with or without prior notice to the participant whose deferrals and investment income are being moved.

(B) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be the TPA [another qualified vendor] or an eligible plan in the case of a plan-to-plan [plan to plan] transfer. If the plan administrator directs the qualified vendor to send funds directly to the TPA, [another qualified vendor,] the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is the TPA, [another qualified vendor,] the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the TPA [specified payee] receives the check no later than the 15th day after the qualified vendor receives notification of the transfer.

(C) If the check is sent to the plan administrator, the plan administrator shall endorse and deposit the check in an [a qualified] investment product specifically designated to receive transfers initiated by the plan administrator.

(D) After depositing the check, or after receiving notification from the TPA [qualified vendor] that the check has been deposited, the plan administrator must notify the agency coordinator for the participant whose deferrals and investment income were moved. [The notification must:]

[(i) state the reason for the transfer;]

[(ii) direct the agency coordinator to request that the participant complete a change agreement to designate the qualified investment product that will receive the participant's deferrals and investment income; and]

[*(iii)* for a transfer from a credit union under subsection (b)(2) of this section, direct the agency coordinator to inform the participant that the participant may require the reinvestment of the transferred amounts in the credit union, unless the plan administrator determines that reinvestment in the credit union would not be in the best interests of the plan.]

[(E) After receiving a participant's completed change agreement, the plan administrator shall send the deferrals and investment income to the qualified vendor designated in the change agreement for investment in accordance with the agreement.]

[(F) The receiving qualified vendor shall not reject and return funds to the ERS or to a previous qualified vendor who transfers funds at the direction of the plan administrator when plan forms have been signed by a valid vendor agent/representative to transfer or defer funds to that vendor;]

(E) [(G)] The receiving TPA or [qualified] vendor shall acknowledge receipt of the deferrals and investment income in the manner required by the plan administrator.

(F) [(H)] Upon approval of the plan administrator, the qualified vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the qualified vendor sending funds complies with procedures specified by the plan administrator;

(ii) the qualified vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the qualified vendor receiving funds complies with procedures specified by the plan administrator.

(3) If a participant initiates a transfer, this paragraph applies.

(A) A participant may initiate a transfer of the participant's deferrals and investment income through the execution of a Prior Funds Transfer form [change agreement and a disclosure form] in accordance with §87.5(h) of this title (relating to Participation by Employees) [and also through telephone transfers (if approval has been obtained from the plan administrator) in accordance with §87.15(h) of this title (relating to Telephone Transfers Within Qualified Vendors). This requirement applies to all transfers, even transfers within the same vendor. A transfer is voidable at the instance of the plan administrator or the participant making the transfer if both a change agreement and a disclosure form are not properly executed and filed. However, a disclosure form is not required when a participant initiates a transfer to an existing account for the same participant, regardless of whether the account is with another qualified vendor.]

(B) After receiving a completed Prior Funds Transfer form [change agreement and disclosure form], the plan administrator shall notify the TPA. [qualified vendor from whose qualified investment product the transfer has been requested.]

(C) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be the TPA [another qualified vendor] or an eligible plan in the case of a plan-to-plan [plan to plan] transfer. An eligible plan-to-plan post-severance transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the qualified vendor to send funds directly to the TPA [another qualified vendor], the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is the TPA, they [another qualified vendor, the qualified vendor] shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the qualified vendor receives notification of the transfer.

(D) If the check is sent to the plan administrator, the plan administrator shall:

(i) endorse the check in favor of the TPA [qualified vendor] that will be receiving the transfer; and

(ii) mail to the TPA [qualified vendor] that will be receiving the transfer the endorsed check and written instructions concerning the investment of the amounts transferred.

(E) The TPA [qualified vendor] must send written confirmation to the plan administrator concerning the TPA's [vendor's] receipt of the transferred funds and written instructions. The TPA [qualified vendor] must ensure that the plan administrator receives the written confirmation no later than the 15th day after the TPA [qualified vendor] receives the transferred funds and instructions.

(F) Upon approval of the plan administrator, the vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the qualified vendor sending funds complies with procedures specified by the plan administrator;

(ii) the qualified vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the qualified vendor receiving funds complies with procedures specified by the plan administrator.

(f) Resolving transfer-related problems. A qualified vendor shall exercise good faith and reasonable diligence in resolving all transfer-related administrative problems with the plan administrator within a reasonable length of time, not to exceed 30 days, after receiving a transfer notification. The plan administrator may not complete any forms provided by a qualified vendor in connection with a transfer.

(g) Transfers into life insurance products.

(1) The only transfer allowed into a life product is a transfer from an existing life insurance product to an existing replacement life insurance product within the same qualified vendor.

(2) This paragraph is effective until December 31, 1998. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same qualified vendor, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(3) This paragraph is effective January 1, 1999, and thereafter. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same qualified vendor, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(h) Telephone transfers within qualified vendors.

(1) A qualified vendor may apply for approval to offer to participants the capability of making transfers of plan deferrals and investment earnings currently on account with that qualifiedvendor from

one qualified investment product or products to another qualified investment product or products within that qualified vendor via telephone instructions given by the participant or plan administrator.

(2) When a participant is in distribution, the telephone transfer option may be used; however, it must be used in accordance with §87.17(i)(6)(C) of this title (relating to Transfers).

(3) The qualified vendor and the participant must obtain approval from the plan administrator and must follow all instructions and procedures prescribed by the plan administrator.

§87.17. Distributions.

(a) In general. Upon request, the plan administrator shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

(1) the participant has attained age 70.5;

(2) the participant has died;

(3) the participant's employment with the State of Texas has terminated other than through death; or

(4) the participant has complied with subsection (l) of this section relating to the one-time election of distribution that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA.

(b) Definitions.

(1) In subsections (m)-(o) of this section, the term "participant's deferrals and investment income" means the cash value of the participant's deferrals and investment income after considering all surrender charges, costs of insurance, forfeitures, and other similar charges.

(2) In this section, a beneficiary or secondary beneficiary "survives" another person only if the beneficiary or secondary beneficiary is alive on the day after the person's death.

(c) Content of a distribution agreement.

(1) A distribution agreement must contain but shall not be limited to:

(A) identifying information concerning the participant, including the date of birth and social security number of the participant;

(B) the name of the qualified vendor or vendor covered by the agreement;

(C) the type of qualified investment product from which distributions will be made, including policy/certificate/or account number;

(D) the date on which the participant separated from service, attained age 70.5, or died, whichever is applicable;

(E) the balance of the participant's deferrals in the qualified investment product from which distributions will be made;

(F) the beginning date of the distributions;

(G) the frequency of distribution;

(H) the amount to be distributed during each time period or the method for calculating the amount to be distributed during each time period; and

(I) beneficiary information, including date of birth(s) and social security number(s).

(2) The person filing the distribution agreement must attach a properly executed Form W-4P to the agreement.

(3) A distribution agreement must be consistent with the distribution options available for the qualified investment product covered by the agreement. The qualified vendor agent/representative signature on the distribution agreement signifies that the distribution option is available and can be implemented as requested.

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) the earliest a participant or beneficiary may begin receiving a distribution is the 51st day after the occurrence that entitles the participant or beneficiary to the distribution, except this paragraph does not apply to an emergency withdrawal or a one-time election distribution; and

(2) the latest a participant may begin receiving a distribution is the later of:

(A) April 1st of the calendar year following the calendar year in which the employee attains age 70.5; or

(B) April 1st of the calendar year following the calendar year in which the employee's employment with the State of Texas terminates.

(e) Filing of distribution agreements by participants.

(1) This subsection applies when a participant becomes entitled to a distribution because:

(A) the participant has attained age 70.5; or

(B) the participant's employment with the State of Texas has terminated other than through death.

(2) A participant must file a single distribution agreement for all qualified investment products in which the participant's deferrals are invested.

(3) Notwithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 must file a distribution agreement only if the participant wants distributions to begin.

(4) Notwithstanding any other plan provision, amounts deferred by a former participant of the plan not yet payable or made available to such participant may be transferred to another eligible plan of which the former participant has become a participant, if:

(A) the plan receiving such amounts provides for their acceptance;

(B) a participant separates from service with the participant's agency and accepts employment with another entity maintaining an eligible deferred compensation plan; and

(C) a participant has not yet begun receiving plan distributions.

(5) A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the previous plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(6) A participant may request a trustee-to-trustee transfer of assets from the previous plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in Internal Revenue Code §414(p)

and Internal Revenue Code §415(n)(3)(A)) under such plan or a repayment to which Internal Revenue Code §415 does not apply by reason of subsection (k)(3) thereof.

(7) Upon receipt of a certified copy of a qualified domestic relations [~~relation's~~] order, the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order.

(8) At a participant's request, the plan administrator may process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

(f) Minimum distributions during the life of a participant.

(1) This subsection applies to distributions to a participant during the life of the participant, notwithstanding anything to the contrary in the participant's distribution agreement.

(2) The amount distributed to the participant must be calculated so that the distributions:

(A) will be distributed over a period not exceeding the life expectancy of the participant or the life expectancy of the participant and the participant's named beneficiary; and

(B) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), EGTRRA and associated statutes and regulations.

(3) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraph (2) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraph (2) of this subsection.

(4) For the purpose of paragraph (2) of this subsection, life expectancies may not be recalculated annually.

(g) Review of distribution agreements by the plan administrator. The plan administrator shall review each distribution agreement received from an agency coordinator to ensure that:

(1) a distribution would be in compliance with the sections in this chapter; and

(2) the minimum distribution requirements of this section have been satisfied.

(h) Amendments of distribution agreements.

(1) Beginning date for a distribution. The beginning date for a distribution may be deferred or cancelled, and the amended distribution agreement must be received by the plan administrator no later than the 30th day before the original distribution begin date.

(2) Frequency of distribution. The frequency of distribution may be amended if the plan administrator receives an amended distribution agreement no later than the 30th day before the beginning date of the first distribution.

(3) Amount of distribution. The amount to be distributed during each time period may be amended only if the plan administrator receives an amended distribution agreement no later than the 30th day before the beginning date of the first distribution.

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change agreement with the agency coordinator of the state agency at which the participant was employed or by submitting a beneficiary designation form directly with the TPA, for the revised plan.

(B) Upon receipt of the change agreement, the agency coordinator shall send the agreement to the plan administrator.

(C) The change agreement is effective upon receipt by the plan administrator.

(D) A beneficiary designation that names a former spouse is invalid unless the designation was signed after the date of divorce and received by the plan administrator.

(5) Emergency withdrawals. Notwithstanding anything to the contrary in this subsection, a distribution agreement may be amended to relieve a severe financial hardship caused by an [~~a sudden and~~] unforeseeable emergency.

(6) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend the participant's distribution agreement must file an amended distribution agreement with the participant's agency coordinator. The amended distribution agreement must contain the word "Amended" at the top of the agreement.

(B) Upon receipt of the amended distribution agreement, the agency coordinator shall promptly review the agreement for compliance with the sections in this chapter.

(C) If the amended distribution agreement does not comply with the sections in this chapter, the agreement will be returned to the participant or beneficiary for corrections.

(D) After the plan administrator receives a signed distribution agreement, the plan administrator and the qualified vendor or TPA covered by the agreement shall take the steps specified in subsections (h) and (j) of this section.

(7) Effective date of amended distribution agreements is 30 days after the plan administrator receives the form. An amended distribution agreement is effective with the first distribution.

(i) Procedure for making distributions.

(1) Upon receiving a letter of authorization, the qualified vendor or TPA shall issue checks payable to the participant or beneficiary and mail the checks as instructed in the letter of authorization.

(2) The plan administrator may not complete any forms provided by a qualified vendor in connection with a distribution. A qualified vendor may not require the plan administrator to submit periodic letters of authorization beyond the initial letter of authorization unless the plan administrator has agreed in writing. A qualified vendor may not impose any requirements as a prerequisite to a distribution that are not specifically mentioned in the sections in this chapter.

(3) The plan administrator shall provide each qualified vendor with the names and signatures of the individuals who are authorized to sign letters of authorization.

(4) A qualified vendor shall confirm each letter of authorization as instructed in the letter.

(j) Emergency withdrawals.

(1) A participant may request an emergency withdrawal regardless of whether a distribution to the participant has already started.

(2) The participant must request the emergency withdrawal by filing a completed emergency withdrawal application with the plan administrator. An emergency withdrawal application:

(A) must show that the prerequisites for making an emergency withdrawal have been fulfilled; and

(B) must be accompanied by two copies of a Form W-4P specifically tailored to the withdrawal.

(3) The plan administrator shall approve the emergency withdrawal if the plan administrator determines that:

(A) an unforeseeable emergency has occurred;

(B) the severe financial hardship caused by the unforeseeable emergency cannot be relieved:

(i) through reimbursement or compensation by insurance or otherwise;

(ii) by liquidating the assets of the participant to the extent the liquidation of the assets would not itself cause severe financial hardship;

(iii) by cessation of deferrals under the plan;

(iv) by other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) through a combination of the actions specified in clauses (i) - (iii) of this subparagraph; and

(C) the emergency withdrawal would satisfy the federal regulations for emergency withdrawals under the Internal Revenue Code of 1986, §457, as amended and, EGTRRA.

(4) If the plan administrator approves an emergency withdrawal, the plan administrator shall determine the amount of the withdrawal. The amount may not exceed the amount reasonably needed to overcome the severe financial hardship, after considering the federal income tax liability resulting from the withdrawal.

(5) The term "unforeseeable emergency" means a severe financial hardship to a participant caused by:

(A) a sudden and unexpected illness or accident of a participant or of a participant's dependent (as defined in the Internal Revenue Code of 1986 as amended, §152(a) and EGTRRA;

(B) the loss of the property of a participant because of a casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, as a result of a natural disaster); or

(C) a similar extraordinary and unforeseeable circumstance arising from events beyond the control of a participant, which includes the prevention of foreclosure or eviction from a participant or beneficiary's primary residence, funeral expenses, and payment of non-reimbursed medically necessary expenses, which includes non-refundable deductibles, as well as the cost of prescription drug medications [~~medical and funeral expenses~~].

(6) The term "unforeseeable emergency" excludes:

(A) the necessity to send a child to college;

(B) the purchase of a home; and

(C) other similar circumstances.

(7) The plan administrator may rely on the information provided by a participant in connection with the participant's request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(8) If the plan administrator denies a participant's request for an emergency withdrawal or if the participant disagrees with the amount of the approved emergency withdrawal, the participant may appeal to the Employees Retirement System of Texas in accordance with §87.23 of this title (relating to the Grievance Procedure).

(9) If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for a six month period following the approval.

(10) The plan administrator may not approve an emergency withdrawal request from a primary or secondary beneficiary.

(k) One-time election of distribution that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA. A participant may elect to receive a distribution of the total account balance if:

(1) such amount does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA as of the date of the election;

(2) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of the distribution;

(3) there has been no prior distribution under the plan to such participant to which this subsection applied; and

(4) a one-time election form is completed and submitted to the plan administrator through the participant's state agency coordinator.

(l) Naming of beneficiaries. When a participant or beneficiary files a distribution agreement, the participant or beneficiary may name one or more primary and secondary beneficiaries. The naming of beneficiaries in a distribution agreement supersedes any previous naming of beneficiaries in a participation agreement or change agreement.

(m) Death of a participant when the participant has named a beneficiary.

(1) This subsection applies only if a participant has named a beneficiary in a participation agreement, change agreement, beneficiary designation form or distribution agreement.

(2) When this subsection requires the plan administrator to order a distribution, the plan administrator shall order the distribution on the 90th day after a participant's death:

(3) The plan administrator shall order a distribution to a primary beneficiary if the beneficiary:

(A) survives the participant; and

(B) is alive on the date of the order.

(4) The plan administrator shall order a distribution to a secondary beneficiary if:

(A) the secondary beneficiary survives the participant;

(B) the secondary beneficiary is alive on the date of the order; and

(C) no primary beneficiaries survive the participant.

(5) The plan administrator shall order a distribution in accordance with subsection (p) of this section if a primary or secondary beneficiary survives the participant but is not alive on the date of the order.

(6) This paragraph applies if a participant designates more than one primary beneficiary and more than one primary beneficiary

survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving primary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary beneficiaries who did not survive the participant and the surviving secondary beneficiaries, if any, may not receive any benefits.

(7) This paragraph applies if a participant designates more than one secondary beneficiary, more than one secondary beneficiary survives the participant, and no primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving secondary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary and secondary beneficiaries who did not survive the participant may not receive any benefits.

(8) The plan administrator shall order the lump-sum payment to the participant's estate of the balance of the participant's deferrals and investment income if:

(A) the participant named a primary and a secondary beneficiary but neither survived the participant; or

(B) the participant named a primary beneficiary but did not name a secondary beneficiary and the primary beneficiary did not survive the participant.

(9) The plan administrator shall order the lump-sum distribution of a participant's deferrals and investment income to the person entitled to receive the distribution if the person is alive on the date of the order and the person files a distribution agreement requesting a lump-sum distribution.

(10) When the plan administrator orders a distribution to a primary or secondary beneficiary, the plan administrator's order must be in accordance with the beneficiary's distribution agreement so long as the agreement complies with the sections in this chapter.

(11) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant did not begin before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed must be calculated so that the distributions:

(A) will begin no later than December 31 in the year that the participant would have attained age 70.5 or December 31 of the year following the participant's death, whichever is later for a spousal beneficiary; or

(B) December 31 of the year following the participant's death and entire amount must be distributed by the end of the fifth year following the year of participant's death for non-spousal beneficiary.

(C) will be made over the life of the person receiving the distributions or over a period not extending beyond the life expectancy of the person;

(D) will be made in substantially non-increasing amounts;

(E) will be made annually or more frequently than annually after the first distribution; and

(F) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), and EGTRRA and associated statutes and regulations.

(12) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant began before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed to the primary or secondary beneficiary must be calculated so that the distributions:

(A) will be made at least as rapidly as under the method of distribution selected by the participant; and

(B) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA.

(13) If a participant dies before distributions to him began and the beneficiary or secondary beneficiary entitled to receive the participant's deferrals and investment income is the participant's surviving spouse, this paragraph applies.

(A) Paragraph (11) of this subsection applies to the distributions to the surviving spouse except as specified in this paragraph.

(B) Notwithstanding paragraph (11) of this subsection, the surviving spouse may delay the start of the receipt of the deferrals and investment income until a date not later than the date when the participant would have attained age 70.5.

(C) Notwithstanding paragraph (11) of this subsection, after a distribution to the surviving spouse begins, the entire amount must be paid over a period not exceeding the spouse's life expectancy.

(D) If the surviving spouse dies before distributions to the spouse begin, then the surviving spouse is a participant for the purpose of paragraph (11) of this subsection.

(14) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraphs (11)-(13) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraphs (11)-(13).

(15) For the purpose of paragraphs (11)-(13) of this subsection, life expectancies may not be recalculated annually.

(n) Death of a participant when the participant has not named a beneficiary.

(1) This subsection applies only when a participant has not named a beneficiary in a participation agreement, change agreement, or distribution agreement.

(2) The plan administrator shall order the distribution to the participant's estate of the balance of the participant's deferrals and investment income.

(o) Death of a beneficiary.

(1) This subsection applies if:

(A) a participant named a beneficiary in a participation agreement, change agreement, or distribution agreement or a beneficiary designation form;

(B) the participant died;

(C) the beneficiary survived the participant but has since died;

(D) the plan administrator has ordered, in accordance with subsection (m) of this section, a distribution to the beneficiary or would have ordered a distribution to the beneficiary if the beneficiary had not died; and

(E) the beneficiary did not receive all the participant's deferrals and investment income before the beneficiary's death.

(2) If the deceased beneficiary filed a distribution agreement and the agreement names a primary beneficiary, the plan administrator shall:

(A) allow the primary beneficiary to have a distribution which will be made at least as rapidly as under the method of distribution selected by the participant, and which will also satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA; or

(B) order a lump sum payment to the primary beneficiary's estate if the primary beneficiary survived the beneficiary who filed the distribution agreement but is not alive on the date of the order.

(3) If the deceased beneficiary filed a distribution agreement and the agreement names a secondary beneficiary, the plan administrator shall order a lump-sum payment to:

(A) the secondary beneficiary if:

(i) the secondary beneficiary is alive on the date of the order; and

(ii) no primary beneficiary survived the deceased beneficiary;

(B) the secondary beneficiary's estate if:

(i) the secondary beneficiary survived the deceased beneficiary;

(ii) the secondary beneficiary is not alive on the date of the plan administrator's order; and

(iii) no primary beneficiary survived the deceased beneficiary.

(4) The lump-sum payment must be made to the estate of the deceased beneficiary if:

(A) the deceased beneficiary's distribution agreement does not name a beneficiary;

(B) the deceased beneficiary did not file a distribution agreement; or

(C) no beneficiary named in the deceased beneficiary's distribution agreement survived the deceased beneficiary.

(5) When more than one primary or secondary beneficiary of a deceased beneficiary is entitled to a lump-sum distribution, the distributions must be made in equal shares unless the deceased beneficiary's distribution agreement provides otherwise.

(p) Distributions to minors and incompetents.

(1) The plan administrator may authorize the payment of a distribution to a person or entity other than the participant or beneficiary otherwise entitled to receive the distribution if satisfactory evidence is presented to the plan administrator that the participant or beneficiary is:

(A) a minor; or

(B) has been adjudicated by a court of law as mentally incompetent and unable to provide a valid release for the payment.

(2) If the conditions of the preceding paragraph are satisfied, the plan administrator shall make the distribution payable to the guardian of the participant or beneficiary.

(3) If no guardian has been appointed and after having obtained a proper release, the plan administrator shall make the distribution payable to:

(A) the person or entity maintaining custody of the participant or beneficiary;

(B) the custodian of the participant or beneficiary under the Texas Uniform Gifts to Minors Act (Texas Property Code, §141.002 et seq.) if the participant or beneficiary resides in the State of Texas;

(C) the custodian of the participant or beneficiary under a law similar to the Texas Uniform Gifts to Minors Act if the participant or beneficiary resides outside the State of Texas; or

(D) the court of law with jurisdiction over the participant or beneficiary.

(q) Distributions to missing persons.

(1) This subsection applies when the plan administrator is unable to determine the location of a participant or beneficiary who is entitled to a distribution.

(2) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator for the participant or beneficiary must send a certified letter to the last known address of the participant or beneficiary.

(3) If the certified letter does not result in the discovery of the location of the participant or beneficiary, the agency coordinator shall inform the plan administrator and provide proof to the plan administrator that the certified letter was sent.

(4) Upon receiving the notification and proof from an agency coordinator, the plan administrator may direct that all benefits due the participant or beneficiary be deposited in a qualified investment product that the plan administrator has specifically designated for this purpose.

(r) Processing of distributions and emergency withdrawals. A qualified vendor or TPA shall process distributions and emergency withdrawals and resolve administrative problems with the plan administrator within a reasonable length of time, not to exceed the 30th day after receiving a letter of authorization for distributions and not to exceed the 15th day after receiving a letter of authorization for emergency withdrawals.

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the previous plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(1) In accordance with the federal Soldiers' & Sailors' Civil Relief Act of 1940, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In no event will interest exceed the maximum rate permitted by applicable law.

(2) In accordance with Internal Revenue Code §72 (p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the Participant is on a bona fide leave of absence and the leave is either without pay or the Participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date; accept upon express approval of the hardship committee. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or

continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(t) Federal withholding and reporting requirements.

(1) qualified vendor or TPA shall file all reports required by the Internal Revenue Service (IRS) when any deferrals and investment income are distributed or otherwise made available to a participant or beneficiary. Payments made to a participant during the participant's life must be reported as taxable wages on a Form 1099-R or another appropriate form which may be hereafter promulgated by the IRS. Pursuant to the provisions of Internal Revenue Service Revenue Ruling 86-109 (1986-2 CB 196), payments to the beneficiary of a deceased participant must be reported on IRS Form 1099-R (or another appropriate form which may be hereafter promulgated by the IRS) as taxable income of the beneficiary.

(2) A qualified vendor or TPA shall file an application for authorization to act as agent of the State of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the qualified vendor files its returns. The application shall include Form 2678 - Employer Appointment of Agent under Section 3504 of the Internal Revenue Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The qualified vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the qualified vendor as agent.

(3) When reporting to the Internal Revenue Service, the qualified vendor and TPA shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A qualified vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the State of Texas. Regardless of how many qualified investment products a qualified vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) Federal tax withholding is mandatory for distributions to participants. A qualified vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. If no Form W-4P is provided, the participant must be considered single with no dependents. Vendors who maintain participant account balances in the previous plan shall provide the required IRC 402(f) safe harbor notice to all 457 plan participants prior to the payment of an eligible rollover distribution. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA.

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-R in accordance with paragraph (m) of this subsection.

(6) A qualified vendor or TPA shall mail a copy of all reports filed with the Internal Revenue Service about a participant or beneficiary to the participant's or beneficiary's home address.

(u) Notwithstanding any provisions to the contrary, the option to receive periodic distributions from a product in the "prior plan" by a terminated participant whose distribution begins after May 1, 2004 is removed. Terminating participants must transfer funds to the revised plan, receive a lump sum distribution, or roll their account balance into a product outside of the deferred compensation plan.

§87.19. Reporting and Recordkeeping by Qualified Vendors.

(a) Definition of current market value. In this section, the term "current market value" has the following meanings.

(1) For an investment in a qualified investment product offered by a bank, credit union, or savings and loan association, current market value means the amount of deferrals plus investment income minus withdrawals minus applicable fees.

(2) For an investment in a mutual fund, current market value means the price of each share at the end of the calendar quarter multiplied by the number of shares purchased with deferrals and investment income minus applicable fees.

(3) For an investment in a term life insurance product, the current market value is usually zero.

(4) For an investment in a life insurance product, current market value means the cash value of the product minus applicable fees.

(5) For an investment in an annuity, current market value equals the amount of deferrals plus investment income minus payouts minus applicable fees. For annuitized accounts, current market value means the present value of all remaining payments, taking into consideration the prevailing statutory interest rates pursuant to the Texas Insurance Code, Article 3.28.

(b) Reports to participants or beneficiaries.

(1) Generally.

(A) A qualified vendor in the prior plan shall issue a report after the end of each calendar quarter to each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, except if the investment is in a product that is annuitized.

(B) The report shall cover all transactions during a calendar quarter.

(C) A qualified vendor shall ensure that the participant or beneficiary receives the report no later than the 45th day after the end of each calendar quarter.

(D) The report must show for each qualified investment product:

(i) the amount of the participant's or beneficiary's deferrals and investment income in the product, including transfers;

(ii) the amount of applied product costs or surrender charges;

(iii) the date and amount of withdrawals during the reporting period; and

(iv) the current market value of the participant's or beneficiary's deferrals and investment income.

(2) Investments in life insurance products. The requirements of the preceding paragraph apply to investments of deferrals and investment income in life insurance products except:

(A) the report is due at least once each calendar year instead of after each calendar quarter; and

(B) the period covered by the report may be either the calendar year or the product year.

(3) Final reports. If a participant or beneficiary receives a lump-sum distribution, the qualified vendor or TPA from whom the lump-sum distribution is made shall issue a final report to the participant or beneficiary containing the information required in paragraph

(1) of this subsection. The report must accompany the lump-sum distribution.

(c) Capital category reports. Once each quarter, or more frequently if appropriate, a qualified vendor which is a bank or savings and loan association shall report to the plan administrator that financial information regarding capital categories and risk-based ratios described in §87.7(j) and (k) of this title (relating to Vendor Participation).

(d) Reports to the plan administrator.

(1) Frequency and coverage of reports. Every vendor in the prior plan that has participant or beneficiary deferrals, investment income, and/or annuitized accounts must ensure that the plan administrator receives a report no later than the 15th day after the end of each calendar quarter. Every vendor must ensure that the plan administrator receives a special report at the end of the fiscal year (August 31st), no later than fifteen days past fiscal year end - September 15th, in addition to the normal quarterly reporting schedule. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter. Every qualified vendor must also remit any fees assessed by the plan administrator along with the quarterly report.

(2) Content of reports. For each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, the report required by this subsection must contain but is not limited to:

(A) the participant's or beneficiary's name, agency code and social security number(s);

(B) a list of the qualified investment products in which the participant's or beneficiary's deferrals and investment income have been invested even if the investment is in a product that is annuitized;

(C) the amount of monthly deferrals for the reporting period separated and listed per month;

(D) the interest and other income earned or lost during the reporting period through the investment of the deferrals and investment income;

(E) the amount of federal income tax withheld during the reporting period;

(F) the current market value of each participant's or beneficiary's deferrals and investment income in each qualified investment product, including annuitized accounts and, including, if appropriate, the number of shares and per share market value;

(G) the amount of fees that the qualified vendor charged during the reporting period;

(H) the amount transferred in and out as a result of a change of product within a company, identified separately by each internal transfer;

(I) the amount of each plan administrator directed transfer in or out; and

(J) the amount of each separate net distribution to the participant or beneficiaries, except that multiple payments that fall on the same day should be combined into one account for quarterly reporting purposes.

(3) Format of reports.

(A) All reports must be in the format prescribed by the plan administrator and follow the DCP quarterly reporting specifications on a:

(i) 5 1/4 or 3 1/2 inch high quality PC diskette;

(ii) manual form; or

(iii) electronic file transfer - use of file transfer protocol (FTP), via the Internet or as an attachment to an electronic mail (E-mail).

(B) Only qualified vendors with less than fifty participants are eligible to report on a manual form.

(C) Before a qualified vendor may use a medium other than a manual form to file a quarterly report with the plan administrator, the vendor must submit a written request along with a electronic transfer file, or diskette to the plan administrator. The ERS must approve and make arrangements with the qualified vendor prior to testing the electronic file transfer [~~described in subparagraph (A)(v) of this paragraph~~]. The electronic transfer file, or diskette must be in the format and contain the information prescribed by the DCP reporting specifications and contain the information that the plan administrator requires including the items listed in paragraph (d)(2)(A) - (J) of this subsection. Failure to submit data in the specified format will result in the return of the media without processing. If the plan administrator determines that the electronic transfer file, or diskette is inadequate, the plan administrator shall ensure that the number of participants whose deferrals and investment income are invested at any given time in the vendor's qualified investment products does not exceed 49.

(D) The product types must be defined and coded as prescribed by the plan administrator and as in the DCP quarterly reporting specifications.

(E) If a participant or beneficiary has invested deferrals and investment income in two or more qualified investment products offered by the same qualified vendor and the products are of the same type, then the qualified vendor must report a cumulative total of those deferrals and investment income.

(4) A qualified vendor that fails to submit any required report with an authorized signature will result in a formal reprimand. After three formal reprimands, a vendor is subject to suspension or expulsion from the plan.

(5) Late reports and fee payment.

(A) A report or fees are [~~is~~] delinquent if the plan administrator receives the report and/or fees after the due date.

(B) A report or fees that are [~~is~~] received before the due date but which are [~~is~~] returned to the vendor for completion or correction are [~~is~~] delinquent if the plan administrator does not receive the completed or corrected version of the report or correct amount of fees within 10 days after the original due date.

(e) Recordkeeping. A qualified vendor shall retain records concerning investments in each qualified investment product by each participant. The records must be retained until the expiration of the second year after the qualified vendor has distributed all the participant's deferrals and investment income.

(f) Quarterly reconciliation. In accordance with §87.3(b)(3)(H) of this title (relating to Participation by State Agencies), an agency coordinator may be[~~is~~] responsible for balancing participant and beneficiary records and reconciling those records with the data provided by qualified vendors and the plan administrator. Qualified vendors [~~Vendors~~] shall assist the plan administrator and state agencies with correcting and explaining any discrepancies. Failure to assist the plan administrator and state agencies with this reconciliation will be considered a rules violation, and the plan administrator may take appropriate action under §87.21 of this title (relating to Remedies).

§87.21. Remedies.

(a) Remedies for violations of the sections in this chapter.

(1) The plan administrator may cancel a product contract, change agreement, participation agreement, or combination of the preceding when a qualified vendor uses methods that violate the sections in this chapter to obtain investments in the qualified vendor's qualified investment products.

(2) The plan administrator may expel a qualified vendor from the plan or suspend its right to receive new deferrals and investment income when the qualified vendor or vendor violates the sections in this chapter.

(3) The plan administrator may prohibit an employee of a qualified vendor or a vendor representative from further solicitation or acceptance of deferred compensation business when the employee or representative violates the sections in this chapter.

(4) If a qualified vendor does not notify the plan administrator by no later than the 30th day after a change in vendor status, the plan administrator shall expel the qualified vendor. For the purpose of this paragraph, the term "change in vendor status" means the events covered by §87.7(f) of this title (relating to Vendor Participation).

(5) The plan administrator shall suspend or expel a qualified vendor that does not file a report with the plan administrator for any two quarters in a 12-month period.

(6) The plan administrator shall suspend or expel a non-filer that files two or more reports after the due date specified within §87.19(d)(1) [~~§87.19(c)(1)~~] of this title (relating to Reporting and Record Keeping by Qualified Vendors) within a 12-month period.

(7) The plan administrator may suspend or expel a qualified vendor who fails to comply with the DCP quarterly reporting specifications and rules on reporting for any two quarters within a 12-month period.

(8) The plan administrator may suspend or expel a qualified vendor whose failure to comply with the requirements in §87.7(j) or (k) of this title (relating to Vendor Participation) and to §87.17 of this title (relating to Distributions) was:

(A) intentional;

(B) caused by a reckless disregard of the requirements;

(C) due to gross negligence; or

(D) due to negligence.

(9) For violations not specifically mentioned in this subsection, the plan administrator may reprimand, suspend, expel, or otherwise discipline a qualified vendor, employee of a qualified vendor, or vendor representative.

(10) The plan administrator may determine the effective date of an expulsion, termination, prohibition, or cancellation when the plan administrator:

(A) expels a qualified vendor or terminates a qualified vendor's participation in the plan;

(B) prohibits a vendor representative or an employee of a qualified vendor from further solicitation or acceptance of deferred compensation business; or

(C) cancels a product contract, change agreement, participation agreement, or combination of the preceding.

(11) When the plan administrator suspends a qualified vendor's participation in the plan, the plan administrator may determine the effective date and termination date of the suspension.

(b) Transfers from qualified vendors that violate the sections in this chapter.

(1) If the plan administrator expels a qualified vendor from the plan, the plan administrator shall initiate a transfer of all deferrals and investment income from the qualified vendor in accordance with §87.15(c) and (d) of this title (relating to Transfers).

(2) If the plan administrator cancels a product contract, change agreement, participation agreement, or combination of the preceding, the plan administrator shall take the action specified in paragraph (1) of this subsection except the transfers must be limited to the deferrals and investment income governed by the contracts or agreements.

(3) If the plan administrator suspends a qualified vendor from participation in the plan, the plan administrator may take the actions specified in paragraph (1) of this subsection. Whether the plan administrator takes those actions or not, the qualified vendor shall continue to file the reports required by the sections in this chapter. The plan administrator shall order the expulsion of a suspended vendor that does not file the required reports.

(4) If a qualified vendor is expelled from the plan, the vendor may not apply for reinstatement in the plan.

(5) If the plan administrator suspends a qualified vendor, an employee of a qualified vendor, or a vendor representative, the suspension shall last for at least 24 months after the effective date of the suspension.

(6) If the plan administrator expels a qualified vendor for violating the provisions of this chapter, the expelled vendor may not charge a fee or penalty for transfers made after the notice of termination.

(c) Continuation of life insurance coverage.

(1) This subsection applies when the plan administrator terminates the participation in the plan of a life insurance company or life insurance product.

(2) In this subsection, the term "terminated life insurance product" means a life insurance product that is no longer a qualified investment product because of a termination specified in paragraph (1) of this subsection.

(3) A participant whose deferrals and investment income were invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the terminated life insurance product.

(4) If an insurance company has not been terminated from participation in the plan, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company shall offer continuing coverage in:

(A) an existing qualified investment product that is comparable to the terminated life insurance product; and

(B) a life insurance product that is not a qualified investment product but is comparable to the terminated life insurance product.

(5) If an insurance company has been terminated from participation in the plan, this paragraph applies. The company shall offer

continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(6) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the product directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(7) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the qualified vendor written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(8) When a participant elects to continue life insurance coverage, the life insurance company offering the product via which the participant is continuing coverage may not:

(A) refuse to continue the life insurance;

(B) require a postponement or an interruption in coverage for any length of time;

(C) require the participant to provide evidence of insurability;

(D) require the participant to apply for coverage;

(E) discriminate in any manner against the participant because the plan administrator terminated the participation in the plan of the company or its life insurance product;

(F) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(G) increase the premiums charged to the participant solely because the participant elected to continue coverage.

(9) An insurance company must ensure that each participant entitled to continue life insurance coverage under this subsection receives written notice of the participant's right by no later than the 30th day after the plan administrator mails notice to the company of a termination described in paragraph (1) of this subsection.

(10) If an insurance company does not comply with paragraph (9) of this subsection, then a participant may exercise the participant's right to continue life insurance coverage up to the 60th day after the insurance company actually mails written notice to the participant containing a full explanation of the participant's rights.

(d) Disciplinary procedures.

(1) The plan administrator may act without a prior hearing when necessary to remedy or protect either the plan or participants from an imminent or actual violation of the sections in this chapter.

(2) The plan administrator may refer violations of the sections in this chapter or noncompliance with a qualified vendor's contractual obligations to the attorney general for appropriate action.

(e) A qualified vendor's failure to act.

(1) A qualified vendor shall reimburse the State of Texas, or effective January 1, 1999, the trust, for a financial loss that results from the vendor's failure to process a request for a transfer in a reasonable time, not to exceed 30 days.

(2) A qualified vendor shall reimburse a participant for a financial loss that results from the qualified vendor's failure to process a distribution in a reasonable time, not to exceed 30 days.

(f) Misrepresentations of qualified investment products.

(1) A qualified vendor is responsible for an intentional or unintentional misrepresentation or misstatement of any attribute of the vendor's qualified investment products by an employee of the qualified vendor or by a vendor representative. This paragraph applies even if the qualified vendor did not authorize the misrepresentation or misstatement.

(2) The plan administrator may bind a qualified vendor to a misrepresentation or misstatement by the qualified vendor's employees or vendor representatives of an attribute of the vendor's qualified investment products if the attribute as misrepresented or misstated is more advantageous to the participant than the attribute would be if it had been accurately depicted.

(g) Alternative action by the plan administrator.

(1) This subsection applies when a section in this chapter requires the plan administrator to terminate a qualified vendor's participation in the plan or expel a qualified vendor from the plan.

(2) In lieu of imposing the termination or expulsion, the plan administrator may:

(A) prohibit a qualified vendor from receiving additional deferrals and investment income;

(B) discipline a qualified vendor;

(C) impose special requirements on a qualified vendor;

(D) take other appropriate action; or

(E) perform a combination of the actions listed in subparagraphs (A)-(D) of this paragraph.

(3) Paragraph (2) of this subsection applies only if the plan administrator determines that alternative action is in the best interests of the plan.

(h) Violations of state insurance or securities laws. The plan administrator shall refer possible violations of state insurance or securities laws or regulations to the Texas Department of Insurance or the State Securities Board for appropriate action.

§87.25. Transition.

(a) This subsection applies only to activities, investment products, qualified vendors' participation in the plan, and documents that the plan administrator approved before May 7, 1990. A qualified vendor must comply with the substantive requirements of the sections in this chapter by July 1, 1990, to the extent that compliance with the requirements is a precondition for obtaining the plan administrator's approval of activities, investment products, qualified vendors' participation in the plan, or documents. Compliance is required notwithstanding the plan administrator's approval of the activities, investment products, qualified vendors' participation in the plan, or documents before the May 7, 1990. If a qualified vendor does not comply by July 1, 1990, the plan administrator shall take appropriate disciplinary action.

(b) A qualified vendor is deemed to consent to each provision and requirement in the sections of this chapter unless the plan administrator receives written notice from the qualified vendor by no later than May 18, 1990, that the qualified vendor is terminating its participation

in the plan effective no later than July 17, 1990. If the plan administrator timely receives the notice from a qualified vendor:

(1) the prohibition against the charging of fees for voluntary termination from the plan in §87.7(g) of this title (relating to Vendor Participation) does not apply to the qualified vendor's qualified investment products; and

(2) §87.7(g) of this title (relating to Vendor Participation) does not provide participants with the right to continue their life insurance coverage, although the terms of a particular life insurance product or state or federal law may provide the participants with the right to continue their insurance coverage.

§87.31. Revised Plan.

(a) Applicability.

(1) This section applies to the State of Texas Deferred Compensation Plan as revised and adopted by the Employees Retirement System of Texas effective September 1, 2000, and filed with the Secretary of State. The plan as revised and adopted is incorporated in this section by reference and is referred to in this section as "the revised plan." Copies of the revised plan may be obtained upon request.

(2) This section also applies to the State of Texas Deferred Compensation Plan as adopted by the Employees Retirement System of Texas effective January 1, 1991, and as amended prior to adoption of the revised plan. The 1991 plan is referred to in this section as "the previous plan." Except as otherwise provided in this section, the provisions of §87.1 through 87.29 of this title continue to apply to participation agreements, distribution agreements, and qualified vendor contracts entered into pursuant to provisions of the previous plan.

(3) This section takes effect September 1, 2000 and shall apply to deferrals and transfers which take place on or after September 1, 2000.

(b) Administration of the revised plan.

(1) The plan administrator shall administer the revised plan in the manner provided in the plan and §87.3 of this title (relating to Administrative and Miscellaneous Provisions).

(2) The provisions of §87.15 of this title (relating to Transfers) shall apply to the authority of the plan administrator to make transfers under the revised plan. Limitations on the plan administrator imposed in §87.7(b)(1) (relating to Vendor Participation) and §87.9(b)(1) (relating to Investment Products) of this title shall not apply to administration of the revised plan.

(3) A participant shall select a single manner of distribution and a single date of distribution of all of the participant's investments in the revised plan.

(4) The plan administrator may assess a fee if necessary to cover the costs of administering the revised plan.

(5) If a participant has not selected an investment product to receive deferrals, the deferrals shall be invested in a money market account or such other product selected by the plan administrator in its sole discretion. Balances in the revised plan may not be transferred to the previous plan.

(6) Deferrals and transfers to the revised plan shall be accepted by the revised plan beginning on the effective date of this section.

(c) Transition from the previous plan.

(1) On the effective date of this section, the plan administrator shall cease to accept deferrals to investment products approved under the previous plan, with the exception of life insurance products, to which deferrals may be continued as necessary to maintain the life insurance.

(2) A participant with an account balance in investment products approved under the previous plan may elect to maintain the balance in those products or to transfer the balance to one or more products approved under the revised plan. Annuitized and life insurance products may not be transferred to the revised plan. Balances transferred to a product approved under the revised plan may not be transferred to a product approved under the previous plan. Transfer of funds to the revised plan that are in distribution must be paid out over a uniform term. A participant may not transfer funds from one qualified vendor in the previous plan to another qualified vendor in the previous plan.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the plan administrator may require that an account balance in an investment product be transferred from such product approved under the previous plan to a product approved under the revised plan if the plan administrator determines it is in the best interests of the plan.

(4) On the effective date of this section, qualified vendors and vendor representatives of qualified investment products under the previous plan shall cease solicitation of business for such products from participants and employees.

(5) Distribution agreements for investment products in the previous plan filed on or after the effective date of this section shall use the same beginning date, duration and frequency for all qualified vendors and investment products.

(6) A beneficiary designation filed with the administrator of the revised plan applies only to those funds that have been transferred to the revised plan.

(7) Termination and resumption of deferrals.

(A) An employee may voluntarily terminate additional deferrals by providing appropriate notice to the TPA.

(B) An employee who has terminated additional deferrals, but who has not separated from service, may resume deferrals by re-enrolling in the plan.

§87.33. The Economic Growth and Tax Relief and Reconciliation Act.

(a) The Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA" and/or "Act") allows a plan administrator to amend eligible 457 deferred compensation plans to provide additional benefits to participants. The following resolutions set forth the decisions and provisions effective January 1, 2002.

(b) Applicability.

(1) This section applies to the State of Texas Deferred Compensation 457 Plan as revised and adopted by the Employees Retirement System of Texas effective September 1, 2000, and filed with the Secretary of State. The plan as revised and adopted is incorporated into this section. Copies may be obtained upon request.

(2) This section also applies to the State of Texas Deferred Compensation 457 Plan adopted by the Employees Retirement System of Texas effective January 1, 1991, and as amended prior to adoption of the revised plan. The 1991 plan is referred to in this section as the "previous plan." Except as otherwise provided in this section, the provisions of §§87.1 through 87.31 of this title continue to apply to participation agreements, distribution agreements, and qualified vendor contracts entered into pursuant to applicable provisions of the previous plan.

(3) This section takes effect January 1, 2002 and shall apply to deferrals, transfers/rollovers and distributions that take place on or after January 1, 2002.

(c) Administration of the revised plan. The plan administrator shall administer the revised plan in the manner provided in the plan and §87.3 of this title (relating to Administrative and Miscellaneous Provisions).

(d) Catch-up contributions during the three years prior to normal retirement age are increased to twice the applicable deferral limit.

(e) A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Internal Revenue Code §414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant who elects to defer contributions under the normal catch-up provisions may not also defer under the special catch-up and Internal Revenue Code §414(v).

(f) Plan Loans - The plan administrator is authorized to implement procedures to establish a loan program for the revised plan. Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the previous plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(g) Distributions.

(1) Change or Cancellation of Irrevocable Distribution Elections - A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the previous plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(2) Purchase of Service - A participant may request a trustee-to-trustee transfer of assets from the previous plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in Internal Revenue Code §415(n)(3)(A)) under such plan or a repayment to which Internal Revenue Code §415 does not apply by reason of subsection (k)(3) thereof.

(3) Qualified vendors [~~Vendors~~] who maintain participant account balances in the previous plan shall provide the required Internal Revenue Code §402(f) safe harbor notice to all 457 plan participants prior to the payment of an eligible rollover distribution.

(h) Cessation of Deferrals upon Emergency Withdrawal - If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for six months following the approval. Participants who were required to suspend deferrals as a result of an emergency withdrawal and whose suspension has equaled or exceeded 6 months as of January 1, 2002 may elect to resume contributions by re-enrolling in the revised plan.

(i) Qualified Domestic Relations Orders - Upon receipt of a certified copy of a qualified domestic relations order, the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order. The plan administrator shall develop procedures for the implementation of this section.

(j) The normal maximum amount of deferrals is increased to the lesser of $13,000 [~~$12,000~~] (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)) or 100% of a participant's includible compensation.

(k) At a participant's request, the plan administrator shall process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

§87.34. Independent Investment Advice.

(a) The plan administrator may offer independent investment advice through a qualified independent advisor in accordance with applicable federal regulations.

(b) Payment for independent investment advice is only allowed from the revised plan.

(c) [~~(b)~~] Applicability.

(1) This section applies to the Texa$aver 401(k) Plan and Texa$aver 457 Plan, as amended and adopted by the Employees Retirement System of Texas.

(2) The investment advisor(s) used by the plan administrator must meet reasonable qualifications, and agree to act as a fiduciary on behalf of the participants.

(3) Payments for investment advice under this rule may only be made when the plan administrator has determined that it considers the payment to be a reasonable plan expense.

(A) The plan administrator may offer independent investment advice through a qualified independent advisor in accordance with applicable federal regulations.

(B) Applicability.

(i) This section applies to the Texa$aver 401(k) Plan and Texa$aver 457 Plan, as amended and adopted by the Employees Retirement System of Texas.

(ii) The investment advisor(s) used by the plan administrator must meet reasonable qualifications, and agree to act as a fiduciary on behalf of the participants.

(iii) Payments for investment advice under this rule may only be made when the plan administrator has determined that it considers the payment to be a reasonable plan expense.

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

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402072
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: May 2, 2004
For further information, please call: (512) 867-7125

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts without changes §§80.51, 80.55, 80.62, 80.64, 80.66, 80.122, 80.128, 80.130, 80.132, and 80.135. The text to the adopted rules without changes will not be republished. The proposed amendments to §80.52 are not adopted. The following amended rules are adopted with changes and will be republished: §§80.11, 80.56, 80.119, 80.121, 80.123, 80.124, 80.126, and 80.136. The proposed rules were published in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8076).

The effective date of the rules is thirty (30) days following the date of publication with the *Texas Register* of notice that the rules have been adopted.

A public hearing was held on October 28, 2003. The following interested groups or associations presented comments either at the hearing or in writing: Texas Manufactured Housing Association ("TMHA").

Set forth below are comments from TMHA and other parties suggesting revisions to specific subsections and the analysis and recommendations of staff.

There was a general comment that several of the definitions (§80.11) were really more than definitions, being in the nature of actual rules, and it was asked that they be moved into other sections as rules. The definitions, as adopted, do not seem to involve any of the proposals that initially caused this issue to be raised.

Definition of Attachment. A commenter suggested changing the language by deleting "With respect to a manufactured home, that it" and adding "means that the home has been..." It was decided to leave it as proposed to make it clear we are talking about the installation of a manufactured home, which includes a HUD Code home or a mobile home, and does not refer to attachment of anything else, such as a foundation or stabilization system.

Definition of a Cash Transaction. A commenter said that proposed definition was technically accurate but could be misleading in a situation in which a customer had secured their own financing independently and used those proceeds to pay cash to the seller. Such a transaction would be is cash the seller (licensee) but financed to the buyer. The commenter stated that these rules were primarily for the benefit of licensees and suggested the following language, "...and no portion of the consideration for the home is financed through the assistance or involvement of the seller." It was decided that the definition was not needed.

Definition of a Contractual Agreement. A commenter expressed concern over the breadth of the definition and thought it might run contrary to the general policy to document manufactured home transactions in writing. It was decided that the definition is not needed.

Definition of a Credit Application. A commenter questioned whether there was such a thing as an oral credit application and voiced that if there is its use should not encouraged or be recognized by the Department. Additionally, the commenter stated, in light of legislative attempts earlier this year to address the ongoing problems with identity theft (SB 473) credit applications should be in writing so it is clear to all parties what is happening and that permission to access consumer information has been granted. It is decided that since the issue is covered by federal laws and rules (the Equal Credit Opportunity Act and Federal Reserve Regulation B), the definition, which tracked the federal language, and separate record-keeping requirement were not needed. However, under the federal law, it is possible, if a lender's procedures permit, to have oral credit application.

Definition of a Creditor. A commenter questioned this, indicating that the Department should have no role in enforcing or administering the Finance Code. The definition, as adopted, is identical to that in the Finance Code. Note that under Section 1201.505, Occupations Code, a retailer or broker must comply with Subtitles A and B, Title 4, Finance Code.

Definition of a Deposit. Due to comments received, the Department clarified to explain disclosure requirements and to allow retention of out-of-pocket costs paid to third parties in connection with financing, such as credit reports.

Definition of Deposits. A commenter indicated that there was nothing wrong with the present definition. It was decided to leave it unchanged

Definition of a Down Payment. A commenter indicated that there was nothing wrong with the present definition. It was decided to leave it unchanged.

Definition of a Permanent Foundation. This was a comment that was viewed as more in the nature of rules than a definition. It was decided to leave this section unchanged from existing rules. However, additional comments and suggestions on this issue are solicited as a broad definition of permanent foundation may promote the availability of mortgage financing for manufactured homes installed to standards other than FHA.

Definition of a Sale Documents - A commenter suggested that the definition was unnecessary. It has been deleted.

A commenter suggested that "chattel mortgage" be defined. Staff recommends that a chattel mortgage be defined as any loan subject to Chapter 347, Finance Code, that is not a mortgage loan.

Section 80.64 - A commenter suggested revising the rule to require manufacturer approval for alterations since the Division no longer has an on staff engineer. Staff is in the process of preparing proposed revisions to §80.64. However, since they are not in connection with the implementation of SB 521, they will be presented separately.

Section 80.119 - A commenter proposed deleting the last sentence of §80.119(g)(2). This comment was adopted.

Section 80.121 - A commenter said that the list of records that retailers must keep on file should also include the 163 Disclosure that is required in §80.182. The comment was adopted and added as §80.121(a)(1)(H). The subsequent subparagraphs are relettered. Also, a commenter suggested adding to the list evidence that the 3-day right of rescission was delivered to the consumer at closing. The right of rescission is extended to 2-years and should be on file. No change was viewed as necessary because §80.121(b) requires all verifications and copies of notices required by the rules to be maintained in the retailer's sales file for a minimum of 6 years, regardless of whether they are listed in §80.121 or not.

Section 80.123(o) - It was asked that the rule be expanded to clarify the scope and application of the continuing education requirements. Language has been added to clarify that participating on a clerical or ministerial basis does not trigger the requirement to obtain continuing education. The same commenter asked for a clarification that courses could be offered online, and this has been made clear.

Section 80.123(i) - A commenter stated the last sentence of subsection (i) could cause confusion and suggested clarification. The sentence has been revised.

Section 80.126 - The phrase "default orders" in subsection (f) and "assessment of costs" in subsection (g) has been removed and clarified at the request of a commenter, along with the phrase "enforcement action." Generally speaking, the language has been clarified so that it does not use any "undefined terms" which appear to have special meanings. A number of commenters objected to what they perceived to be the imposition of costs on top of administrative penalties and asked that these additions not be adopted. These proposed sections have not been deleted. The recovery of costs is specifically authorized by law, and the Department is not in a position to incur significant out-of-pocket costs in order to enforce the laws and rules it administers.

Section 80.136(a)(2) - A commenter stated that for real property transactions the rules should also allow for other installation requirements required by a lender. If no lender is involved and the consumer chooses to treat the home as real property, they should be able to do so and only meet the manufacturer's installation requirements necessary to activate the warranty on new homes and the State generic code on used homes. The Department has deleted this paragraph.

Except as noted below, the rules as proposed on September 19, 2003 are adopted as final rules with the following non-substantive changes.

Section 80.11 is revised by adding new definitions: "Chattel Mortgage or Consumer Loan"; and "Long-Term Lease."

Section 80.11 is revised by deleting proposed new definitions: "Cash Transaction"; "Contractual agreement with a consumer regarding the purchase, exchange, or lease purchase of a manufactured home"; "Credit Application"; and "Sale Documents."

Section 80.11 is revised by deleting proposed amendments to existing definitions: "Creditor"; "Deposits"; "Down Payment"; and "Permanent Foundation."

Section 80.56(k)(1) is revised by changing "BTUH" to uppercase.

In §80.119(b)(1) the first sentence changed by moving the words "perform or" for better sentence structure.

In §80.119(g)(2) the last sentence is deleted because it is not needed.

In §80.121(a)(1) subparagraph (H) was added that requires the retailer retain the 163 Disclosure on file as part of the sales record.

In §80.123(i) the last sentence changed to reference a specific subsection.

In §80.123(o)(1)(B) the last sentence changed to clarify that a person is not required to take continuing education courses if not directly involved in the sale.

In §80.123(o)(2)(C) the last sentence is added to allow for online instructional courses.

Section 80.123(o)(2)(E) is deleted.

Section 80.123(o)(2)(F) changed to (E) and changes were made to the paragraph for clarification purposes and to add wording for courses provided online.

Section 80.123(o)(2)(G) is changed to (F). The text remains the same as proposed.

Section 80.124(c) is a new subsection for additional clarification of deposits and previously proposed subsections are relettered.

In §80.126(f) the first sentence "Default orders." is deleted and in the second sentence the words "respond to" is deleted.

In §80.126(g) the first sentence "Assessment of costs." is deleted and in the second sentence the word "enforcement" located in two places are deleted.

Deleted proposed paragraph §80.136(a)(2) and renumbered remaining paragraphs.

The following is a restatement of the rules' factual basis:

Section 80.11 is adopted (with changes) to make amendments and additions to the definitions. A number of terms added and revised are being clarified in order to facilitate the implementation of changes to the Act made by SB 521.

Section 80.51(c)(1) is adopted (without changes) for the purpose of clarification.

Section 80.55 is adopted (without changes) for the purpose of clarification.

Figure: 10 TAC §80.55(d)(2) - is adopted (without changes) that amends Item # 9 in Table 4A for the purpose of clarification.

Figure: 10 TAC §80.55(e)(1) - is adopted (without changes) that amends Item #9 in Table 5A for the purpose of clarification.

Section 80.56 is adopted (with changes) to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.62 is adopted (without changes) to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.64 is adopted (without changes) to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.66 is adopted (without changes) to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.119 is adopted (with changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code, to comply with changes made by SB 521, and to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.121 is adopted (with changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code, to comply with changes made by SB 521, and to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.122 is adopted (without changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code.

Section 80.123 is adopted (with changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code, to comply with changes made by SB 521, and to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.123(o) is adopted (with changes) that implement continuing education requirements put in place by the adoption of SB 521. This provision also specifies the requirements for the approval of third party coursework providers.

Section 80.124 is adopted (with changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code and to comply with changes made by SB 521.

Section 80.126 is adopted (with changes) that enable the Division to recover certain costs when it takes successful enforcement action in a contested case.

Section 80.128 is adopted (without changes) to comply with changes made by SB 521, and to make minor grammar changes for the purpose of consistency throughout the rules.

Section 80.130 is adopted (without changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code.

Section 80.132 is adopted (without changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code.

Section 80.135 is adopted (without changes) to change statutory references from Vernon's Revised Texas Civil Statutes to the Occupations Code.

Section 80.136 is adopted (with changes) that delete the requirements for the surrendering of manufacturer's certificates of origin ("MCOs"), a change made possible by the adoption of SB 521, which changed the way that MCOs are treated after a first retail sale.

SUBCHAPTER B. DEFINITIONS

10 TAC §80.11

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.11. Definitions.

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

(1) Alteration - The replacement, addition, and modification or removal of any equipment or its installation after sale by the manufacturer to a retailer, but prior to sale and installation to a purchaser which may affect the construction, fire safety, occupancy plumbing, heat-producing, or electrical system. An alteration is deemed to be prior to sale if the alteration is part of the retail sales contract. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected (FMHCSS §3287.7(c)).

(2) Anchoring components - Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include auger anchors, rock anchors, slab anchors, ground anchors, stabilizing plates, connection bolts, j-hooks, buckles, and split bolts.

(3) Anchoring equipment - Straps, cables, turnbuckles, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other approved devices.

(4) Anchoring systems - Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.

(5) APA - Administrative Procedure Act, Texas Government Code, Chapter 2001.

(6) Attachment - With respect to a manufactured home, that it has been installed in accordance with the Department's rules and connected to any one or more utilities including, but not limited to, electricity, water, natural gas, propane or bottled gas, or wastewater service. For purposes of determining whether a manufactured home is attached, the presence of installation deviations or violations shall not invalidate the home's status as being attached.

(7) Board - Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs.

(8) Business use - Any use other than for dwelling purposes.

(9) Calendar days - Includes every day on the calendar.

(10) Certificate of Attachment - A certificate issued by the department to the person who surrenders the Manufacturer's Certificate

of Origin or document of title when the home has been permanently affixed to real estate. Certificates of Attachment are no longer issued after June 18, 2003.

(11) Chattel Mortgage or Consumer Loan - A loan subject to Chapter 347, Texas Finance Code, that is not a mortgage loan.

(12) Coastline - The shoreline that forms the boundary between the land and the Gulf of Mexico or a bay or estuary connecting to the Gulf of Mexico that is more than five miles wide.

(13) Credit document - The credit sale contract or the loan instruments including all the written agreements between the consumer and creditor that relate to the credit transaction.

(14) Creditor - A person involved in a credit transaction who:

(A) extends or arranges the extension of credit; or

(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit.

(15) Creditor-Lender - A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.

(16) Custom designed stabilization system - An anchoring and support system that is not an approved method as prescribed by the state generic standards, manufacturer's installation instructions, or other systems pre-approved by the department.

(17) DAPIA - The Design Approval Primary Inspection Agency.

(18) Defect - A failure to comply with an applicable federal manufactured home safety and construction standard that renders the manufactured home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(j)).

(19) Department - The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(20) Department inspector - An inspector who is an employee of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs or an inspector who is an employee of an entity performing inspection services under contract with the department.

(21) Deposits - Money or other consideration given by a consumer to a retailer, salesperson, or agent of a retailer to hold a home in inventory for subsequent purchase or to special order a home for subsequent purchase.

(22) Diagonal tie - A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

(23) Director - The Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(24) Down Payment - An amount, including the value of any property used as a trade-in, paid to a retailer to reduce the cash price of goods or services purchased in a credit sale transaction.

(25) Dwelling unit - One or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking and eating.

(26) FMHCSS - Federal Manufactured Home Construction and Safety Standards that implement the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., and means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety.

(27) Footing - That portion of the support system that transmits loads directly to the soil.

(28) Ground anchor - Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

(29) HUD-Code manufactured home - A structure constructed on or after June 15, 1976, according to the rules of HUD, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 CFR, §3282.8(g).

(30) Imminent safety hazard - A hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction and safety standard (FMHCSS §3282.7(q)).

(31) Independent testing laboratory - An agency or firm that tests products for conformance to standards and employs at least one engineer or architect licensed in at least one state.

(32) Installation information - A term used to describe the reports used to inform the department of information needed to perform installation inspections (includes Notice of Installation).

(33) IPIA - The Production Inspection Primary Inspection Agency which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and/or provides ongoing surveillance of the manufacturing process.

(34) Lien - A security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title or other security agreement of whatever kind or character, if an interest, other than an absolute title, is sought to be held or given in a manufactured home, and any lien on a manufactured home that is created or given by the constitution or a statute.

(35) Long-Term Lease - For the purpose of determining whether or not the owner of a manufactured home may elect to treat the home as real property, is a lease on land to which the manufactured home has been attached and which:

(A) has been approved by each lienholder for the manufactured home by placing on file with the department written consent to have the home treated as real property; or

(B) is for at least five years if the home is not financed.

(36) Main frame - The structural components on which the body of the manufactured home is mounted.

(37) Manufactured home - A HUD-Code manufactured home or a mobile home and collectively means and refers to both.

(38) Manufactured home identification numbers - For purposes of title records, the numbers shall include the HUD label number(s) and the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the

department, shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, or if a home manufactured after June 15, 1976, does not have a HUD label, a Texas seal shall be purchased from the department and attached to the home and used for identification in lieu of the HUD label number.

(39) Manufactured home site - That area of a lot or tract of land on which a manufactured home is installed.

(40) Mobile home - A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(41) Permanent foundation - A system of supports and securements, including piers, either partially or entirely below grade which is constructed or certified in accordance with the criteria outlined in §80.52(a) and (b), of this title (relating to Permanent Foundation Performance Criteria).

(42) Permanently affixed - Having been anchored to the real estate by attachment to a permanent foundation.

(43) Rebuild - To make a salvaged manufactured home habitable in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).

(44) Rebuilder - Any person, within the state, who has been licensed by the department to rebuild a salvaged manufactured home, as defined in §1201.461 the Standards Act, in accordance with the rules and regulations of the department.

(45) Refurbish - To make a nonhabitable manufactured home or section habitable by repairing, adding, replacing, modifying, or removing components.

(46) Serious defect - Any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(gg)).

(47) Shim - A wedge-shaped piece of cedar, oak, walnut, pecan, gum, ash, hickory, elm, or other comparable hardwood or other accepted material not to exceed one (1) inch vertical (actual) height.

(48) Stabilizing components - All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.

(49) Standards Act - Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.

(50) Statement of Ownership and Location - means a statement, issued by the Department on the prescribed form, based on a completed application for Statement of Ownership and Location, accompanied by the required fee and all required supporting documentation.

(51) Support system - A combination of footings, piers, caps and shims that support the manufactured home.

(52) TDHCA - The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department).

(53) TMHSA - Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.

(54) Used home - Any manufactured home (or mobile home) for which a document of title has previously been issued by an appropriate agency of any state or which has been occupied.

(55) Vertical tie - A tie intended primarily to resist the uplifting and overturning forces.

(56) Wind Zone I - All Texas counties not in Wind Zone II.

(57) Wind Zone II - Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties.

(58) Working days - Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. STANDARDS AND REQUIREMENTS

10 TAC §§80.51, 80.55, 80.56, 80.62

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.56. Multi-Section Connection Standards.

(a) Air infiltration and water vapor migration at mating surfaces: Before positioning additional sections, the mating line surfaces along the floor, endwall and ceiling, require material or procedures to limit air infiltration and water vapor migration. The following are acceptable materials and/or procedures:

(1) Expanding Foam: Foam may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(2) Caulking: Caulking may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(3) Non-porous gasket installed along the perimeter of all mating lines.

(4) Insulation, carpet, carpet pad or other porous materials are not acceptable.
Figure: 10 TAC §80.56(a)(4) (No change.)

(b) Floor Connections:

(1) Gaps between floors up to 1-1/2 inches maximum which do not extend the full length of the floor may be filled with lumber, plywood or other suitable shimming materials. Fastener lengths in shimmed areas may need to be increased to provide minimum 1-1/4 inches penetration into opposite floor rim joist.

(2) Gaps less than 1/2 inch width need not be shimmed.

(3) The floor assemblies of multi-section units must be fastened together. Fastener options and maximum spacings are listed in table 6A in paragraph (5) of this subsection.

(4) Any tears or damages to the bottom board due to fastener installation must be repaired.

(5) Table 6A: Floor connections - Wind Zone I and II:
Figure: 10 TAC §80.56(b)(5) (No change.)

(c) Endwall Connections:

(1) Endwalls must be fastened together at the mating line with minimum #8x4 inch wood screws or 16d nails at maximum 8 inches on-center or 12 inches on-center maximum for 5/16 lags; toed or driven straight; and

(2) Fastener length may need to be adjusted for gaps and/or toeing, to provide minimum 1-1/2 inch penetration into opposite endwall stud.
Figure: 10 TAC §80.56(c)(2) (No change.)

(d) Roof Connection: (Note: Fasteners must not be used to pull the sections together.)

(1) Roof shall be connected with the fasteners and spacings specified in Table 56(d)(3).

(2) Gaps between the roof sections (at ridge beam and/or open beam ledgers) of up to 1-1/2 inches wide maximum which do not extend the full length of the roof must be filled with lumber and/or plywood shims. Gaps up to 1/2 inch need not be shimmed. The fastener length used in the shimmed area may need to be increased to provide a minimum 1-1/4 inch penetration into the adjacent roof structural member.

(3) Table 56(d)(3): Roof Connection - Fastener type and spacing:
Figure: 10 TAC §80.56(d)(3) (No change.)

(4) Figure 56(d)(4).
Figure: 10 TAC §80.56(d)(4) (No change.)

(e) Exterior Roof Close Up:

(1) Ensure that shingles are installed to edge of roof decking at peak. Follow nailing instructions on the shingle wrapper. Note: Wind Zone II (high wind) installations require additional fasteners.

(2) Before installing ridge cap shingles, a minimum 6 inch wide piece of 30 gauge galvanized flashing must be installed the length of the roof.

(3) When flashing is not continuous, lap individual pieces a minimum of 6 inches.

(4) Fasten flashing into roof sheathing with minimum 16 gauge staples with 1 inch crown or roofing nails of sufficient length to penetrate roof decking. Maximum fastener spacing is 6 inches on-center each roof section. Place fasteners a minimum of 3/4 inches along edge of flashing.

(5) Install ridge shingles directly on top of flashing.

(6) Check remainder of roof for any damaged or lose shingles, remove any shipping plastic or netting, wind deflectors, etc. Make sure to seal any fastener holes with roofing cement.
Figure: 10 TAC §80.56(e)(6) (No change.)

(f) Exterior Endwall Close Up: Cut closure material to the shape and size required and secure in place, starting from the bottom up, i.e.: bottom starter, vertical or horizontal siding, then roof overhang, soffit and fascia. All closure material should be fitted and sealed as required to protect the structure or interior from the elements.

(g) HVAC (heat/cooling) Duct Crossover:

(1) Crossover duct must be listed for EXTERIOR use.

(2) Duct R-value shall be a minimum of R-4.

(3) The duct must be supported 48 inches on-center (maximum) and must not be allowed to touch the ground. Either strapping, to hang the duct from the floor, or pads to support it off the ground are acceptable.

(4) The duct to the collar or plenum connections must be secured with bands or straps approved for such use. Keep duct as straight as possible to avoid kinks or bends that may restrict the airflow. Extra length must be cut off.
Figure: 10 TAC §80.56(g)(4) (No change.)

(h) Water Crossover Connection (multi-sections only):

(1) If there is water service to other sections, connect the water supply crossover lines as shown in the applicable detail.
Figure: 10 TAC §80.56(h)(1) (No change.)

(2) If the water crossover connection is not within the insulated floor envelopes, wrap the exposed water lines in insulation and secure with a good pressure sensitive tape or nonabrasive strap, or enclose the exposed portion with an insulated box.

(3) If water piping at the inlet is exposed, a heat tape should be installed to prevent freezing. A heat tape receptacle has been provided near the water inlet. When purchasing a heat tape, it must be listed for manufactured home use, and it must be installed per manufacturer's instructions.

(i) Drain, Waste and Vent System (DWV):

(1) Portions of the DWV system which are below the floor may not have been installed, to prevent damage to the piping during transport. Typically, the DWV layout is designed to terminate at a single connection point to connect to the on-site sewer system. For a new home where on-site DWV connections are not assembled per the manufacturer's instructions, the DWV system must be assembled in accordance with Part 3280 of the FMHCSS.

(2) The following guidelines apply:

(A) All portions of the DWV system shall be installed to provide a minimum of 1/4 inch slope per foot, in the direction of the flow.

(B) Changes in direction from vertical to horizontal, and horizontal to horizontal, shall be made using long sweep elbows and/or tees.

(C) All drain piping shall be supported at intervals not to exceed 4 feet on-center. The support may be either blocking or strapping. When strapping is used, it should be nonabrasive.

(D) Piping must be assembled with the appropriate cleaners, primers and solvents (note: both ABS and PVC systems are common, but require different adhesives). Be sure to follow the instructions of the product used.

(E) A cleanout must be installed at the upper (most remote) end of the floor piping system (see diagrams in subparagraph (F) in this paragraph).

(F) Typical details:
Figure: 10 TAC §80.56(i)(2)(F) (No change.)

(j) Electrical Connections: Depending on the model and/or manufacturer of the home, electrical crossovers may be located in either the front end and/or rear end of the home. Check along mating line for other labeled access panels.

(1) Crossover connections may be one of the following:

(A) approved snap or plug-in type;

(B) junction boxes inside floor cavity (note: crossover wiring routed outside the floor cavity must be enclosed in conduit). If the boxes and/or covers are metal, they must be grounded by the use of the ground wire; or

(C) pigtail between receptacles/switches between sections (one circuit only).

(2) Chassis Bonding: Each chassis shall be bonded to the adjacent chassis with a solid or stranded, green insulated or bare, number 8 copper conductor. The conductor is connected to the steel chassis with a solderless lug. Alternate bonding: A 4 inch wide by 30 gauge continuous metal strap may be used as an alternate, when attached to the chassis members with two #8x 3/4 inch self tapping metal screws each end of the strap.
Figure: 10 TAC §80.56(j)(2) (No change.)

(3) typical crossover details:
Figure: 10 TAC §80.56(j)(3) (No change.)

(4) Shipped loose equipment:

(A) Electrical equipment such as ceiling fans, chandeliers, exterior lights, etc., which may have been shipped loose, must be installed in accordance with the adopted National Electric Code (NEC). Connect all corresponding color coded or otherwise marked conductors per the applicable sections of the NEC.

(B) Bonding strap removal: 240 volt appliances (range, dryer, etc.) shall have the bonding strap removed between the ground and the neutral conductors. Cords used to connect those appliances shall be four conductor, four prong.

(5) Electrical testing: At the time of installation, the following tests must be performed:

(A) All site installed or shipped loose fixtures shall be subjected to a polarity test to determine that the connections have been properly made.

(B) All grounding and bonding conductors installed or connected during the home installation shall be tested for continuity, and

(C) All electrical lights, equipment, ground fault circuit interrupters and appliances shall be subjected to an operational test to demonstrate that all equipment is connected and functioning properly.

(6) Main panel box feeder connection: The main panel box is wired with the grounding system separated from the neutral system (4-wire feeder). The grounding bus in the panel must be connected through a properly sized green colored insulated conductor to the service entrance equipment (meter base) located on or adjacent to the home. Refer to the following table for proper feeder conductor sizes.
Figure: 10 TAC §80.56(j)(6) (No change.)

(k) Fuel Gas Piping Systems:

(1) Crossover Connections: All underfloor fuel gas pipe crossover connections shall be accessible and be made with the connectors supplied by the home manufacturer, or, if not available, with flexible connectors listed for exterior use and a listed quick disconnect (Method A), or a shut-off valve (Method B). When shut-off valve is used, it must be installed on the supply side of the gas piping system. The crossover connector must have a capacity rating (BTUH) of at least the total BTUH's of all appliances it serves.

(2) Testing: The fuel gas piping system shall be subjected to an air pressure test of no less than 6 ounces and no more than 8 ounces. While the gas piping system is pressurized with air, the appliance and crossover connections shall be tested for leakage with soapy water or bubble solution. This test is required of the person connecting the gas supply to the home, but may also be performed by the gas utility or supply company.
Figure: 10 TAC §80.56(k)(2) (No change.)

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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10 TAC §80.64, §80.66

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §§80.119, 80.121 - 80.124, 80.126, 80.128, 80.130, 80.132, 80.135, 80.136

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.119. Installation Responsibilities.

(a) For new manufactured homes, the retailer is the installer and must warrant the proper installation of the home. If the retailer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed.

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must warrant the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with the installation warranty and site preparation notice. All verification and copies of the installation warranty and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

(1) The person contracting directly with the consumer for only the transportation of the used home to a manufactured home site is not an installer if the person does not perform or contract to perform any installation functions. In this case, the installer is the person that contracts for the construction of the foundation systems, whether temporary or permanent, and the placement and erection of the used home and its components on the foundation system.

(2) The selling retailer may sell a used home and deliver possession to the consumer at the sales location (e.g., F.O.B. the sales location). In this case, the retailer shall not perform any installation functions nor transport the home to the home site.

(c) The installer is fully responsible for the complete installation even though the installer may subcontract certain installation functions to independent contractors pursuant to §1201.102(b) of the Standards Act. It is unlawful for a subcontractor who is acting as an agent for a licensed installer to advertise and/or offer installation services to any person unless the licensed installer's name appears prominently in the advertisement.

(d) The sale of a new or used home by a retailer which includes an agreement to deliver the home and install the home at the home site is not completed until possession of the home is tendered to the consumer at the home site.

(e) Electrical, fuel, mechanical, and plumbing system crossover connections for multi-section homes, and completions of drain lines underneath all homes in accordance with DAPIA approved on-site assembly drawings are installer responsibilities and cannot be excluded by wording of the installation contract. The installation of air conditioning at the home site must be performed by a licensed air conditioning contractor. The installation and ventilation of skirting or other material that encloses the crawl space underneath a manufactured home is an installer responsibility, if it is part of the sales or installation contract.

(f) For all secondary moves (where there is no title transfer) the Notice of Installation and the required fee must be submitted to the department within ten (10) working days after the installation is completed.

(g) When the installer selects the department to inspect the permanent foundation before concealment, the installer shall file an application to install a manufactured home on a permanent foundation on a form approved by the department. The required fee for the permanent foundation installation report shall be forwarded with the application. After the department inspects the permanent foundation and indicates acceptance of the permanent foundation on the form, the title company, attorney, retailer, or retailer's agent later files the Notice of Installation, including a copy of the form, with the public land records of the county and forwards a copy to the department. The reporting fee does not have to be paid to the department again.

(1) Unless the retailer/installer follows the home installation manual or a department pre-approved foundation systems, a copy of the foundation system drawing as stamped and signed by the licensed engineer or architect must be filed with the application.

(2) The application must be received by the department at least ten (10) calendar days prior to the date on which construction of the permanent foundation system is scheduled to begin.

(3) Installers shall provide a copy of the application and the foundation system drawing to the department inspector at the time an inspection is performed.

(4) If the permanent foundation system design is approved by the authorized local government official and if the applicable building inspection fees are paid to the local government, the provisions of this section do not apply. The installer must, however, file a sworn statement of these facts with the Notice of Installation.

(5) If the permanent foundation for a home acquired and installed before January 1, 2002 is certified by the consumer/mortgagor and the lender/mortgagee in a real estate transaction, or is certified by the owner if there is no lien or the lien has been released, as having permanently affixed the structure to the real estate, the provisions of this section do not apply. The installation reporting fee must be paid and sent to the department along with the certification.

(6) When specifically requested in writing by the department with a Department Real Estate Inspection Request Form, a contracting local government shall make and perform inspection and enforcement activities related to the construction of the foundation that permanently affixes a manufactured home to real estate. If the permanent foundation system and other site improvements are inspected and accepted by a contracting local government official before concealment, the local government records may be the verification required by

§1201.222(c) of the Standards Act. The retailer/installer must file a Notice of Installation, including a copy of the local government inspection report, with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.

(7) If the site suitability, site preparation, site improvement, foundation construction, and installation for a home acquired on or after January 1, 2002 are verified by a retailer or installer, the provisions of this section do not apply, but the title company, attorney, retailer, or retailer's agent must file a Notice of Installation with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.

§80.121. Retailer's Responsibilities.

(a) Manufactured housing retailers shall retain as part of each sales record and make available for copying and review by department personnel, upon request during normal business hours, the following information:

(1) For all manufactured homes:

(A) name and address of the purchaser and the date of purchase;

(B) verification that the purchaser received the Formaldehyde Health Notice required by §1201.153 of the Standards Act;

(C) verification that the purchaser was advised of the Wind Zone, thermal zone, and roof load zone for which the home was constructed. If this information is not available for a used home, the purchaser will be advised of this fact and the used home will be disclosed as being constructed to Wind Zone I, thermal zone 1, and the roof load design for the South;

(D) verification that the purchaser received the Wind Zone notice as required by §80.50 of this title (relating to Wind Zone Regulations);

(E) verification that the purchaser received the site preparation notice;

(F) verification that the purchaser received written notice of the two (2) year limitation of notice for filing a claim with the department;

(G) verification that the Disclosure required by §80.181 of this title (relating to Section 162 Notice) was provided to the purchaser prior to completing a credit application;

(H) verification that the disclosure required by §80.182 (relating to 163 Disclosure) be delivered to the consumer at least 24 hours before execution of the contract in a chattel mortgage or consumer loan transaction;

(I) copies of the Notice of Installation and attached documents;

(J) if the sale of a home includes air conditioning, the name and license number of the air conditioning contractor which installed the air conditioning system in accordance with §80.64(d) of this title (relating to Procedures for Alterations); and

(K) complete records of all alterations, in accordance with 24 CFR §3282.254.

(2) For all new manufactured homes:

(A) verification that a copy or the general description of the manufacturer's new home warranty and installation warranty were given to the consumer prior to the retailer's signing of any binding retail installment sales contract or other mutually binding agreement.

(B) verification that the manufacturer's new home warranty, consumer's manual, and retailer's installation warranty were delivered to the purchaser;

(C) verification of the date that the manufactured home information card was mailed to the manufacturer; and

(D) verification of delivery of conspicuous notice relating to defect or damage under the new home warranty as required by §1201.359(b) of the Standards Act.

(3) For used manufactured homes:

(A) verification that the purchaser received the written 60-day habitability warranty;

(B) verification that a copy or the general description of the retailer's installation warranty were given to the consumer prior to signing of any binding retail installment sales contract or other mutually binding agreement, if the retailer contracted for the installation as a part of the sales agreement; and

(C) verification that the purchaser received the retailer's installation warranty if the retailer contracted for the installation as a part of the sales agreement.

(b) All verifications and copies of notices required by this chapter must be maintained in the retailer's sales file, and the sales file must be maintained for a period of not less than six (6) years from the date of sale. If a retailer has more than one sales location and wishes to maintain all of its records at a central location, it may do so provided that the retailer notifies the department more than sixty (60) calendar days in advance that its records are being maintained at a central location by providing the address of such location. Absent such notice the records of a particular home must be maintained at the address where the home is in inventory and from which it was sold. If the retailer wishes to discontinue the centralization of its records or to change the address where its records are kept, the retailer must notify the department more than sixty (60) calendar days in advance of the change of the location and the address and effective date of the new location.

(c) For new homes or used homes manufactured on or after September 1, 1997, a manufactured housing license holder shall not contract for sale or installation of any home under which the home would be installed in a wind zone, thermal zone, or roof load zone other than that allowed on the data plate.

§80.123. License Requirements.

(a) Manufacturer. Any person constructing or assembling new manufactured housing for sale, exchange, or lease purchase within this state shall be licensed as a manufacturer. An application shall be submitted on the form required by the department and shall be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Every distinct corporate entity must be separately licensed. Each separate plant location operated by a license holder which is not on property which is contiguous to or located within 300 feet of the license holder's licensed manufacturing facility requires a separate license and security.

(b) Retailer. Any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease purchase to consumers shall be licensed as a retailer. An application for license shall be submitted on the form required by the department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. No person shall be considered a retailer unless

engaged in the sale, exchange, or lease purchase of two or more manufactured homes to consumers in any consecutive twelve (12) month period. Sales, exchanges, or lease purchases by any employee or agent of a business entity are deemed to be sales of the business entity. Each separate sales location which is not on property which is contiguous to or located within 300 feet of a licensed sales location requires a separate license and security.

(c) Broker.

(1) Any person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding shall be licensed as a manufactured housing broker. An application for license shall be submitted on the form required by the department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Each office location of the broker shall be licensed and proper security posted unless an office is on property which is contiguous to or located within 300 feet of an office licensed with the department.

(2) A broker shall not maintain a location for the display of manufactured homes without being licensed as a retailer.

(3) Paragraphs (1) and (2) of this subsection shall not apply to the sale, exchange, or lease purchase of a manufactured home in a single real estate transaction when the home and land are sold as realty with improvements.

(d) Rebuilder. Any person who desires to be licensed by the department to alter, repair, or otherwise rebuild a salvaged manufactured home, as that term is defined in §1201.461 of the Standards Act, within this state, shall be licensed. An application shall be submitted on the form required by the department and shall be completed, giving all the requested information. The application shall be accompanied by the required license fee and Articles of Incorporation or Assumed Name Certificate.

(e) Installer.

(1) Every person who contracts to perform or performs installations shall submit the required security, complete the necessary license forms and any other information needed, and be issued a license prior to performing an installation function. The required license fee must accompany the application for license and Articles of Incorporation or Assumed Name Certificate.

(A) Each applicant for license shall have public liability insurance coverage, including completed operations coverage in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence. A combined single limit of $300,000 will be considered to be in compliance with this section. If the applicant will be engaged in the transportation of manufactured housing incidental to the installation, the applicant must also have motor vehicle liability insurance coverage in an amount of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence, $100,000 property damage each occurrence. A combined single limit of $500,000 will be considered to be in compliance with this section. Cargo insurance on each home or transportable section of not less than $50,000 per towing motor vehicle is required.

(B) At the time of initial license and on renewal, a certificate of insurance must be filed with the department by the insurance carrier or its authorized agent certifying the kind, type and amount of insurance coverage and which provides for thirty (30) calendar days notice of cancellation. If the applicant does not provide proof of the required motor vehicle liability insurance and the cargo coverage, the applicant must sign an affidavit that the applicant will not engage in any transportation of manufactured housing. If the applicant transports only his/her own property, and furnishes the department with an affidavit attesting to that fact, cargo coverage is not required.

(C) An installer, also licensed as a retailer, may satisfy the insurance requirements by filing a certificate of insurance which shows that the license holder has motor vehicle-garage liability coverage including completed operations, and has dealer's physical damage (open lot) including transit insurance coverage in amounts not less than those set forth in subparagraph (A) of this paragraph.

(D) If the required insurance coverage expires or is canceled, and proof of replacement coverage is not received prior to the expiration date or date of cancellation, the installer's license is automatically terminated.

(2) The installer responsible for the installation in accordance with the provisions of §80.119 of this title (relating to Installation Responsibilities) shall maintain a file containing a copy of the installation report as filed with the department.

(f) Homeowner's Temporary Installation.

(1) A homeowner may apply for a temporary license as an installer for the purpose of installing such owner's used manufactured home. The application shall be submitted on a form and contain such information as required by the department, and it must be accompanied by a cashier's check or money order payable to TDHCA in payment for the required fee. The issuance of a homeowner's temporary installer's license by the department shall not relieve any warranty responsibility required by the Standards Act except for damage or defects which may occur as a result of the installation of the home by the homeowner.

(2) The application must be accompanied by a certificate of insurance issued by the insurance carrier or its authorized agent to prove insurance coverage for the installation of the home as follows: public liability insurance coverage including completed operations in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence, for which a combined single limit of $300,000 will be considered to be in compliance with this section; and motor vehicle liability insurance coverage of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence and $100,000 property damage each occurrence, for which a combined single limit of $500,000 will be considered to be in compliance with this section. A copy of the home manufacturer's installation instructions, custom designed installation instructions stamped by a Texas licensed professional engineer or architect, or an installation plan with details and specifications conforming to the state's generic standards shall accompany the application.

(3) Upon approval of the application, the homeowner will be issued a temporary license for the installation of that home set out in the application and a temporary installer's (TI) number. The temporary license shall be valid only for thirty (30) calendar days.

(4) The temporary installer's (TI) number must be displayed on the back of the home in letters and figures not less than 8 inches in height when the home is moved over the roads, streets, or highways in this state.

(g) Salesperson.

(1) A salesperson means an individual, partnership, company, corporation, association, or other group who, for any form of compensation, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of

a retailer or broker. A person or entity licensed as a retailer or broker with the department is not required to be licensed as a salesperson, and the owner of a sole proprietorship, a partner in a partnership, or an officer in a corporation which is duly licensed does not need a salesperson's license so long as such individual is listed in the ownership of the application filed with the department.

(2) The salesperson is an agent of the retailer or broker for whom sales or lease-purchases, or offers, are made. This includes the general manager, sales manager, office manager or anyone involved in showing and offering homes for sale. The retailer or broker is liable and responsible for the acts or omissions of a salesperson in connection with the sale or lease-purchase of a manufactured home. It is a violation of the Standards Act and this chapter for a retailer or broker of manufactured housing to employ a salesperson who is not licensed with the department.

(3) An application for license must be made by every salesperson. Each applicant for a salesperson's license must file with the department an application for license on a form provided by the department containing:

(A) the full legal name, permanent mailing address, date of birth, telephone number, Texas driver's license number or Texas identification number, and social security number of the applicant;

(B) places of employment of the applicant for the preceding three (3) years, providing the name of firm(s), address(es), and dates of employment; and

(C) a statement that the applicant is the authorized agent for a manufactured housing retailer or broker; the statement shall be signed by the employer. If there is a change in name, address, telephone, email address, or employer, an amended application must be submitted to the department within ten (10) calendar days of this change.

(4) Except as may otherwise be authorized, the fee for a salesperson's license shall be submitted to the department in the form of a cashier's check or money order. Salesperson licenses shall be valid for a period of one (1) year from the date of issuance.

(5) Payment of the renewal fee shall be made by the salesperson and submitted to the department along with the completed license renewal notice prior to the expiration of the current license.

(6) Salespersons shall be issued a license card by the department containing effective date and license number. The salespersons shall be required to present a valid license card upon request.

(h) Applicable License Holder Ownership Changes.

(1) A license holder shall not change the location of a licensed business unless the license holder first files with the department:

(A) a written notification of the address of the new location;

(B) an endorsement to the bond reflecting the change of location; and

(C) the original license.

(2) The change of location is not effective until the notification and endorsement are received by the department.

(3) For a change in ownership of less than fifty percent (50%) of the licensed business entity, no new license is required provided that the existing bond or other security continues in effect. However, the current Articles of Incorporation or Assumed Name Certificate must accompany the request.

(4) For a change in ownership of fifty percent (50%) or more, the license holder must file with the department, along with the appropriate fee and Articles of Incorporation or Assumed Name Certificate:

(A) a license addendum by the purchaser providing information as may be required by the department; and

(B) certification by the surety that the bond for the licensed business entity continues in effect after the change in ownership; or

(C) an application for a new license along with a new bond or other security and proof that the education requirements of §1201.113 of the Standards Act, have been met.

(i) Education Requirements. Effective September 1, 1987, all applicants for license, except salespersons, shall attend and complete 20 hours of educational instruction as required by the Standards Act and this chapter. A manufacturer may request a one-day in-plant training session be presented by the department in lieu of completing the instruction requirement. The license will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the business location, or the salesperson to be licensed, attends and completes this educational requirement. Except as provided in §80.123(o), this section shall not apply to the renewal of licenses, nor to the license of additional business locations.

(j) Approving a training program conducted by a nonprofit educational institution or foundation as sanctioned by §1201.104(c)(2) of the Standards Act.

(1) An organization requesting approval to conduct the educational course required by the Standards Act must file a course approval request and course materials at least ninety (90) calendar days before the date of the first scheduled presentation. The director shall deliver a written notice of approval or denial no later than thirty (30) calendar days after receiving the request. If denied, the requestor may resubmit the course with corrections. The director will deliver a written notice of approval or denial no later than fifteen (15) calendar days after receiving the re-submittal.

(A) Approval of Training Program: The director will approve the training program if the requirements in this subsection are met and the materials submitted comply with the required course topics in paragraph (3) of this subsection.

(B) Denial of Training Program: The director will not approve the training program if the requirements are not met and the materials submitted do not comply with the required course topics in paragraph (3) of the subsection. The requestor will receive a written notice detailing the reason(s) for the denial. The requestor may re-submit the course with corrections as mentioned in paragraph (1) of this subsection.

(2) As a prerequisite for a license, the course must be twenty (20) hours in length and instruct the potential attendee in the law and consumer protection regulations.

(3) An educational training course shall consist of the following topics:

(A) Presentation of the Law and Rules.

(i) Occupations Code, Chapter 1201, the Standards Act

(ii) Chapter 80, Texas Administrative Code, Administrative Rules

(iii) Texas Finance Code (applicable sections)

(iv) Texas Transportation Code (applicable sections)

(v) Federal Truth -in-Lending Act

(vi) Property Code

(B) Statement of Ownership and Location.

(i) Seals

(ii) Application Fees

(iii) Application Processing

(iv) Description of Forms

(v) Property Election

(C) Licensing.

(i) Manufacturer Application Form Requirements

(ii) Retailer Application Form Requirements

(iii) Installer Application Form Requirements

(iv) Salesperson Application Form Requirements

(v) Broker Application Form Requirements

(vi) Salvage/Rebuilder Application Form Requirements

(vii) Insurance and Bond Requirements

(viii) License Renewal and Revision Requirements

(ix) Sale of non-habitable homes

(x) Retailer and Installer Responsibilities

(D) Installations.

(i) Anchoring, supporting, and multi-section connecting standards

(ii) Requirements for Completing the Installation Inspection Report Form

(E) Consumer Complaints.

(i) Consumer Complaint Process

(ii) Delivery of Warranty

(iii) Correction Requirements

(iv) Requirements for Completing the Complaint Forms

(F) Dispute Resolution.

(i) Dispute Resolution Process

(ii) Texas Government Code, Chapter 2306

(iii) Federal Trade Commission Manual: "How to Advertise Consumer Credit"

(iv) Business & Commerce Code, Deceptive Trade Practices (applicable sections)

(4) The training organization must provide each attendee of the class with written proof of having completed the entire 20 hour course.

(5) The primary administrator for the training program will be notified by the director of changes to the Law and Rules and the date that the changes will become effective.

(6) The director may revoke course approval for failure to comply with the standards or procedures set forth in this subsection. Unless surrendered or revoked for cause, the approval will be valid for a period of two (2) years.

(k) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Repeat Violations of the Standards Act or Department Rules.

(1) The following criteria shall be utilized to determine whether an applicant shall be issued or renewed a license if the applicant within the last two years from the date of the application has:

(A) two Agreed Final Orders of the same kind or type of violations; or

(B) one Final Order of the same kind or type of violations.

(2) If the department suspends, revokes, or denies renewal of a valid license, or denies a person's license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior violations history, the department shall:

(A) notify the person in writing stating reasons for the suspension, revocation, renewal denial, denial of disqualification; and

(B) offer the person the opportunity for a hearing on the prior violation history.

(l) Denial, Suspension, Renewal Denial, or Revocation of License relating to the history of non-compliance with the Standards Act and Rules.

(1) The department will consider the background of the applicant, license holder, sole proprietor, partner officer, managing employee, chief executive officer, chief executive operating officer, and directors of a corporation.

(2) In the evaluation the department will consider the non-compliance history with the Standards Act and this chapter and will comply with the Texas Government Code, Chapter 2001, in proceeding with denial, suspension, or revocation of a license.

(m) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Criminal Background.

(1) The following criteria shall be utilized to determine whether an applicant shall be issued a license if that applicant states in his/her application for said license that he/she has a record of criminal convictions within five (5) years preceding the date of the application:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the intended manufactured housing business activity;

(C) the extent to which a license holder might engage in further criminal activity of the same or similar type as that in which the applicant previously had been involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the license holder's occupation or industry; and

(E) whether the offenses were defined as crimes of moral turpitude by statute or common law, from Class A misdemeanors to first, second, and third degree felonies carrying fines and/or imprisonment or both. Special emphasis shall be given to the crimes of robbery, burglary, theft, embezzlement, sexual assault, and conversion.

(2) In addition to the factors that may be considered in paragraph (1) of this subsection, the department, in determining the present fitness of a person who has been convicted of a crime, may consider the following:

(A) the extended nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal conviction;

(D) the conduct and work activity of the person prior to and following the criminal conviction;

(E) evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(3) It shall be the responsibility of the applicant to the extent possible to secure and provide to the department the recommendations of the prosecution, law enforcement, and correctional authorities as required by this subsection.

(4) The applicant shall furnish proof in any form, as may be required by the department, that he/she has maintained a record of steady employment and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant was convicted.

(5) If the department suspends or revokes a valid license, or denies a person a license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior conviction of a crime and the relationship of the crime to the license, the department shall:

(A) notify the person in writing stating reasons for the suspension, revocation, denial, or disqualification; and

(B) offer the person the opportunity for a hearing on the record.

(n) License Renewal Requirements. It is the responsibility of the license holder to renew the license prior to its expiration date.

(1) The department will mail each license holder a renewal notice and application for renewal at least forty-five (45) calendar days prior to the date on which the current license expires. Notice will be mailed to the last known address indicated in department records.

(2) In order to prevent the expiration of a certificate of license, all applications for license renewals must be received by the department prior to the date on which the current license expires.

(3) If an application for license renewal is received by the department after the date on which the current license expires, the license will not be reinstated except with approval of the director. The director may require a hearing prior to reinstatement.

(4) All renewal licenses and a reinstatement license approved by the director shall be dated as of the day following the date on which the current license expires.

(o) Continuing Education Requirements.

(1) Covered persons. The following persons are deemed to be engaged in sales of manufactured housing and, therefore, must be certified as having completed eight (8) hours of approved continuing education each year in order to renew any license as a retailer, broker, or salesperson on or after January 1, 2005:

(A) Any principal of any sole proprietorship or business organization that is licensed as a retailer or broker. As used herein a person is deemed to be a principal if they are an officer, manager, or other person participating in making management or policy decisions for the licensee;

(B) Any agent or other representative of any retailer or broker that is involved in any activity of that retailer or broker relating to the marketing or sale of manufactured homes to consumers, not including a person whose sole involvement is ministerial, clerical, or incidental;

(C) Any licensed salesperson.

(2) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses a party wishing to be considered for such approval must submit, for each course for which approval is sought, a letter application, accompanied by a nonrefundable processing fee of $300, and the following:

(A) A narrative overview of the course, describing subject matter to be covered;

(B) Brief biographies, including credentials, of each instructor;

(C) A copy of any course materials to be used. If the course materials are deemed to be proprietary they should be placed in a separate envelope, marked confidential, and accompanied by a written statement as to why they should not be treated as open records. There is no assurance that such materials will ultimately be accorded any exemption from disclosure under the Open Records provisions of the Government Code. If the course is to be offered online, a hard copy of the material as well as an electronic version must be submitted.

(D) A schedule of fees to be charged for the course;

(E) As such information becomes available, an indication as to the locations, times, and dates for offerings, or if provided online, instructions for how and when the course may be taken; and

(F) Such other information as the Department may require.

(3) Once the staff determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the board of Directors for consideration. The staff will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) working days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(A) Approvals shall be for a period not to exceed two years. The Director may, at no cost, send a representative to attend any approved course to determine that the course is being taught in accordance with the terms of approval.

(B) The Director may revoke or suspend approval of a course if the Director determines that the course is not being taught in accordance with the terms of approval or that the course is not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before

an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Director, the Director's order of suspension or revocation shall become final.

(p) Application and Appeals.

(1) Initial application processing.

(A) It is the policy of the department to issue the license within seven (7) working days after receipt of all required information and the following conditions have been met:

(i) all required forms are properly executed; and

(ii) all requirements of applicable statutes and department rules have been met.

(B) License applications and accompanying documents received shall be processed and issued within seven (7) working days if all conditions for license have been met.

(C) License applications and accompanying documents found to be incomplete or not properly executed shall be returned to the applicant with an explanation of the specific reason and what information is required to complete license. Upon receipt of all required information, the license will be issued within seven (7) working days.

(D) Upon written request, the department will call the license holder and provide the license number assigned.

(2) Appeals. Applicants may appeal any dispute arising from a violation of the time periods set for processing an application. An appeal is perfected by filing with the director a letter explaining the time period dispute. The letter of appeal must be received by the director no later than twenty (20) calendar days after the date of the letter of explanation from the department outlined in paragraph (1)(C) of this subsection. The department will decide the appeal within twenty (20) calendar days of the receipt of the letter of appeal by the director.

§80.124. Deposits and Down Payments.

(a) The retailer, salesperson, or agency of the retailer shall not retain or keep a deposit except in accordance with this section.

(b) A deposit on a home in inventory must be refunded within fifteen (15) calendar days following the date of written notice from the depositing consumer requesting the refund. The retailer must hold the home in inventory for purchase by the consumer making the deposit until the deposit is refunded. The retailer may refund the deposit at any time to the depositing consumer, but the retailer must not sell the home to any other consumer until the deposit on the home in inventory has been refunded.

(c) A retailer may require an earnest money deposit on a specially ordered manufactured home only if:

(1) an earnest money contract has been signed by all parties;

(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and

(3) the consumer has not rescinded the contract under §1201.1521 in the Standards Act.

(d) A deposit on a special ordered home which is not in inventory must be refunded within fifteen (15) calendar days following the date of written notice from the depositing consumer requesting the refund under the following conditions:

(1) The retailer, salesperson, or agent does not have record of the consumer being given conspicuous written notice of the requirements for retaining the deposit as set forth by §1201.151 in the Standards Act, along with all of the notices and forms required by the Standards Act to be given to the consumer prior to the execution of any mutually binding contract.

(2) The special ordered home is delivered or ready to be delivered and fails to conform to the specifications or representations, if any, made to the consumer by the retailer.

(e) On a special ordered home which is not in inventory, the retailer may retain the deposit provided that:

(1) the home conforms to the specifications of the special order and the representations, if any, made to the consumer are not altered without the consumer's consent;

(2) the consumer fails or refuses to accept delivery and installation of the home by the retailer; and

(3) the consumer is given conspicuous written notice of the requirements for retaining the deposit as set forth in this subsection along with all of the notices and forms required by this chapter to be given the consumer prior to the execution of any mutually binding contract.

(f) The retailer may not retain more than five percent (5%) of the estimated cash price of the home which is specially ordered, and the retailer must refund any amount of the deposit which exceeds five percent (5%).

(g) In a financed transaction, the deposit becomes the down payment, or part thereof, following credit approval and the execution of a retail installment sales contract, and the provisions of this section do not apply.

(h) To ensure that the down payment required by the creditor in a financed transaction is actually received by the retailer at the time of the execution of the contract or document, the actual source of the funds for the down payment must be verified by the consumer, the retailer, and the salesperson on a form prescribed by the department. The Down Payment Verification Affidavit must be signed and notarized by the consumer, the retailer, and the salesperson prior to the execution of a retail installment sales contract or agreement.

(i) This Down Payment Verification Affidavit must denote in at least 14 point bold font "The amount of my down payment is the true amount noted on my retail installment contract."

(j) The provisions of this section do not apply to a deposit or funds held in an escrow account in connection with a real estate transaction.

§80.126. Rules for Hearings.

(a) Unless otherwise expressly set forth in the Standards Act or this chapter, all hearings shall be held and conducted pursuant to the applicable provisions of Government Code, Chapter 2001.

(b) Any party to a hearing may request that a record of the hearing be made and transcribed by an independent court reporter, other than an employee of the department. Such request must be made not later than seven (7) calendar days prior to the hearing. The additional cost and expense of the independent court reporter may be assessed against the party making the request. In all hearings, the published rules and regulations of the secretary of HUD shall be considered, if relevant. If the department believes that such rules and regulations are relevant to any issue to be involved in the hearing, the notice of hearing shall specifically refer to such HUD rules and regulations.

(c) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, the hearing may proceed in that party's absence and a default judgment may be entered.

(d) Any person for whom a license was revoked, denied, or suspended by a final order issued after a hearing under Government Code, Chapter 2001, may only be issued a new license after a hearing under Government Code, Chapter 2001, and determination by the director that the certificate of license may be issued.

(e) Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the department within ten (10) working days of the Proposal for Decision, with replies to be filed ten (10) working days after the filing of exceptions.

(f) When an administrative hearing is held for any matter in which the Department seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the Department shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of $100 or the actual costs charged to the Department by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(g) The Department will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

§80.136. Homes Acquired on or after January 1, 2002.

(a) When a retail sale of a manufactured home occurs and that home will be treated as real property under §1201.2055 of the Standards Act:

(1) The closing of that sale must occur at either a title company authorized to do business in Texas, an attorneys' office, or an office of a federally insured depository institution, regardless of whether the manufactured home or the real property on which it will be located is or will be the homestead of the purchaser.

(2) The method or manner of installation must be supported by documentation establishing the particular requirement with which it complies and the basis on which it was concluded that such particular requirement and particular department standard were met, such as a report by:

(A) an FHA, FNMA, or FHLMC approved inspector;

(B) an engineer, architect, real estate inspector, or appraiser licensed by the state of Texas; or

(C) an inspector employed by and inspecting for the state of Texas or a local government in Texas.

(b) When a manufactured home is installed or re-installed, the licensed installer (or, in the case of a retail sale of a new home, the retailer) shall provide to the Department a statement as to the name of the legal owner(s) of the property on which such manufactured home is being installed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 16, 2004.

TRD-200401989
Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
Effective date: May 2, 2004
Proposal publication date: September 19, 2003
For further information, please call: (512) 475-2206

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.12

The Texas Board of Architectural Examiners adopts new section 1.12 for Title 22, Chapter 1, Subchapter A, pertaining to a statutory joint advisory committee to advise the Board and the Texas Board of Professional Engineers on issues related to the practice of engineering, the practice of architecture, and the practice of landscape architecture, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11197). The section is being adopted without changes, and the text will not be republished in the *Texas Register*.

The new rule will govern issues related to the appointment, tenure, and functions of the statutory joint advisory committee as follows: the Board's chairman will appoint three members of the Board and one architect who is not a member of the Board to serve on the joint advisory committee. The three members of the Board will include two architects and one landscape architect. Members will serve staggered six-year terms. The terms of one or two of the members must expire each odd numbered year. The joint advisory committee will meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture. The joint advisory committee will issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including whether certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture; specific disciplinary proceedings initiated by the Board or by TBPE; and the need for persons working on particular projects to be registered by the Board or licensed by TBPE. The Board will notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board. The Board will enter into a memorandum of understanding with TBPE regarding the joint advisory committee. The mission of the joint advisory committee will be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

New section 1.12 provides for a group of qualified people to handle complex issues resulting from the overlap of the three professions. In addition, the two agencies will be provided with reliable guidance regarding enforcement issues related to the overlap of the three professions.

The agency received no comments pertaining to the proposal to adopt this new section.

The new section is adopted pursuant to Sections 1051.202 and 1051.212 of Tex. Occupations Code Annotated ch. 1051, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the statutory joint advisory committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2004.

TRD-200401960
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: April 4, 2004
Proposal publication date: December 19, 2003
For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.21, §1.22

The Texas Board of Architectural Examiners adopts amendments to Sections 1.21 and 1.22 for Title 22, Chapter 1, Subchapter B, pertaining to registration as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11198). Section 1.21 is being adopted with changes. Section 1.22 is being adopted without changes, and the text will not be republished in the *Texas Register*.

The only change to Section 1.21 as proposed removes the word "certified" from the phrase "other certified documentation."

The amended Section 1.21 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The amended Section 1.22 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The amendment reflects a recently enacted legislative change.

As a result of the amendments to the sections, the agency will be upholding its statutory responsibility to assist with enforcement of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, with regard to the amendment to the reciprocal registration rule, the opportunities for obtaining reciprocal registration will be clearly described in the rules.

The agency received no comments pertaining to the proposals to amend these sections.

The amendments are adopted pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges only under certain specified circumstances.

§1.21. Registration by Examination.

(a) In order to obtain architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from an architectural education program accredited by the National Architectural Accreditation Board (NAAB) or from an architectural education program outside the United States where an evaluation by NAAB or another organization acceptable to the Board has concluded that the program is substantially equivalent to an NAAB accredited professional program;

(2) shall successfully demonstrate completion of the Texas Board of Architectural Examiners Intern Development Training Requirement; and

(3) shall successfully complete the architectural registration examination as more fully described in Subchapter C.

(b) An Applicant for architectural registration by examination shall not be required to complete the Texas Board of Architectural Examiners Intern Development Training Requirement if the Applicant successfully demonstrates that prior to January 1, 1984, he/she acquired at least eight (8) years of acceptable architectural experience or eight (8) years of a combination of acceptable education and experience.

(c) An Applicant for architectural registration by examination who commenced his/her architectural education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.

(d) For purposes of this section, an Applicant shall be considered to have "commenced" his/her architectural education upon enrollment in an acceptable architectural education program.

(e) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board'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 March 15, 2004.

TRD-200401961
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: April 4, 2004
Proposal publication date: December 19, 2003
For further information, please call: (512) 305-8535

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SUBCHAPTER C. EXAMINATION

22 TAC §1.41

The Texas Board of Architectural Examiners adopts an amendment to section 1.41 for Title 22, Chapter 1, Subchapter C, pertaining to the refund of examination fees as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11199). The section is being adopted with changes. The section describes requirements related to the general procedures for requesting refunds of fees for the examination for architectural registration in Texas.

The amendment to section 1.41 adds a new section regarding refunds of examination fees. It states that the application fee is not refundable but that a portion of the examination fee paid to the national examination provider may be refunded if a candidate is precluded from taking or scheduling the examination because of extreme hardship. The new section requires the submission of a written request for refund within thirty days of the examination date. The new section states that an examination fee may not be transferred to a subsequent examination.

Changes to the amendments to section 1.41, as proposed, include changing the phrase "date of the scheduled examination" to "date the examination was scheduled or intended to be scheduled" and adding "[a]pproval of the request [for a refund] and refund of the fee or portion of the fee by the national examination provider" as an additional condition precedent for granting refunds of examination fees.

As a result of the amendment, the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The Board received no comments pertaining to the proposal to amend section 1.41.

The amendment to this section is adopted pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

§1.41. Requirements.

(a) Every Applicant for architectural registration by examination in Texas must successfully complete all sections of the Architect Registration Examination (ARE).

(b) The Board may approve an Applicant to take the ARE only after the Applicant has completed the educational requirements for architectural registration by examination in Texas, has completed at least six (6) months of full-time experience working under the direct supervision of a licensed architect, and has submitted the required application materials.

(c) An Applicant may take the ARE at any official ARE testing center but must satisfy all Texas registration requirements in order to obtain architectural registration by examination in Texas.

(d) Each Candidate must achieve a passing score in each division of the ARE. Scores from individual divisions may not be averaged to achieve a passing score.

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date the examination or portion of the examination was scheduled or intended to be scheduled. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(C) Approval of the request and refund of the fee or portion of the fee by the national examination provider.

(3) An examination fee may not be transferred to a subsequent examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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 §1.45

The Texas Board of Architectural Examiners adopts new section 1.45 for Title 22, Chapter 1, Subchapter C, pertaining to special accommodations for taking the Architect Registration Examination as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11199). The section is being adopted without changes, and the text will not be republished in the *Texas Register*.

New §1.45 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her

disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical, mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

The board received no comments pertaining to the proposal to adopt this section.

The new section is adopted pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §1.65, §1.66

The Texas Board of Architectural Examiners adopts amendments to sections 1.65 and 1.66 for Title 22, Chapter 1, Subchapter D, pertaining to renewal and reinstatement as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11201).

The sections are being adopted with changes.

The sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

The changes to §1.65 involve removing text that differentiates "registration by examination" from "registration by reexamination" and deleting references to the requirement that the applicant complete the "current" registration examination.

The amendment to §1.65 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration and satisfy all requirements for registration, including the successful completion of the registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the registration examination; or (3) submit an application for registration and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application.

The change to §1.66 involves adding the phrase "by operation of law" in subsection (f) of the section. The purpose of the change is to clarify that the subsection applies only to cancellations that are effectuated by operation of law rather than to all cancellations.

The amendment to §1.66 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered in lieu of disciplinary action, or cancelled by operation of law due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also states that a registration cancelled due to the registrant's failure to renew it may not be reinstated.

The Board received no comments pertaining to the proposal to amend these sections.

The amendments are adopted pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency, and pursuant to Section 1051.403 of the Tex. Occupations Code, which allows

the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement.

§1.65. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Architect at the Architect's current address of record. An Architect must notify the Board in writing each time the Architect's address of record changes, and the written notice of the Architect's change of address must be signed by the Architect and submitted to the Board within sixty (60) days of the effective date of the change of address.

(b) An Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(c) Each Architect must pay a mandatory $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

(d) If an Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Architect's registration, the Board shall impose a late payment penalty that must be paid before the Architect's registration may be renewed.

(e) If the Board receives official notice that an Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Architect presents to the Board a certificate from TGSLC certifying that the Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Architect presents to the Board a certificate from TGSLC certifying that the Architect is not in default on a loan guaranteed by TGSLC.

(f) If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's registration.

(g) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 1.21, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 1.22, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

§1.66. Reinstatement.

(a) Once the revocation, cancellation, or surrender of an Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) If a reinstatement Applicant has practiced architecture or used any form of the title "architect" in violation of the Architects' Registration Law since the effective date of the revocation, cancellation, or surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the revocation, cancellation, or surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been revoked for a continuous period of five (5) years or longer;

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the revocation of a registration; or

(3) the registration was voluntarily surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the revocation, cancellation, or surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas architectural registration requirements.

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

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) 305-8535

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SUBCHAPTER E. FEES

22 TAC §1.81, §1.82

The Texas Board of Architectural Examiners adopts amendments to Sections 1.81 and 1.82 for Title 22, Chapter 1, Subchapter E, pertaining to fees, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11201).

Section 1.81 is being adopted without changes, and the text will not be republished in the *Texas Register*. Section 1.82 is being adopted with changes.

The sections describe the method of establishing fees, the amounts of fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The amendment to Section 1.81 adds the agency's fee schedule to the section, clarifies that cash will not be accepted as payment for any fee, adds a reference to a processing fee to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status.

One change to the proposed amendment to §1.82 involves replacing the sentence "[a] registration certificate shall become invalid on its designated expiration date unless it is renewed" with "[a] person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed" in Subsection (b). The other change replaces "registrant" with "Registrant" to denote a defined term.

The amendment to Section 1.82 describes the automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

The Board received one comment pertaining to the proposal to amend these sections. The comment suggested that the Board should consider exempting members of the military from having to submit annual renewal forms when they are on active duty in a combat situation. The Board declined to take action to implement the suggestion because of the importance of maintaining current information related to all registrants.

The amendments are adopted pursuant to Section 1051.651 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

§1.82. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration. If a Registrant fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration, the Board shall require that the Registrant pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed.

(c) If a Registrant fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's current address of record.

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
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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.12

The Texas Board of Architectural Examiners adopts new section 3.12 for Title 22, Chapter 3, Subchapter A, pertaining to a statutory joint advisory committee to advise the Board and the Texas Board of Professional Engineers on issues related to the practice of engineering, the practice of architecture, and the practice of landscape architecture, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11203).

The section is being adopted without changes, and the text will not be republished in the *Texas Register*.

The new rule will govern issues related to the appointment, tenure, and functions of the statutory joint advisory committee as follows: the Board's chairman will appoint three members of the Board and one architect who is not a member of the Board to serve on the joint advisory committee. The three members of the Board will include two architects and one landscape architect. Members will serve staggered six-year terms. The terms of one or two of the members must expire each odd numbered year. The joint advisory committee will meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture. The joint advisory committee will issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including whether

certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture; specific disciplinary proceedings initiated by the Board or by TBPE; and the need for persons working on particular projects to be registered by the Board or licensed by TBPE. The Board will notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board. The Board will enter into a memorandum of understanding with TBPE regarding the joint advisory committee. The mission of the joint advisory committee will be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

New section 3.12 provides for a group of qualified people to handle complex issues resulting from the overlap of the three professions. In addition, the two agencies will be provided with reliable guidance regarding enforcement issues related to the overlap of the three professions

The board received no comments pertaining to the proposal to adopt this new rule.

The new section is adopted pursuant to Sections 1051.202 and 1051.212 of Tex. Occupations Code Annotated ch. 1051, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the statutory joint advisory committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21, §3.22

The Texas Board of Architectural Examiners adopts amendments to Sections 3.21 and 3.22 for Title 22, Chapter 3, Subchapter B, pertaining to registration, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11205).

Section 3.21 is being adopted with changes. Section 3.22 is being adopted without changes, and the text will not be republished in the *Texas Register*.

The sections describe the general requirements for obtaining landscape architectural registration by examination and by reciprocal transfer.

The only change to §3.21 as proposed removes the word "certified" from the phrase "other certified documentation."

The amendment to Section 3.21 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The amendment to Section 3.22 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The amendment reflects a recently enacted legislative change. The amendments to the sections will enable the agency to uphold its statutory responsibility to assist with enforcement of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, with regard to the proposed amendment to the reciprocal registration rule, that the opportunities for obtaining reciprocal registration will be clearly described in the rules.

The board received no comments pertaining to the proposal to adopt this new section.

The amendments are adopted pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The proposed amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges only under certain specified circumstances.

§3.21. Registration by Examination.

(a) In order to obtain landscape architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB) or from a landscape architectural education program outside the United States where an evaluation by Education Credential Evaluators or another organization acceptable to the Board has concluded that the program is substantially equivalent to an LAAB accredited professional program;

(2) shall successfully demonstrate that he/she has gained at least two (2) years' actual experience working directly under a licensed landscape architect or other experience approved by the Board pursuant to the Texas Table of Equivalents for Experience in Landscape Architecture; and

(3) shall successfully complete the landscape architectural registration examination as more fully described in Subchapter C.

(b) An Applicant for landscape architectural registration by examination who commenced his/her landscape architectural education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.

(c) For purposes of this section, an Applicant shall be considered to have "commenced" his/her landscape architectural education upon enrollment in an acceptable landscape architectural education program.

(d) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements

of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board'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.

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SUBCHAPTER C. EXAMINATION

22 TAC §3.41

The Texas Board of Architectural Examiners adopts an amendment to section 3.41 for Title 22, Chapter 3, Subchapter C, pertaining to the refund of examination fees, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11205).

The section is being adopted with changes.

The section describes requirements related to the general procedures for the examination for landscape architectural registration in Texas.

The amendment to section 3.41 adds a new section regarding refunds of examination fees.

Changes to the amendment, as proposed, disallow refunds of exam fees but state that a portion of an examination fee may be reapplied to a subsequent examination if a candidate was unable to take a scheduled examination due to "extreme hardship," which is specifically defined. The changes also describe the process for requesting the reapplication of a portion of an examination fee and state that the national examination provider must approve the request in order for it to be granted.

As a result of the amendment, the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The board received no comments pertaining to the proposal to adopt this amendment.

The amendment to this section is adopted pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

§3.41. Requirements.

(a) Every Applicant for landscape architectural registration by examination in Texas must successfully complete all sections of the Landscape Architect Registration Examination (LARE).

(b) The Board may approve an Applicant to take the LARE only after the Applicant has completed the educational requirements for landscape architectural registration by examination in Texas, has completed at least six (6) months of full-time experience working under the direct supervision of a licensed landscape architect, and has submitted the required application materials.

(c) An Applicant may take the LARE at any official LARE testing center but must satisfy all Texas registration requirements in order to obtain landscape architectural registration by examination in Texas.

(d) Each Candidate must achieve a passing score in each division of the LARE. Scores from individual divisions may not be averaged to achieve a passing score.

(e) An examination fee may not be refunded. A portion of an examination fee may be reapplied to a subsequent examination as follows:

(1) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(2) A written request to reapply the examination fee based on extreme hardship must be submitted not later than thirty (30) days after the date of the scheduled examination or portion of the examination. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(A) Illness: verification from a physician who treated the illness.

(B) Accident: a copy of an official accident report.

(C) Death: a copy of a death certificate or newspaper obituary.

(3) The national examination provider must approve the request.

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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22 TAC §3.45

The Texas Board of Architectural Examiners adopts new §3.45 for Title 22, Chapter 3, Subchapter C, pertaining to special accommodations for taking the registration examination for landscape architectural registration in Texas, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11206).

The section is being adopted without changes, and the text will not be republished in the *Texas Register*.

New §3.45 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical, mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

The Board received no comments pertaining to the proposal to adopt this section.

The new section is adopted pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §3.65, §3.66

The Texas Board of Architectural Examiners adopts amendments to sections 3.65 and 3.66 for Title 22, Chapter 3, Subchapter D, pertaining to renewal and reinstatement, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11208).

The section is being adopted with changes.

The sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

Changes to §3.65 involve removing text that differentiates "registration by examination" from "registration by reexamination" and deleting references to the requirement that the applicant complete the "current" registration examination.

The amendment to §3.65 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration and satisfy all requirements for registration, including the successful completion of the registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the registration examination; or (3) submit an application for registration and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application. The proposed amendments also will implement recently enacted statutory language requiring landscape architects to pay a $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

The change to §3.66 involves adding the phrase "by operation of law" in subsection (f) of the section. The purpose of the change is to clarify that the subsection applies only to cancellations that are effectuated by operation of law rather than to all cancellations.

The amendment to §3.66 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered in lieu of disciplinary action, or cancelled by operation of law due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect

the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also states that a registration cancelled due to the registrant's failure to renew it may not be reinstated.

The board received no comments pertaining to the proposal to amend this section.

The amendments are adopted pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency; pursuant to Section 1051.403 of the Tex. Occupations Code, which allows the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement; and pursuant to Section 1052.0541 of the Tex. Occupations Code, which prescribes a mandatory $200 professional fee for landscape architects.

§3.65. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Landscape Architect at the Landscape Architect's current address of record. A Landscape Architect must notify the Board in writing each time the Landscape Architect's address of record changes, and the written notice of the Landscape Architect's change of address must be signed by the Landscape Architect and submitted to the Board within sixty (60) days of the effective date of the change of address.

(b) A Landscape Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information and documentation requested by the annual registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(c) If a Landscape Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Landscape Architect's registration, the Board shall impose a late payment penalty that must be paid before the Landscape Architect's registration may be renewed.

(d) If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Landscape Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect is not in default on a loan guaranteed by TGSLC.

(e) If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect's registration.

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 3.21, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 3.22, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Landscape Architect must pay a mandatory $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

§3.66. Reinstatement.

(a) Once the revocation, cancellation, or Surrender of a Landscape Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) If a reinstatement Applicant has practiced landscape architecture or has used the term "landscape architect," the term "landscape architectural," the term "landscape architecture," or any similar term to describe himself/herself or to describe services he/she has offered or provided in Texas since the effective date of the revocation, cancellation, or Surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the revocation, cancellation, or Surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been revoked for a continuous period of five (5) years or longer;

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the revocation of a registration; or

(3) the registration was voluntarily surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the revocation, cancellation, or Surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds a landscape architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas landscape architectural registration requirements.

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2004.

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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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SUBCHAPTER E. FEES

22 TAC §3.81, §3.82

The Texas Board of Architectural Examiners adopts amendments to Sections 3.81 and 3.82 for Title 22, Chapter 3, Subchapter E, pertaining to fees, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11209).

Section 3.81 is being adopted without changes, and the text will not be republished in the *Texas Register*. Section 3.82 is being adopted with changes.

The sections describe the method of establishing fees, the amounts of fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The amendment to Section 3.81 adds the agency's fee schedule to the section, clarifies that cash will not be accepted as payment for any fee, adds a reference to a processing fee to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status.

One change to the proposed amendment to §3.82 involves replacing the sentence "[a] registration certificate shall become invalid on its designated expiration date unless it is renewed" with "[a] person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed" in Subsection (b). The other change replaces "registrant" with "Registrant" to denote a defined term.

The amendment to Section 3.82 describes the automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

The Board received one comment pertaining to the proposal to amend these sections. The comment suggested that the Board should consider exempting members of the military from having to submit annual renewal forms when they are on active duty in a combat situation. The Board declined to take action to implement the suggestion because of the importance of maintaining current information related to all registrants.

The amendments are adopted pursuant to Section 1052.054 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

§3.82. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration. If a Registrant fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration, the Board shall require that the Registrant pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed.

(c) If a Registrant fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's current address of record.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2004.

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Cathy L. Hendricks, ASID/IIDA
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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31, §5.32

The Texas Board of Architectural Examiners adopts amendments to Sections 5.31and 5.32 for Title 22, Chapter 5, Subchapter B, pertaining to registration, as published in the

December 19, 2003, issue of the *Texas Register* (28 TexReg 11210).

Section 5.31 is being adopted with changes. Section 5.32 is being adopted without changes, and the text will not be republished in the *Texas Register*.

The existing sections describe the general requirements for obtaining interior design registration by examination and by reciprocal transfer.

The only change to §5.31 as proposed removes the word "certified" from the phrase "other certified documentation."

The amendment to Section 5.31 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The amendment to Section 5.32 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The proposed amendment reflects a recently enacted legislative change.

The agency received no comments pertaining to the proposals to amend these sections.

The amendments are adopted pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The proposed amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges only under certain specified circumstances.

§5.31. Registration by Examination.

(a) In order to obtain interior design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved interior design education and experience and shall successfully complete the interior design registration examination as more fully described in Subchapter C. For purposes of this section, an Applicant has "approved interior design education" if:

(1) The Applicant graduated from a program that has been granted professional status by the Foundation for Interior Design Education Research (FIDER) or the National Architectural Accreditation Board (NAAB) or from an interior design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a FIDER or NAAB accredited professional program;

(2) The Applicant has a doctorate, a master's degree, or a baccalaureate degree in interior design;

(3) The Applicant has:

(A) A baccalaureate degree in a field other than interior design; and

(B) An associate's degree or a two- or three-year certificate from an interior design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The Applicant has:

(A) A baccalaureate degree in a field other than interior design; and

(B) An associate's degree or a two- or three-year certificate from a foreign interior design program approved or accredited by an agency acceptable to the Board;

(5) The Applicant applied on or before August 31, 2010, and prior to that date, the Applicant successfully completed:

(A) At least six years of actual experience working under the direct supervision of a registered interior designer or a registered architect;

(B) An associate's degree in interior design from an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board; and

(C) Credit for the equivalent of at least 60 semester credit hours toward any baccalaureate degree; or

(6) The Applicant applied on or before August 31, 2010, and prior to that date, the Applicant successfully completed:

(A) At least four years of actual experience working under the direct supervision of a registered interior designer or a registered architect;

(B) A FIDER accredited pre-professional assistant level program; and

(C) Credit for the equivalent of at least 60 semester credit hours toward any baccalaureate degree.

(b) The Board shall evaluate the education and experience required by subsection (a) of this section in accordance with the Table of Equivalents for Education and Experience in Interior Design.

(c) For purposes of this section, the term "approved interior design education" does not include continuing education courses.

(d) An Applicant for interior design registration by examination who commences completion of the educational requirements for registration after September 1, 2006, must graduate from a program that has been granted professional status by FIDER.

(e) An Applicant for interior design registration by examination who commenced his/her interior design education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.

(f) For purposes of this section, an applicant shall be considered to have "commenced" his/her interior design education upon enrollment in an acceptable interior design education program.

(g) An Applicant who filed an application for registration without examination prior to August 31, 1994, is subject to the rules and regulations relating to educational and experiential requirements in effect at the time the application was filed. Such Applicant must complete the required six years of experience on or before September 1, 2003, in order to be eligible for registration without examination.

(h) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board'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.

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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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SUBCHAPTER C. EXAMINATION

22 TAC §5.51

The Texas Board of Architectural Examiners adopts an amendment to section 5.51 for Title 22, Chapter 5, Subchapter C, pertaining to the refund of examination fees, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11211).

The section is being adopted with changes.

The section describes requirements related to the general procedures for examination for interior design registration in Texas.

The amendment to section 5.51 adds a new section regarding refunds of examination fees. It states that the application fee is not refundable but that a portion of the examination fee paid to the national examination provider may be refunded if a candidate is precluded from taking or scheduling the examination because of extreme hardship. The new section requires the submission of a written request for refund within thirty days of the examination date. The new section states that an examination fee may not be transferred to a subsequent examination.

Changes to the amendments to section §5.51, as proposed include changing the phrase "date of the scheduled examination" to "date the examination was scheduled or intended to be scheduled" and adding "[a]pproval of the request [for a refund] and refund of the fee or portion of the fee by the national examination provider" as an additional condition for approving refunds of examination fees.

As a result of the amendment, the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The board received no comments pertaining to the proposal to amend this section.

The amendment to this section is adopted pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

§5.51. Requirements.

(a) Every Applicant for interior design registration by examination in Texas must successfully complete all sections of the National Council for Interior Design Qualification (NCIDQ) examination.

(b) The Board may approve an Applicant to take the NCIDQ examination only after the Applicant has completed the educational requirements for interior design registration by examination in Texas, has completed at least six (6) months of full-time experience working directly under the direct supervision of a licensed interior designer, and has submitted the required application materials.

(c) An Applicant may take the NCIDQ examination at any official NCIDQ testing center but must satisfy all Texas registration requirements in order to obtain interior design registration by examination in Texas.

(d) Each Candidate must achieve a passing score in each division of the NCIDQ examination. Scores from individual divisions may not be averaged to achieve a passing score.

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date the examination or portion of the examination was scheduled or intended to be scheduled. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(C) Approval of the request and refund of the fee or portion of the fee by the national examination provider.

(3) An examination fee may not be transferred to a subsequent examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8535

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22 TAC §5.55

The Texas Board of Architectural Examiners adopts new section 5.55 for Title 22, Chapter 5, Subchapter C, pertaining to special accommodations for taking the registration examination for interior design registration in Texas, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11212).

The section is being adopted without changes, and the text will not be republished in the *Texas Register*.

New §5.55 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical, mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

The board received no comments pertaining to the proposal to adopt this new rule.

The new section is adopted pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

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
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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §5.75, §5.76

The Texas Board of Architectural Examiners adopts amendments to sections 5.75 and 5.76 for Title 22, Chapter 5, Subchapter D, pertaining to renewal and reinstatement, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11214).

The sections are being adopted with changes.

The sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

Changes to §5.75 involve removing text that differentiates "registration by examination" from "registration by reexamination" and deleting references to the requirement that the applicant complete the "current" registration examination.

The amendment to §5.75 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration and satisfy all requirements for registration, including the successful completion of the registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the registration examination; or (3) submit an application for registration and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application. The proposed amendments also will implement recently enacted statutory language requiring interior designers to pay a $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

The change to §5.76 involves adding the phrase "by operation of law" in subsection (f) of the section. The purpose of the change is to clarify that the subsection applies only to cancellations that are effectuated by operation of law rather than to all cancellations.

The amendment to §5.76 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered

in lieu of disciplinary action, or cancelled by operation of law due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also states that a registration cancelled due to the registrant's failure to renew it may not be

The board received no comments pertaining to the proposal to amend these sections.

The amendments are adopted pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency; pursuant to Section 1051.403 of the Tex. Occupations Code, which allows the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement; and pursuant to Section 1053.0521 of the Tex. Occupations Code, which prescribes a mandatory $200 professional fee for interior designers.

§5.75. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Interior Designer at the Interior Designer's current address of record. An Interior Designer must notify the Board in writing each time the Interior Designer's address of record changes, and the written notice of the Interior Designer's change of address must be signed by the Interior Designer and submitted to the Board within sixty (60) days of the effective date of the change of address.

(b) An Interior Designer may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(c) If an Interior Designer fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Interior Designer's registration, the Board shall impose a late payment penalty that must be paid before the Interior Designer's registration may be renewed.

(d) If the Board receives official notice that an Interior Designer has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Interior Designer's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Interior Designer presents to the Board a certificate from TGSLC certifying that the Interior Designer has entered into a repayment agreement for the defaulted loan; or

(3) the Interior Designer presents to the Board a Certificate from TGSLC certifying that the Interior Designer is not in default on a loan guaranteed by TGSLC.

(e) If the Board receives official notice that an Interior Designer has failed to pay court ordered child support, the Board may be prohibited from renewing the Interior Designer's registration.

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 5.31, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 5.32, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Interior Designer must pay a mandatory $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

§5.76. Reinstatement.

(a) Once the revocation, cancellation, or surrender of an Interior Designer's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) If a reinstatement Applicant has used the title "interior designer" or the term "interior design" in violation of the Interior Designers' Registration Law since the effective date of the revocation, cancellation, or surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the revocation, cancellation, or surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been revoked for a continuous period of five (5) years or longer; or

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the revocation of a registration; or

(3) the registration was voluntarily surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the revocation, cancellation, or surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an interior design registration that is active and in good standing in another

jurisdiction where the registration requirements are substantially equivalent to Texas interior design registration requirements.

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2004.

TRD-200401973
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: April 4, 2004
Proposal publication date: December 19, 2003
For further information, please call: (512) 305-8535

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SUBCHAPTER E. FEES

22 TAC §5.91, §5.92

The Texas Board of Architectural Examiners adopts amendments to Sections 5.91 and 5.92 for Title 22, Chapter 5, Subchapter E, pertaining to fees, as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11215).

Section 5.91 is being adopted without changes, and the text will not be republished in the *Texas Register*. Section 5.92 is being adopted with changes

The existing sections describe the method of establishing fees, the amounts of fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The amendment to Section 5.91 adds the agency's fee schedule to the section, clarifies that cash will not be accepted as payment for any fee, adds a reference to a processing fee to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status.

One change to the proposed amendment to §5.92 involves replacing the sentence "[a] registration certificate shall become invalid on its designated expiration date unless it is renewed" with "[a] person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed" in Subsection (b). The other change replaces "registrant" with "Registrant" to denote a defined term. The amendment to Section 5.92 describes an automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

The Board received one comment pertaining to the proposal to amend these sections. The comment suggested that the Board should consider exempting members of the military from having to submit annual renewal forms when they are on active duty in a combat situation. The Board declined to take action to implement the suggestion because of the importance of maintaining current information related to all registrants.

The amendments are adopted pursuant to Section 1053.052 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

§5.92. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration. If a Registrant fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's certificate of registration, the Board shall require that the Registrant pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed.

(c) If a Registrant fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's current address of record.

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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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.72

The Texas State Board of Public Accountancy adopts an amendment to §501.72, concerning Contingency Fees without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 756). The text of the rule will not be republished.

The amendment to §501.72 will bring the board's rule into conformity with the contingent fee arrangements that are allowed by the Securities and Exchange Commission's rules, clarifies contingent fees and tax returns.

The amendment will function by bringing the board's rule into conformity with the Securities and Exchange Commission's rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402027
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 7, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 305-7848

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22 TAC §501.78

The Texas State Board of Public Accountancy adopts new §501.78, concerning Withdrawal or Resignation without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 757). The text of the rule will not be republished.

The new rule will give licensees guidance as to when they must withdraw from an engagement or employment.

The new rule will function by giving licensees guidance from the board as to when they must withdraw from an engagement or employment.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

The Texas State Board of Public Accountancy adopts the repeal of Chapter 523, Subchapter A: §523.1, concerning CPE Purpose and Definitions; §523.2, concerning Standards for CPE Program Development; §523.3, concerning Savings Provisions and Dispositions Table; Subchapter B: §523.21, concerning Establishment of Mandatory CPE Program; §523.22, concerning Mandatory CPE Reporting; §523.23, concerning Mandatory CPE Attendance; §523.24, concerning Denial of a License; §523.25, concerning Disciplinary Actions Relating to CPE; §523.26, concerning Credits for Instructors and Discussion Leaders; §523.27, concerning Credits for Published Articles and Books; §523.28, concerning Minimum Hours Required Per CPE Reporting Period as a Participant; §523.29, concerning Limitation for Non-Technical Courses; §523.30, concerning Alternative Sources of CPE; §523.31, concerning Standards for CPE Reporting; §523.32, concerning CPE for non-CPA Owners; §523.34, concerning Course Content and Board Approval after September 1, 2003; Subchapter C: §523.41, concerning Board Rules and Ethics Course; §523.43, concerning Course Content and Board Approval; Subchapter D: §523.51, concerning Program Standards; §523.52, concerning Evaluation; §523.53, concerning Program Time Credit Measurement; §523.54, concerning Sponsor's Record; §523.55, concerning Board Contracted CPE Sponsors; §523.56, concerning Obligations of the Sponsor; §523.57, concerning Registry of CPE Sponsors; and §523.58, concerning Sponsor Review Oversight Program without changes to the proposal as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 757).

The repeal of §§523.1 - 523.3, 523.21 - 523.32, 523.34, 523.41, 523.43 and 523.51 - 523.58 will remove these rules so they can be replaced with re-written and renumbered rules.

The repeals will function by replacing these rules with re-written and renumbered rules.

No comments were received regarding adoption of these repeals.

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §§523.1 - 523.3

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to adopt rules regarding continuing professional education.

No other article, statute or code is affected by 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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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §§523.21 - 523.32, 523.34

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to adopt rules regarding continuing professional education.

No other article, statute or code is affected by 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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Rande Herrell
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For further information, please call: (512) 305-7848

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.41, §523.43

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to adopt rules regarding continuing professional education.

No other article, statute or code is affected by 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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Rande Herrell
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §§523.51 - 523.58

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to adopt rules regarding continuing professional education.

No other article, statute or code is affected by 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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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §§523.101 - 523.103

The Texas State Board of Public Accountancy adopts new rules §523.101 concerning Savings Provisions and Dispositions Table, §523.102 concerning CPE Purpose and Definitions and §523.103 concerning Standards for CPE Program Development in Chapter 523, Subchapter A without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 759). The text of the rules will not be republished.

The new rules are adopted for renumbering purposes and, because the CPE rules are being repealed and renumbered, to correct references to section numbers. New §523.101 contains a chart showing the disposition of the rules under the new numbering system. New §523.102 corrects one typographical error from the original rule, by changing the word "reasonable" to "reasonably".

The new rules will function by correcting references to section numbers, renumbering the rules and correcting one typographical error.

No comments were received regarding adoption of the rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

No other article, statute or code is affected by these adoptions.

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

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SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §§523.110 - 523.121

The Texas State Board of Public Accountancy adopts new rules §523.110 concerning Establishment of Mandatory CPE Program; §523.111 concerning Mandatory CPE Reporting; §523.112 concerning Mandatory CPE Attendance; §523.113 concerning Denial of a License; §523.114 concerning Disciplinary Actions Relating to CPE; §523.115 concerning Credits for Instructors and Discussion Leaders; §523.116 concerning Credits for Published Articles and Books; §523.117 concerning Minimum Hours Required Per CPE Reporting Period as a Participant; §523.118 concerning Limitation for Non-Technical Courses; §523.119 concerning Alternative Sources of CPE; §523.120 concerning Standards for CPE Reporting and §523.121 concerning CPE for non-CPA Owners in Chapter 523, Subchapter B without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 761). The text of the rules will not be republished.

Sections 523.110 through 523.121 are adopted for renumbering purposes and, because the CPE rules are being repealed and renumbered, to correct references to section numbers. New §523.101 contains a chart showing the disposition of the rules under the new numbering system. In addition, the effective date of §523.112 is changed to December 31, 2005.

The new rules will function by correcting references to section numbers, renumbering the rules and §523.112 will have an implementation date that allows adequate time for preparation.

No comments were received regarding adoption of the rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

No other article, statute or code is affected by these adoptions.

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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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: January 30, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §§523.130 - 523.133

The Texas State Board of Public Accountancy adopts new rules §523.130 concerning Board Rules and Ethics Course; §523.131 concerning Board Approval of Ethics Course Content after January 1, 2005; §523.132 concerning Board Contracted Ethics Instructors after January 1, 2005 and §523.133 concerning Course Content and Board Approval in Subchapter C with changes to the proposed text in §523.132 as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 764). Sections 523.130, 523.131, and 523.133, are adopted without changes and the text of the rules will not be republished. In response to some of the written comments and oral presentations that were received at the public hearing on March 16, 2004, the Rules Committee recommended some changes to the Board. The Board agreed with the recommendations and made some non-substantive changes to proposed rule 523.132. The changes to 523.132 moved the substantially equivalent language from the end to the beginning of subsection (b)(1), deleted "in an ethics course" in subsection (b)(1) because it was redundant, moved the substantially equivalent language from the end to the beginning of subsection (b)(2), added "discipline for" in subsection (b)(4) to clarify that the prohibition is based on a violation that resulted in discipline being imposed which makes it consistent with subsection (a)(2), deleted subsection (c) because there is no need to apply for an exemption as each application will be fully scrutinized to insure the applicant meets the requirements, and renumbered former subsections (d) and (e) to subsections (c) and (d).

The new rules §§523.130, 523.131, 523.132 and 523.133 are adopted new for renumbering purposes and, because the CPE rules are being repealed and renumbered, to correct references to section numbers. New §523.101 contains a chart showing the disposition of the rules under the new numbering system.

In addition, these rules will re-create and continue the board rules and ethics course program. Rule 523.130 continues the requirement of a two-hour ethics course every three years until December 31, 2004, with changes to the previous rule. After January 1, 2005, licensees must complete a board-approved four hour ethics course every two years. Ethics by self-study is no longer an option. Out-of-state licensees must complete their ethics course by live-instructor format or by computer-based interactive format, or request an exemption. After January 1, 2005, licensees who take ethics courses that are either not board-approved or taught by instructors not under contract with the board will not receive ethics course credit and will instead receive non-technical CPE credit. Retired, disabled or otherwise exempt licensees who change their exempt status must complete a board-approved ethics course. The rule provides for transition to the new 4 hour course and 2 year requirements. Rule 523.131 is a new rule creating a requirement that ethics course contents must be board approved. The new rule contains the procedure and criteria for applying for initial approval and renewed approval of course content. Rule 523.132 creates the requirement that, starting January 1, 2005, ethics course instructors must be board approved. The rule contains the procedure and criteria for applying for instructor approval, with an interpretive comment at the end. Rule 523.133 is simply being re-numbered.

The new rules will function by re-creating and continuing the board rules and ethics course program. CPAs will be taking more hours of board-approved ethics courses that are being taught by board-approved instructors. In addition, the rules will function by correcting references to section numbers and renumbering the rules.

Several comments were received by the board. The comments and the board's response are listed in the following paragraphs.

Dr. Nita J. Clyde submitted comments on behalf of the Texas Society of Certified Public Accountants on proposed §523.132. Dr. Clyde believes that the rule's failure to provide appropriate guidance about the qualifications for the ethics course instructors will exclude qualified instructors from participating in the program. The college ethics teaching experience and completion of college ethics courses requirements are unnecessarily exclusive and do not guarantee a good or adequate instructor. While teaching experience is important, experience in making ethical decisions should be accepted as a substitute for these requirements. Experienced quality instructors who do not meet these requirements will be forced to apply for an exception. It is likely more instructors will qualify through exception than qualify through board rules, and it makes no sense to require qualified instructors to apply for a waiver or exception. The board pre-approves ethics courses, requires instructors to complete ethics instructor training and to enter into a contract to deliver effective instruction; additional requirements are unnecessary.

Mr. Barry King also submitted comments. He has no problem with the proposed changes to the content of the ethics courses, but takes exception to the requirement that instructors be experienced college instructors because college professors are steeped in academia and lack practical experience. Mr. King perceives the college ethics teaching experience and completion of college ethics courses requirements as a direct insult to him because he has been an ethics instructor for years. He is concerned that the board is overreacting or incorrectly reacting to recent profession ethics failures. Ethics courses will not make a person act ethically because any one old enough to be a CPA already has their ethics and morals established. It is impossible to apply the letter of the law and rules to every situation.

Dr. Sammie Smith, Professor of Accounting at Stephen F. Austin State University, submitted comments and questions. The proposed rules still need additional work and considerable input from the profession that cannot be achieved during the two hours allotted for the public hearing on the proposed rules. The objectives stated in proposed §523.130 cannot be accomplished in a four-hour course taken every two years. The objectives stated in proposed §523.131 have good intentions but cannot be practically accomplished in a four-hour course. Many experts question whether ethical conduct can be taught. Proposed §523.132 has many problems. He questions whether a six hour college ethics course can achieve ethics teaching expertise and points out that to complete the six hours will require two courses. He asks what constitutes substantially equivalent educational experience and why there is an in-house governmental entity exemption. Full time college teaching experience does not translate into the ability to teach ethics. Instructors that represent clients before the board are more knowledgeable and informed about ethics and are more qualified to teach ethics. Dr. Smith doubts the proposed rule will withstand judicial scrutiny. The profession needs to reverse the changes of the last 20 years that were caused by the profit motives of a minority through a needed ethics indoctrination that promotes a cultural revolution but the proposed rules will not do it because they need a lot of work and significant input from the profession.

Mr. Jacob Bezner commented on proposed §523.132. He noted that attorneys are allowed to represent clients in court and teach continuing legal education courses. He encourages the use of ethics instructors with both academic and practical experience.

Ms. Karen Williams commented that proposed §523.131(a) (1) (2) and (3) should be changed to read "course shall be designed to reinforce" rather than "designed to teach." She also commented on proposed §523.132. There should not be any exemptions for in-house government entities and substantially equivalent because everyone should comply with the same rules. Instructors that represent CPAs in Board proceedings have a better working knowledge of the rules. Requiring six credit hours in ethics is too restrictive, unnecessary and might be expensive because very few colleges offer ethics courses. Although college level ethics teaching experience is great, it is inappropriate to use non-experience as a reason to deny someone the right to teach a board ethics course. Ms. Williams asks why there are different requirements for an ethics instructor and non-ethics CPE instructors.

Mr. Kenneth Horwitz objected to the requirement that a written copy of his testimony be filed with the Board by February 27. Mr. Horwitz claims this violates the 30 day notice provision of Government Code section 2001.023. Mr. Horwitz also objected to the board's voting on the proposed rules during its meeting two days after the public hearing on the proposed rules because two days is inadequate time for the board to confirm the facts presented at the public hearing. Mr. Horwitz claims this violates Government Code sections 2001.029(a) and 2001.029(c). Mr. Horwitz also contends that limiting the public hearing to two hours violates Texans' right to present their views to their government. Mr. Horwitz submitted extensive comments. The board's estimated cost to enforce the new rules erroneously omits the cost of completing the college courses, the cost of teaching at the college level, the cost to acquire work experience as a CPA, and the cost of not violating the Rules of Professional Conduct. The

board's estimated cost for a person to comply with the proposed rules erroneously underestimates the time by 1/2 an hour at $35 per hour times 50,000 CPAs and omits inflation. The board's determination that the proposed rules will not have an adverse economic impact on small businesses is incorrect because he believes the cost will be $1 million. The board lacks statutory authority to regulate the qualifications of course instructors. The proposed rule confuses conflict of interest because of representation before the board with a conflict with the ethics rules. The only ethics instructors who will qualify are TSCPA instructors, this creates a monopoly and this monopoly requires all board members who are also TSCPA members to recuse themselves from voting on the proposed rules. The proposed rules are vague and this suggests the possibility of violation of Due Process by the Board when considering exceptions. Enron and other accounting and ethics failures demonstrate the lack of success of ethics rules and the proposed rules are a continuation of the demonstrably unsuccessful rules. The college ethics course and college level teaching requirements are anti-competitive, are bad public policy and omit persons with practical experience. CPAs acquire their ethical and moral standards from family and religion and these would be little enhanced by college level courses. The board performs a disservice to CPAs when it omits an attorney that represents CPAs before the board because of his experience with real accounting practice situations. The State Bar's ratio of general courses to ethics course is recommended. The board spends almost all its CPE regulatory effort on the ethics course and little effort regulating other CPE causing the non-ethics CPE to suffer from little regulation and oversight. The board is engaging in illegal rule making by singling out an ethics instructor.

Mr. John A. Anderson, Jr. is in favor of the proposed rules but prefers the ethics requirements be the same for all states. He is certified in Texas and Louisiana and professional ethics should be the same in each state.

Mr. Mark H. Andrus submitted comments on the proposed rules. The proposed changes only increase the number of hours of CPE that has not made any real difference in accounting ethics. Enron-type failures occur because CPAs ignore ethics and are more interested in keeping their client happy. College professors and non-lawyers are not the best sources of information about accounting ethics. The requirements will reduce the number of possible instructors, create a favorable situation for these instructors and appear to have been drafted to exclude a particular instructor. Proposed §523.119 requires pre-approval for alternative CPE courses and, because many of the courses he takes have not been submitted for approval by the sponsoring organization, he suggests extending §523.121's acceptance as CPE courses non-CPA professional designation required courses.

Mr. Donald M. Clanton applauded the board's efforts to require ethical behavior, but believed the rules should be applicable to everyone in a CPA firm. Mr. Clanton believes subsections 523.131(1)-(4) are vague when they should be plainly stated and easy to understand. He also believes §523.132 is obviously intended to exclude a particular person as an ethics instructor, and it should be re-written to insure that the most competent and qualified instructors teach ethics to all members of a CPA firm. He commended the board for scheduling a public hearing on the proposed rules and requested more publicity about future public hearings.

Mr. Roger Thaxton suggested the board ignore professional associations' rules because their agendas are opposed to the board's goals. The board's rules should be very clearly stated, easily understood and highly publicized so all CPAs can know what behavior is expected. Ethics should be taught only by psychologists and psychiatrists because of the behavioral issues and should be taught only in a live face to face format for an exchange of ideas. Computerized or CD ethics courses should be prohibited.

Mr. Muhammed Ali Baig appreciates the board's efforts to improve the profession's ethical standards and endorses the increase in ethics course hours. Subsection 523.130(f) should not be enacted because it is redundant to subsection (e). Subsection 523.130(d) should be modified to remove any reference to place of residence. The intent of §523.131 is vague and both intent and commercial exploitation should be defined and explained to adequately inform licensees. Mr. Baig questions whether the deletion of "or she" in §523.132 means that ethics instructors have to be males. Mr. Baig awaits the board's reasoning for subsection (b)'s requirements for ethics instructors. He disagrees that representing someone before the board creates a conflict of interest with being an ethics instructor.

Mr. Dennis Fernelius doubts ethical reasoning should be taught to CPAs because individuals acquire their morals and ethics by age 7 or 8. Honest and ethical CPAs can run afoul of the Board because of a lack of knowledge of the rules and current practice knowledge. Current CPE rules do not require CPE in a CPA's area of practice. He questions whether a significant number of peer review problems are caused by CPAs' failure to maintain professional knowledge and asks how CPAs can stay abreast of the constant changes to the board's rules. He proposes a rule that requires a solid ethics course covering the rules, rule changes and how the rule changes affect a CPA, combined with CPE in the CPA's field of practice. The ethics instructor requirements are restrictive and subject to board interpretation which will limit the number of instructors and will increase the cost of CPE courses.

Dr. Raymond J. Clay believes a significant portion of the ethics course should focus on ethical principles, moral values and societal norms because periodic reminders help reassess beliefs and provide a benchmark to compare personal and professional behavior. Another important element of the course should be ethical reasoning and its application to situational dilemmas. A third component of the course should be a periodic review of the rules, an examination of historical events involving CPAs and the application of standards and ethical principles of professional conduct.

Mr. Larry Swift said there is no conflict of interest with an ethics instructor representing licensees before the board.

Mr. Frank Chovanetz questions whether four hours is enough time for an ethics course, how 6 hours of college credit provides experience, whether experience matters, why there is an in-house governmental entity exemption and how representing a client before the board can be a conflict of interest for an ethics instructor. Such an instructor would be more knowledgeable and informed about the rules and ethics.

Mr. Carl Bowles provided comments on behalf of the Texas Association of Certified Public Accountants. Proposed §523.130 increases the frequency and duration of ethics courses creating additional demand on a limited instructor pool which will increase travel time and expense for CPAs that reside outside

major cities and out of state. The introductory parts of proposed §523.131 subsections (a) (1)-(3) emphasize original education and should be re-written to emphasize continuing education. The breadth of material cannot be adequately covered in one four hour course. Subsection (a)(4) requiring case study coupled with proposed §523.140(j) requiring smaller class sizes for case studies increases the demand for instructors. Proposed §523.132 is too restrictive because it disqualifies applicants that were disciplined for nonpayment of license fees. The proposed rule favors academic training over practical experience but practical experience is an essential component of ethics education. The proposed rules should encourage a larger pool of instructor applicants with a broad range of knowledge and experience rather than discourage them. The in-house governmental entity exemption is unjustified and should be deleted. There is no conflict of interest and the provision diminishes the quality of the ethics instructor pool.

Mr. Richard Forrest challenges the constitutionality of proposed rules 523.131(f), 523.11(a) (4) (C) and 523.132(e) as prior restraints on free speech. Substantially all instructors of continuing education courses do so for marketing reasons. Proposed §523.132(e) violates the constitution's equal protection clause because the rule applies solely to him and is arbitrary, capricious, retaliatory and usurps the authority of the State Bar and the Texas Supreme Court to regulate attorneys. There is no more of a conflict of interest with him than there is a conflict of interest between the board and a board enforcement attorney. Proposed rules 523.101, 523.103, 523.110-523.121, 523.130-523.133, and 523.140-147 exceed the board's authority to regulate continuing education. Mr. Forrest attached and adopted in its entirety his letter to the board dated October 25, 2002 regarding his comments to then proposed and now adopted §523.71 ("October Letter"). The October Letter challenged the board's authority to regulate or charge fees to educators or continuing professional education providers or to regulate course providers and said the board only has authority to regulate courses and course content by accepting or rejecting completed courses tendered by CPAs based on whether the courses do or do not contribute to that CPA's competence.

In response to these comments: As to questions about the legality of the proposed rules, the board's statutory authority to enact these rules and the alleged actual and potential constitutional violations, the proposed rules were reviewed by the board's General Counsel who assured the board that it had the authority to promulgate these rules and that these rules were Constitutionally appropriate.

The board has no objection to an ethics instructor benefiting from the name exposure that comes with teaching an ethics course. What the board does object to is the commercial exploitation of a state sponsored function for the promotion of other products and services offered by the instructor.

It has been suggested that such a prohibition is an illegal restraint on commercial free speech. Commercial free speech gives one the right to advertise their products and services. It does not require the board to provide a venue in which to advertise private product lines and services. The purpose behind the ethics course is to reinforce and promote ethical behavior in CPAs, not provide a captive audience for commercial exploitation by the instructor.

The proposed rules do not deny any provider the right to offer a course on the board's rules and how to circumvent them. The board believes that such a course is not consistent with the board's goal of protection of the public. Therefore, such a course would not qualify for credit to satisfy the ethics course requirement. However, a CPA who wishes to take such a course can still obtain credit for non-technical CPE.

The board is not installing the college ethics requirements because they will guarantee or secure good instructors, but because it considers the requirements to be part of several factors that might help enhance the quality and professionalism of an instructor's ethics teaching experience and teaching of ethics.

The purpose of the new rules is to raise standards for ethics instructors. How can the board expect an instructor to teach that which he has never studied? The board realizes that accounting departments have only recently begun offering stand-alone ethics courses to accounting majors. The board wants to encourage prospective ethics instructors to avail themselves of instruction in ethical reasoning. Substantial equivalency is available to prospective ethics instructors who have not taken and are unable to take a stand-alone course. The board agrees that experience is important, hence the rule also has a 10 year experience requirement.

The purpose of the new rules is to insure that the ethics course is not the first course ever taught by the prospective instructor. The board agrees that college level teaching experience is no guarantee of a good instructor, but it is a better predictor than no teaching experience at all. Again, substantial equivalency is available to those who can demonstrate teaching adults for a similar duration in an environment that would encourage development of the requisite teaching skills.

The board has not rejected current or potential instructors who do not meet the proposed college ethics requirements but possess the appropriate experience or other qualifications to teach ethics courses for the board; the substantially equivalent educational experience and substantially equivalent teaching experience waiver or exception was created for them.

The board realizes that a few instructors may not meet the literal requirements for educational experience and teaching experience, but have other experience that is just as good that would make them good ethics instructors. The board wants the flexibility to retain these good instructors while setting standards high for instructor qualifications.

The board did not draft these rules to exclude any person; indeed the board is unaware of whether any particular person qualifies under the proposed rules as an instructor or would qualify under the exceptions.

The board seeks ethics instructors with the highest standards of professional conduct. CPAs who violate the Code of Professional Conduct do not exhibit that trait. Temporary suspension of a license for non-payment of license fees is not a violation of the board's Code of Professional Conduct that would bar a CPA from becoming an ethics instructor.

Based on the legal staff's experience, the board's licensees do want to behave ethically as demonstrated by licensees regularly calling or writing the legal staff requesting preventive advice, guidance, information and clarification. Therefore, the board disagrees with the assertions that CPAs cannot be taught ethics or cannot have their ethics improved.

Although there is a limit on the length of the public hearing to receive oral testimony, no limit was imposed on the number of written comments or the length of individual written comments

that the board will receive and consider. The board heard every person who requested to speak at the public hearing.

"Substantially equivalent" was not defined in order to allow the applicants flexibility in their submissions to the board and to allow the board to exercise discretion.

In response to comments that the proposed rules need professional input and further work, this is being accomplished through publication of the proposed rules and notice of the public hearing in the *Texas Register*, by soliciting comments such as these, by conducting the public hearing and receiving testimony from the profession, and by consideration of written comments such as these.

The example of the attorney in court that also teaches continuing legal education courses fails because the attorney is not under contract with the judiciary to teach continuing education, the judiciary does not offer continuing education, the judiciary is separate from and independent of the State Bar, and it is the State Bar that offers continuing education courses.

Because ethics instructors are under contract with the board, the board wishes to avoid the appearance of a conflict by not allowing contracted ethics instructors to represent parties in a disciplinary dispute before the board. The State Bar allows their CLE instructors to represent clients in court, but attorneys are not under contract with the courts to provide CLE. The IRS allows CPAs to both teach CPE and represent clients at the IRS but again, the CPAs are not under contract with the IRS.

It was suggested that there should be no exceptions, but the board prefers to exercise discretion in order to attract and keep qualified instructors, improve course content and take the greatest measures practically available to protect the public.

The requirements for ethics instructors are different than for non-ethics instructors because professional ethics currently requires more attention and direction.

All CPE instructors should have the requisite education and teaching skills to teach their respective CPE subjects. The board is addressing the quality of all CPE courses through the Sponsor Review Oversight Board. The board has chosen to begin the process of insuring the quality of all CPE courses and instructors with the board's rules regarding the required ethics course.

The estimated cost to enforce the proposed rules is the board's costs, and these are estimated to be minimal.

The estimated cost to comply with the proposed rules is the estimated cost for one instructor-applicant to comply, not the total cost for the universe of CPE instructors and students, and this is estimated to be only $20 per person including inflation.

The board believes that any cost increase will be minimal. The current requirement is that CPAs take 120 hours of CPE in a three year period, 2 of which must be ethics. The change merely increases the number of hours that must be in ethics, not the overall number of required hours. The cost for a live instructor or inter-active computer format ethics course is not anticipated to be any more than for a similarly formatted course in another area.

The board's conclusion that there will be no adverse economic effect is based on the effect on one small business, not the effect on all CPA firms. As of February 19, 2004, there were 9,352 registered CPA firms. Using Mr. Horwitz' $1 million and excluding the Big Four, the economic effect is only $107 per year per CPA firm and some are not small businesses ($1 million divided by 9348). The sum of $107 per year is not an adverse economic effect.

As a matter of fact, the board spends most of its regulatory effort enforcing the rules on non-ethics continuing professional education courses than on its ethics rules. In Fiscal Year 2003 the board opened 2271 continuing professional education complaints, none of which were solely ethics course related.

Limiting ethics instructors to only psychologists or psychiatrists would be too limiting and expensive for licensees.

Deleting "or she" is an editorial change because one gender includes both genders, not to limit instructor applicants to only males.

The comments about requiring CPE courses to be pertinent to a CPA's field of practice will be made available to the board's CPE committee for its consideration.

There does not appear to be any authoritative literature published or studies performed that point to the one most effective way for state accounting boards to have ethics taught and, given the current turbulent business ethics situation, this is one way that this board is attempting to address its licensees' ethics, and it may be that these proposed rules will again be amended as the board and its ethics instructors acquire pertinent experience.

The new course may prove to be too short, but the board wants to try to meet its objectives in a four hour course before imposing a longer duration with the concomitant hardship on Texas CPAs. The four hour duration is a starting point. The board will continue to study the effectiveness of the course.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

No other article, statute or code is affected by these adoptions.

§523.132. Board Contracted Ethics Instructors after January 1, 2005.

(a) Effective January 1, 2005, the board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas and has completed the board's ethics training program within the last three years or as required by the board;

(2) the instructor has never been disciplined for a violation of the board's Rules of Professional Conduct; and

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

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

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

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon proof that he has:

(1) at the time of application or by June 30, 2005, whichever is later, obtained education in ethics substantially equivalent to a minimum of 6 hours of credit from an accredited University, College or Community College, of which at least three hours must be in organizational ethics;

(2) teaching experience that is substantially equivalent to two or more full time semesters teaching experience at an accredited University, College or Community College;

(3) spent at least ten years performing accountancy related activities as a licensed CPA;

(4) no record of discipline for violation of the rules of professional conduct of the American Institute of Certified Public Accountants, the Texas Society of Certified Public Accountants or other national or state accountancy organization recognized by the board; and

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Public Accountancy Act.

(c) The board may refuse to contract, refuse to renew a contract or cancel the contract of any instructor who has engaged in conduct rendering that instructor unsuitable for teaching ethics.

(d) Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Public Accountancy Act an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402035
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 7, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §§523.140 - 523.147

The Texas State Board of Public Accountancy adopts new rules §523.140 concerning Program Standards; §523.141 concerning Evaluation; §523.142 concerning Program Time Credit Measurement; §523.143 concerning Sponsor's Record; §523.144 concerning Board Contracted CPE Sponsors after December 31, 2005; §523.145 concerning Obligations of the Sponsor; §523.146 concerning Registry of National Association of State Boards of Accountancy (NASBA) CPE Sponsors and §523.147 concerning Sponsor Review Oversight Program in Chapter 523, Subchapter D without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 767). The text of the rules will not be republished.

The new rules §§523.140 through 523.147 are adopted new for renumbering purposes and, because the CPE rules are being repealed and renumbered, to correct references to section numbers. New §523.101 contains a chart showing the disposition of the rules under the new numbering system. In addition, these rules will re-create and continue the board's continuing professional education program. Rule 523.140 contains standards for the program developers, course materials, participants, facilities, general course instructors, ethics instructors and sponsors. Rule 523.144 is being re-numbered, references to other rules are also being re-numbered and the caption of the rule has been changed. Rule 523.146 is being re-numbered, the rule caption is being changed, and a new subsection exempts sponsors registered under this Rule from entering into the contract required by Rule 523.144. Rules 523.141-523.143, 523.145 and 523.147 are only being re-numbered.

The new rules will function by re-creating and continuing the board's continuing professional education program. In addition, the rules will function by correcting references to section numbers and renumbering the rules.

No comments were received regarding adoption of these rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and § 901.411 which authorizes the board to promulgate rules regarding continuing professional education.

No other article, statute or code is affected by these adoptions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2004.

TRD-200402036
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 7, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 305-7848

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.5

The Comptroller of Public Accounts adopts an amendment to §1.5, concerning the initiation of a hearing, without changes to

the proposed text as published in the February 13, 2004, issue of the *Texas Register* (29 TexReg 1301).

Subsection (c) incorporates the 30-day statutory deadline imposed by House Bill 2425, 78th Regular Legislative Session, 2003. All other adopted amendments to subsections (a), (b), and (c) are for clarity and to update the rule to reflect current practice and procedures.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402059
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 11, 2004
Proposal publication date: February 13, 2004
For further information, please call: (512) 475-0387

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34 TAC §1.15

The Comptroller of Public Accounts adopts an amendment to §1.15, concerning reply to the position letter or notice of setting, without changes to the proposed text as published in the February 13, 2004, issue of the *Texas Register* (29 TexReg 1302).

Subsection (d) was added to implement the written demand for documents provided by House Bill 2425, 78th Regular Legislative Session, 2003. All other amendments to subsections (a), (b), and (c) are for clarity and to update the rule to reflect current practice and procedures.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402058
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 11, 2004
Proposal publication date: February 13, 2004
For further information, please call: (512) 475-0387

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.544

The Comptroller of Public Accounts adopts an amendment to §3.544, concerning reports and payments, without changes to the proposed text as published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 604).

The adopted amendment to subsection (a)(1)(A)(ii), which deletes the reference to the date a foreign corporation's certificate of authority takes effect for purposes of determining the beginning date for foreign corporations, reflects a legislative change made by House Bill 2424, 78th Legislative Session, 2003. The adopted amendment to subsection (a)(1)(B) provides an updated example of an initial report for clarification purposes. The adopted amendment to subsection (h)(2) concerning certain Public Information Report filings, specifies that these reports may be filed electronically, in accordance with House Bill 2424, 78th Legislature, 2003. The adopted amendment to subsection (i) sets out the requirement that a corporation must report within 120 days the results of certain administrative proceedings that affect the corporation's franchise tax liability, as specified in House Bill 2425, 78th Legislature, 2003.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§171.001(b)(2)(B), 171.152, 171.203, and 111.206.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402060
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 11, 2004
Proposal publication date: January 23, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.580

The Comptroller of Public Accounts adopts an amendment to §3.580, concerning credit for hiring persons with disabilities, without changes to the proposed text as published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 607).

In accordance with House Bill 2424, 78th Legislature, 2003, subsection (c)(2) is to be amended to provide revised limitation guidelines for the credit.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§171.851-171.856.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2004.

TRD-200402061
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 11, 2004
Proposal publication date: January 23, 2004
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY

The Texas Department of Human Services (DHS) adopts the repeal of §§93.1 - 93.6, and adopts new §§93.1 - 93.4, 93.11 - 93.13, 93.21 - 93.23, 93.31 - 93.34, 93.41 - 93.48, and 93.61 - 93.63, without changes to the proposal published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 338).

DHS undertook the repeals and new sections as part of its agency-wide initiative to reorganize and rewrite its rules in plain English to make them easier for the public, facilities, and agencies to navigate and understand. DHS is also adopting the new sections to implement the Health and Safety Code, §253.008 and §253.009(a), which require that persons exempt from licensing under the Health and Safety Code, §142.003(a)(19), must search the Employee Misconduct Registry (EMR) before hiring an employee, notify their employees about the EMR as required, and may not employ a person who is listed in the EMR.

DHS received no comments regarding adoption of the repeals and new sections.

40 TAC §§93.1 - 93.6

The repeals are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The repeals implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402051
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

SUBCHAPTER A. INTRODUCTION

40 TAC §§93.1 - 93.4

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402052
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER B. EMR USE REQUIREMENTS

40 TAC §§93.11 - 93.13

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402053
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROCESS FOR FACILITY REFERRALS

40 TAC §§93.21 - 93.23

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402054
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER D. PROCESS FOR AGENCY REFERRALS

40 TAC §§93.31 - 93.34

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402055
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER E. DETERMINATION OF REPORTABLE CONDUCT, INFORMAL REVIEW, AND FORMAL HEARING FOR FACILITY REFERRALS

40 TAC §§93.41 - 93.48

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402056
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER F. RECORDABLE INFORMATION IN THE EMR

40 TAC §§93.61 - 93.63

The new sections are adopted under the Health and Safety Code, Chapter 253, which authorizes DHS to administer the employee misconduct registry.

The new sections implement the Health and Safety Code, §§253.001 - 253.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2004.

TRD-200402057
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2004 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopts amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2004 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0204-02-I) was published in the February 20, 2004 issue of the *Texas Register* (29 TexReg 1675).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2004 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0204-02-I, which are incorporated by reference into Commissioner's Order No. 04-0272.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98 and 5.101.

IT IS THEEFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200402111
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 24, 2004

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 Alcohol and Drug Abuse

Title 40, Part 3

The Texas Commission on Alcohol and Drug Abuse (Commission) files this notice of intention to review and readopt Title 40, Texas Administrative Code, Part 3, Texas Commission on Alcohol and Drug Abuse, Chapter 151, Peer Assistance, §§151.1 - 151.5, 151.11, 151.21, 151.22, 151.31, 151.32, 151.51 and 151.61. This review is pursuant to §2001.039 of the Texas Government Code pertaining to agency review of existing rules.

The Commission will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments on the review may be submitted to Deana Abshire, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments may also be submitted electronically to *rules.revisions@tcada.state.tx.us* or faxed to (512) 821-4445. All comments must be received by May 3, 2004.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

§151.1. Authority.

§151.2. Program Purpose.

§151.3. Applicability.

§151.4. Relationship to Licensing/Disciplinary Authority.

§151.5. Program Requirements.

§151.11. Definitions.

§151.21. Organization.

§151.22. Staffing.

§151.31. Program Description.

§151.32. Policies and Procedures.

§151.51. Referrals to Assessment/Treatment Resources.

§151.61. Certification.

TRD-200402070

Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Filed: March 22, 2004

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Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas files this notice of intent to review the rules contained in Chapter 71 (Creditable Service). This review is pursuant to §2001.039, Texas Government Code. The rules to be reviewed are located in Title 34, Part 4, of the Texas Administrative Code.

Chapter 71. Creditable Service

§71.1. Service Credit for Members of Employee Class.

§71.2. Membership Waiting Period for Employee Class.

§71.3. Service Credit for Members of the Elective Class.

§71.5. Credit Previously Transferred from Teacher Retirement System (TRS) and Credit Transferred from TRS Pursuant to the Government Code, Title 8.

§71.7. Limitation on Service Credit.

§71.11. Retirement Contributions Based on Nonmonetary Compensation.

§71.13. Payments to Establish Service Credit--Date Due.

§71.14. Payments To Establish or Reestablish Service Credit.

§71.15. Transfer of ERS Service Credit to the TRS for Certain TRIMS Employees.

§71.17. Credit for Unused Accumulated Leave.

§71.19. Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS).

§71.21. Transfer of Certain State Employees from the Teacher Retirement System of Texas (TRS) to the Employees Retirement System of Texas (ERS).

§71.23. Acceptance of Rollovers and Transfers from Other Plans.

§71.27. Certain Service Considered Solely to Establish Eligibility.

§71.29. Purchase of Additional Service Credit.

§71.31. Credit Purchase Option For Certain Waiting Period Service.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on May 4, 2004, and submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207

TRD-200402020
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 18, 2004

♦ ♦ ♦

Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) has completed the review of the Texas Administrative Code, Title 34, Part 4, Chapter 69, concerning Membership and Refunds, Chapter 73, concerning Benefits, Chapter 75, concerning Hazardous Profession Death Benefits, and Chapter 77, concerning Judicial Retirement, in accordance with the requirements of the Texas Government Code, §2001.039. The notice of intention to review was published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10293).

During this review period, ERS made changes to Chapters 73, 75, and 77, that were adopted by the Board in its regularly schedule public meetings held on December 10, 2003 and February 18, 2004.

No comments were received regarding this review. ERS has reviewed the rules in Chapters 69, 73, 75, and 77, and has determined that the reasons for adopting these rules continue to exist. The rules in Chapters 69, 73, 75, and 77 are therefore readopted in accordance with the requirements of the Texas Government Code §2001.039. This concludes ERS' review of Chapters 69, 73, 75, and 77.

TRD-2004002019
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 18, 2004

♦ ♦ ♦

Texas State Board of Public Accountancy

Title 22, Part 22

In accordance with Government Code §2001.039 the Texas State Board of Public Accountancy (board) adopts the review of Chapters 501, concerning Rules of Professional Conduct; 511, concerning Certification as a CPA; 515, concerning Licenses; 517, concerning Temporary Practice in Texas; 521, concerning Fee Schedule; 523, concerning Continuing Professional Education; and 525, concerning Criminal Background Investigations; in Title 22 Texas Administrative Code, Part 22. The board published a Notice of Intention to Review Title 22, TAC, Part 22, in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received regarding adoption of the rule review.

Government Code §2001.039 requires that every agency review each of its rules to determine at a minimum whether the reasons for the adoption of the rule continues to exist. In accordance with the provisions of Government Code §2001.039 the board developed a list of questions and considerations it used to guide its rule review. These considerations included an analysis of whether each rule is needed for fair administration and just enforcement of the Public Accountancy Act and whether the rule reflects current board policy and current legal interpretations of the Act.

As a result of conducting its review of these Chapters, the board has proposed and/or adopted amendments to or repeals of approximately 71 rules. Each of these amendments and repeals have been published in the *Texas Register* in accordance with the Administrative Procedure Act. The board finds that the reasons for adopting those of its rules for which no amendments or repeals have been proposed in the course of its review continue to exist.

This concludes the review of Chapters 501, 511, 515, 517, 521, 523 and 525.

TRD-200402049
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Filed: March 18, 2004

♦ ♦ ♦

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: 22 TAC §519.9(a)

No.	Violation	Citation	Administrative Penalty Range
1	Failure to follow Generally Accepted Auditing Standards; Yellow Book Auditing Standards; AICPA Auditing Standards; and other auditing standards.	22 TEX. ADMIN. CODE §§501.60 & 501.74; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
2	Failure to follow Generally Accepted Accounting Principles	22 TEX. ADMIN. CODE §§501.53, 501.61 & 501.74; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
3	Failure to follow other Professional Standards (e.g. Compilation Standards)	22 TEX. ADMIN. CODE §§501.62 & 501.74; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
4	Lack of independence	22 TEX. ADMIN. CODE §§501.70 & 501.73 TEX. OCC. CODE §§901.458, 901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

5	Violation of rules regarding receipt of commissions and other compensation	22 TEX. ADMIN. CODE §501.71; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
6	Violation of rules regarding contingency fees	22 TEX. ADMIN. CODE §501.72; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
7	Lack of integrity and objectivity	22 TEX. ADMIN. CODE §501.73; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
8	Incompetence	22 TEX. ADMIN. CODE §501.74; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

9	Breach of confidential communications	22 TEX. ADMIN. CODE §501.75; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
10	Failure to return client records or client's portion of work papers	22 TEX. ADMIN. CODE §501.76; TEX. OCC. CODE §§901.502(6) & 901.502(11)	$0 to $25,000 per violation.
11	Acting through others	22 TEX. ADMIN. CODE §501.77 (AND THE RULE VIOLATED BY THE ACTOR); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
12	Practicing without a license	22 TEX. ADMIN. CODE §501.80; TEX. OCC. CODE §§901.401, 901.453, 901.456, 901.502(6) & 901.502(11)	$0 to $25,000 per violation.

13	Practicing through an unregistered entity	22 TEX. ADMIN. CODE §501.81; TEX. OCC. CODE §§901.401, 901.502(6) & 901.502(11)	$0 to $25,000 per violation.
14	False, fraudulent, misleading, or deceptive advertising	22 TEX. ADMIN. CODE §501.82; TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $1,000 per violation. **Moderate:** $1,000 to $50,000 per violation. **Major:** $50,000 to $100,000 per violation.
15	Improper firm name	22 TEX. ADMIN. CODE §501.83; TEX. OCC. CODE §§901.502(6) & 901.502(11)	$0 to $10,000 per violation.
16	Improper form of practice	22 TEX. ADMIN. CODE §501.84; TEX. OCC. CODE §§901.502(6) & 901.502(11)	$0 to $10,000 per violation.
17	Performing discreditable acts (1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting	22 TEX. ADMIN. CODE §501.90(1); TEX. OCC. CODE §§901.502(1), 901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

18	Performing discreditable acts (2) dishonesty, fraud or gross negligence in the practice of public accountancy	22 TEX. ADMIN. CODE §501.90(2); TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
19	Performing discreditable acts (3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board	22 TEX. ADMIN. CODE §501.90(3); TEX. OCC. CODE §§901.502(5), 901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
20	Performing discreditable acts (4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States	22 TEX. ADMIN. CODE §501.90(4); TEX. OCC. CODE §§901.502(6), 901.502(10), & 901.502(11) TEX. OCC. CODE CHAP. 53	$0 to $100,000 per violation.
21	Performing discreditable acts (5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States	22 TEX. ADMIN. CODE §501.90(5); TEX. OCC. CODE §§901.502(6), 901.502(10), & 901.502(11)	$0 to $100,000 per violation.

22	Performing discreditable acts (6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state	22 TEX. ADMIN. CODE §501.90(6); TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), & 901.502(11)	$0 to $100,000 per violation.
23	Performing discreditable acts (7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action	22 TEX. ADMIN. CODE §501.90(7); TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
24	Performing discreditable acts (8) knowingly participating in the preparation of a false or misleading financial statement or tax return	22 TEX. ADMIN. CODE §501.90(8); TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
25	Performing discreditable acts (9) fiscal dishonesty or breach of fiduciary responsibility of any type	22 TEX. ADMIN. CODE §501.90(9); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

26	Performing discreditable acts (10) failure to comply with a final order of any state or federal court	22 TEX. ADMIN. CODE §501.90(10); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
27	Performing discreditable acts (11) repeated failure to respond to a client's inquiry within a reasonable time without good cause	22 TEX. ADMIN. CODE §501.90(11); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
28	Performing discreditable acts (12) misrepresenting facts or making a misleading or deceitful statement to a client	22 TEX. ADMIN. CODE §501.90(12); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
29	Performing discreditable acts (13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing authority	22 TEX. ADMIN. CODE §501.90(13); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

30	Performing discreditable acts (14) threats of bodily harm or retribution to a client	22 TEX. ADMIN. CODE §501.90(14); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
31	Performing discreditable acts (15) public allegations of a lack of mental capacity of a client which cannot be supported in fact	22 TEX. ADMIN. CODE §501.90(15); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
32	Performing discreditable acts (16) causing a breach in the security of the CPA examination	22 TEX. ADMIN. CODE §501.90(16); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

33	Performing discreditable acts (17) voluntarily disclosing information communicated to the certificate holder by an employer, past or present, or through the certificate holder's employment in connection with accounting services rendered to the employer, except: (A) by permission of the employer; (B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act"); (C) pursuant to a subpoena or other compulsory process in a court proceeding; (D) in an investigation or proceeding by the board under the Public Accountancy Act; or (E) in an ethical investigation conducted by a professional organization of certified public accountants	22 TEX. ADMIN. CODE §501.90(17); TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
34	Performing discreditable acts (18) breaching the terms of an agreed consent order entered by the Board or violating any Board Order	22 TEX. ADMIN. CODE §501.90(18); TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.
35	Failure to report reportable events	22 TEX. ADMIN. CODE §501.91 TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

36	Filing a frivolous complaint	22 TEX. ADMIN. CODE §501.92 TEX. OCC. CODE §§901.502(6) & 901.502(11)	$0 to $10,000 per violation.
37	Failure to respond to Board communications	22 TEX. ADMIN. CODE §501.93 TEX. OCC. CODE §§901.502(6) & 901.502(11)	**Minor:** $0 to $1,000 per violation. **Moderate:** $1,000 to $50,000 per violation. **Major:** $50,000 to $100,000 per violation.
38	Failure to comply with mandatory CPE	22 TEX. ADMIN. CODE §§501.94 & 523.62 TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)	$0 to $10,000 per violation.
39	Three year no-pay individual	TEX. OCC. CODE §§901.502(4) & 901.502(11)	$0 to $10,000 per violation.
40	CPA exam irregularities	22 TEX. ADMIN. CODE §511.70 TEX. OCC. CODE §§901.502(11) & 901.502(12)	**Minor:** $0 to $25,000 per violation. **Moderate:** $25,000 to 75,000 per violation. **Major:** $75,000 to $100,000 per violation.

41	Ineligible applicant certification hearings	22 TEX. ADMIN. CODE §§511.161 & 511.176 TEX. OCC. CODE §§901.502(11) & 901.502(12)	$0 to $10,000 per violation.
42	Moral character	22 TEX. ADMIN. CODE §§511.27 & 525.1 TEX. OCC. CODE §§901.502(11) & 901.502(12)	**Moderate:** $1,000 to $50,000 per violation. **Major:** $50,000 to $100,000 per violation.
43	Failure to satisfy peer review requirements	22 TEX. ADMIN. CODE §527.4 TEX. OCC. CODE §§901.502(11) & 901.502(12)	**Minor:** $0 to $1,000 per violation. **Moderate:** $1,000 to $50,000 per violation. **Major:** $50,000 to $100,000 per violation.

Figure: 25 TAC §265.184(n)(1)

Maximum Number of Users in Pool at Any Time

Shallow/Instructional or Beginning or Wading Areas	Deep Area (Not Including Diving Area)	Diving Area (per each diving board)
15 sq. ft. water surface area per user	25 sq. ft. water surface area per user	300 sq. ft. water surface area per user

Figure: 25 TAC §265.184(o)

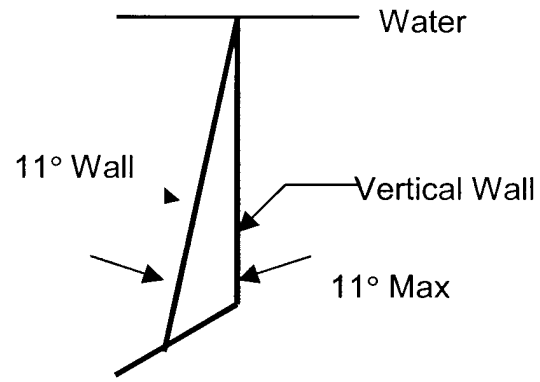


Figure: 25 TAC §265.184(t)(3)

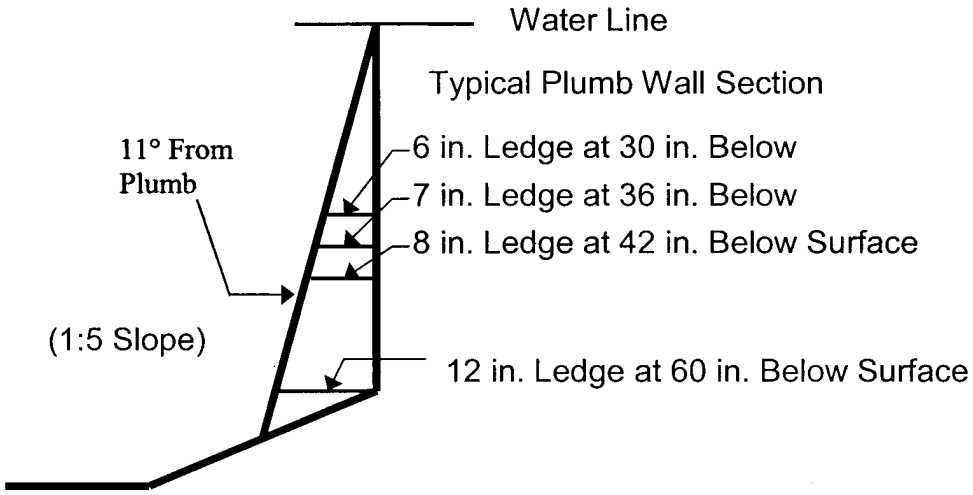
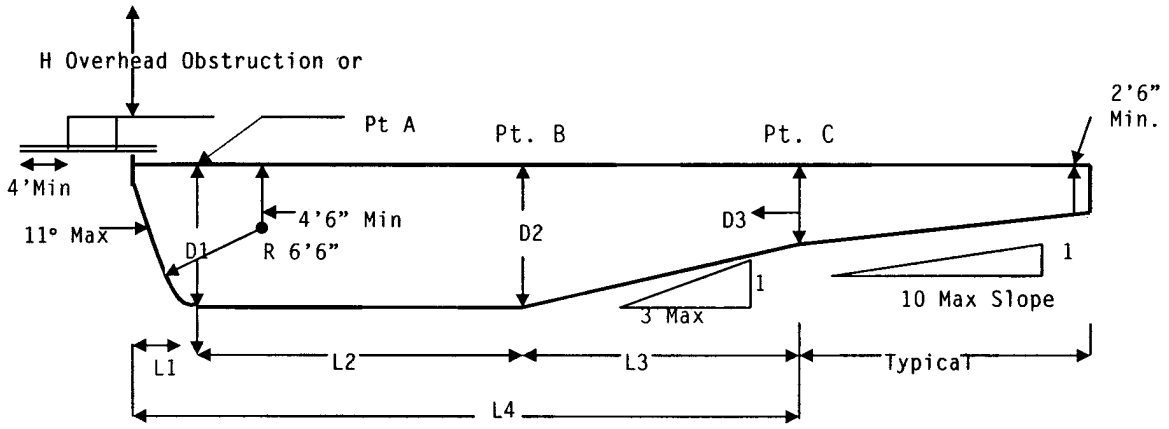


Figure: 25 TAC §265.186(e)(6)

Maximum Diving Board Height Over Water	¾ Meter	1 Meter	3 Meters
Maximum Diving Board Length	12 ft.	16 ft.	16 ft.
Minimum Diving Board Overhang	2 ft. 6 in.	5 ft.	5 ft.
D1 Minimum	8 ft. 6 in.	11 ft. 2 in.	12 ft. 2 in.
D2 Minimum	9 ft.	10 ft. 10 in.	11 ft. 10 in.
D3 Minimum	4 ft.	6 ft.	6 ft.
L1 Minimum	4 ft.	5 ft.	5 ft.
L2 Minimum	12 ft.	16 ft. 5 in.	19 ft. 9 in.
L3 Minimum	14 ft. 10 in.	13 ft. 2 in.	13 ft. 11 in.
L4 Minimum	30 ft. 10 in.	34 ft. 7 in.	38 ft. 8 in.
L5 Minimum	8 ft.	10 ft.	13 ft.
H Minimum	16 ft.	16 ft.	16 ft.
From Plummet to Pool Wall at Side	9 ft.	10 ft.	11 ft. 6 in.
From Plummet to Adjacent Plummet	10 ft.	10 ft.	10 ft.



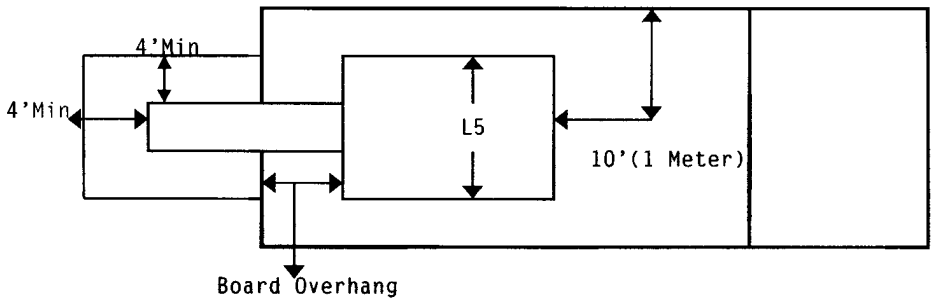


Figure: 25 TAC §265.201(f)(1)

Fixture Schedule	Females	Males
Water Closets	1/50	1/100
Urinals	N/A	1/100[1]
Lavatories	1/100	1/100
Showers	1/100	1/100
Baby Changing Table	-1-	-1-
Drinking Water Fountain	1 per facility[2]	1 per facility[2]

[1] Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one half of the minimum specified.

[2] Only one must be provided and available to swimmers in the pool/spa area.

Figure: 25 TAC §265.204(a)

1. Disinfectant Levels	Minimum	Ideal	Maximum
Free Chlorine--pools	1.0 ppm	2.0 - 3.0 ppm	8.0 ppm
Free Chlorine--spas	2.0 ppm	3.0 - 5.0 ppm	8.0 ppm
Combined Chlorine	None	None	None
Bromine--pools	2.5 ppm	2.5 - 6.0 ppm	12.0 ppm
Bromine--spas	4.5 ppm	5.5 - 7.5 ppm	12.0 ppm

2. pH Levels	Minimum	Ideal	Maximum
pH	Not less than 7.0	7.4 - 7.6	7.8

3. Water Clarity	Minimum	Ideal	Maximum
Water turbidity	Bottom and main drain shall be clearly visible at the deepest part of the pool or spa (Section 265.203(c))	Bottom and main drain shall be clearly visible at the deepest part of the pool or spa (Section 265.203(c))	Bottom and main drain shall be clearly visible at the deepest part of the pool or spa (Section 265.203(c))

4. Spa Temperature	Minimum	Ideal	Maximum
Temperature °F	N/A	102°F or less	104°F (40°C)

5. Stabilizer (cyanuric acid)	Minimum	Ideal	Maximum
Cyanuric acid	None*	10.0 - 40.0 ppm	100.0 ppm

*Stabilizer will not be used in indoor pools or spas or brominated pools or spas

Figure: 25 TAC §289.232(c)(18)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}} \left[\sum_{i=1}^{n} \frac{(X_i - \overline{X})^2}{n-1} \right]^{1/2}$$

Where: s = estimated standard deviation of the population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample

Figure: 25 TAC §289.232(i)(5)(C)

BRC FORM 232-1

Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3189

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Texas Department of Health has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY
Your employer is required to-
1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Texas Department of Health rules, certificates of registration, notices of violations, and operating procedures that apply to work you are engaged in, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER
You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES
1. Limits on exposure to radiation and radioactive material in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY
1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit as set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.232(i)(4)(A)-(C) of this title (relating to Radiation Control Regulations for Dental Radiation Machines). These subsections specify limits on exposure to radiation and exposure to concentrations of radioactive material in air and water.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation);
(a) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation.
(b) your employer must give you a written report of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS
All registered activities are subject to inspection by representatives of the Texas Department of Health. In addition, any worker or representative of the workers who believes that there is a violation of the Texas Radiation Control Act, the rules issued thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Texas Department of Health. The request must set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.232 (relating to Radiation Control Regulations for Dental Radiation Machines), to permit employees to observe a copy on the way to or from their place of employment.

Figure: 25 TAC §289.232(i)(6)(E)(i)(I)

TABLE I. HALF-VALUE LAYER FOR SELECTED KILOVOLT PEAK

X-ray tube voltage (kilovolt peak)		Measure Half-Value Layer (millimeters of aluminum)
Designed operating range	Measured operating potential	
Below 51----------	30	1.5
	40	1.5
	50	1.5
51 to 70----------	51	1.5
	60	1.5
	70	1.5
Above 70---------	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

Figure: 25 TAC §289.232(j)(1)(L)(i)(II)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552-----CONFIDENTIAL

This document contains information submitted to the Texas Department of Health, Bureau of Radiation Control by

_____
(Name of Company) (Name of Submitter)

that is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____
(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____
(Signature and Title) (Office) (Date)"

Figure: 25 TAC §289.232(k)(1)(X)(i)

	Name of Record/Document	Rule Cross-Reference	Time Interval for Keeping Record/Document
(I)	Inventory of all Radiation Machines Possessed	(h)(5)(D)	4 years
(II)	Receipt, Transfer, and Disposal of Each Radiation Machine Possessed	(h)(5)(E)	Until termination of registration
(III)	Current Operating and Safety Procedures	(i)(3)	Until termination of registration
	Documentation that all staff who operate the radiation machine(s) have read this document		Until next on-site inspection
(IV)	Current §289.232 of this title	(i)(5)(B)(*i*)(*I*)	Until termination of registration
(V)	Current Certificate of Registration	(i)(5)(B)(*i*)(*II*)	Until termination of registration
(VI)	Notice of Violation From Last Inspection (if applicable)	(i)(5)(B)(*i*)(*IV*)	Until next on-site inspection
(VII)	Documentation of Corrections of any Violations	(i)(5)(B)(*i*)(*IV*)	Until next on-site inspection
(VIII)	Equipment Performance Evaluation Tests	(i)(7)	4 years
(IX)	United States Food and Drug Administration Variances	(i)(10)	Until transfer of machines or termination of registration
(X)	Records at Additional Authorized Use Locations	(j)(1)(H)	While location is authorized on registration
(XI)	Automatic and Manual Film Processing Records	(i)(14)(F)	1 year
(XII)	Alternative Film Processing Records	(i)(15)	1 year
(XIII)	Digital Imaging Acquisition System Records	(i)(16)	1 year

Figure: 25 TAC §289.260(q)

Constituent or Property	Maximum (mg/l)	Concentration (pCi/l)
Arsenic	0.05	
Barium	1.0	
Cadmium	0.01	
Chromium	0.05	
Lead	0.05	
Mercury	0.002	
Selenium	0.01	
Silver	0.05	
Endrin 1,2,3,4,10,10-hexachloro-6, 7-expoxy-1,4,4a,5,6,7,8, 8a-octahydro-endo, endo-1,4:5,8-dimethanonaphthalene	0.0002	
Lindane 1,2,3,4,5, 6-hexachlorocyclohexane	0.004	
Methoxychlor 1,1,1-trichloro-2,2-bis-(p-methoxyphenyl) ethane	0.1	
Toxaphene Chlorinated camphene	0.005	
2,4-D (2,4, 5-Trichlorophenoxy) acetic acid	0.1	
Silvex 2-(2,4,5-Trichlorophenoxy) propionic acid	0.01	
Combined radium-226 and radium-228		5
Gross alpha-particle activity (excluding radon and uranium when producing uranium byproduct material or radon and thorium when producing thorium byproduct material)		15

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.

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 March 12, 2004, through March 18, 2004. The public comment period for these projects will close at 5:00 p.m. on April 23, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Buckeye Gulf Coast Pipelines; Location: The 38-mile long pipeline originates at an intersection of an existing pipeline corridor and FM 563 near the Moss Bluff area in Liberty County, Texas. The coordinates of the origin are Latitude N 29°54'44"; Longitude W 94°41'58" (N= 13,904,269.71; E= 3,330,656.76). The pipeline runs in a southern direction and enters Trinity Bay at Latitude N 29°46'42"; Longitude W 94°43'51". The pipeline terminates west of Dollar Point in Texas City, Galveston County, Texas. The coordinates of the terminus are Latitude N 29°26'16"; Longitude W 94°54'15" (N=13,730,358.13; E=3,271,411.96). Project Description: The applicant proposes to construct a 38-mile 12-inch diameter pipeline to transport hydrogen gas to consumers in Texas City. The project will have a 100-foot right-of-way and will temporarily impact 26.84 acres of wetlands. Directional drills will be utilized in crossing Hog Bayou, the Trinity River, the Houston Ship Cannel, and the Dickinson Channel/Texas City Levee. The overall project will result in 24.28 acres of temporary impacts to freshwater wetlands and 3.62 acres of permanent impacts to forested wetlands. Approximately 2.66 acres of the forested wetlands are categorized as mixed hardwood and Chinese tallow forest. The remaining 0.96-acre of forested wetland is dominated by Chinese tallow. The pipeline route near the Houston Ship Channel, within blocks 262 and 249, crosses the oyster reef pad #5 on the west side and the South Boater Cut on the east side of the channel. The applicant is resolving these areas by utilizing directional drilling. Updated plans, of this crossing, will be available if requested within the comment period. The applicant proposes to restore the 24.28 acres of temporarily impacted wetland areas in the proposed pipeline right of way by restoring the areas to pre-project contours and allowing the area to naturally revegetate. The applicant will achieve a success rate of 50% vegetative cover within 2 years. For the permanent forested wetland impacts of 3.62 acres, the applicant will establish an in- lieu-fee agreement with the National Fish and Wildlife Foundation at the Lower Trinity River Habitat Fund. The funds will contribute to the purchase of 15 acres of mixed bottomland hardwood habitat within the Trinity River floodplain. The 15 acres will be incorporated into the Trinity River National Wildlife Refuge. The monitoring plan is included with the project plans. CCC Project No.: 04-0063-F1; Type of Application: U.S.A.C.E. permit application #23290 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 §1251-1387). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Robert Carl Bedgood; Location: The project is located southeast of the intersection of Scurlock Street and Stella Street, in Port O'Connor, along the Gulf Intracoastal Waterway, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port O'Connor, Texas. Approximate UTM Coordinates: Zone 14; Easting: 751712; Northing: 3147735. Project Description: The permittee proposes to modify U. S. Army Corps of Engineers Permit 22739. The proposed changes involve changing the mitigation plan and adding structures for property owners. The mitigation modification is necessary due to erosion incurred during Hurricane Claudia. All dredging, bulkheading, and filling behind the bulkhead have been completed. The permittee proposes to create 0.28-acre of smooth cord grass emergent intertidal wetlands instead of the original 0.16-acre authorized. The elevation would be stabilized above mean sea level using the excavated soils located in the northwest corner of the basin. These consist of sand and loamy sands with some organic content. Once the stabilized bed elevation is established, the rock wavebreak fronting this bed and bulkhead would be completed. The permittee proposes to install 0.21-acre of submerged hard substrate materials instead of the 0.17-acre authorized in the original permit. This will function as submerged habitat and wave absorption buffers for both the existing seagrass beds and the created intertidal wetland, reducing further loss of existing beds due to hydrologic forces and preventing the erosion of the clay lenses the seagrass beds are situated upon. The permittee proposes to construct six L-head piers in front of the bulkhead on the west side of Larry's Harbor for the property owners of those lots. This would allow a full review of the entire project instead of the property owners coming in independently without regard to the mitigation area. Lastly, the permittee proposes to change the authorized location of the boat ramp to avoid utility lines. CCC Project No.: 04-0067-F1; Type of Application: U.S.A.C.E. permit application #22739(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 §1251-1387).

Applicant: Davis Petroleum Corporation; Location: The project is located in Texas State Tracts 99, 100, 113, 114, 131, and 205. The proposed well is located in State Tract 99 in Galveston Bay, Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 319657; Northing: 3277583. The first proposed pipeline will be installed from the proposed well to the second proposed pipeline in Galveston Bay, Chambers County, Texas. The tie-in location for the two proposed pipelines can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 320577; Northing: 3276794. The second proposed pipeline would be installed from a previously permitted well location to an existing pipeline. The previously permitted well

can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 320792; Northing: 3277140. The tie-in location at the existing pipeline can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates: Zone 15; Easting: 316728; Northing: 3274393. Project Description: The applicant proposes to erect and maintain structures and to perform work to drill and produce the ST-99 Well No. 1. This activity consists of the permanent placement of a 30-foot by 7-foot well platform and a 70-foot by 70-foot production platform. During drilling operations the applicant will place 2,667 cubic yards of shell, gravel, or crushed rock for the marine barge pad. The barge pad will cover 24,000 square feet of mud bottom in Galveston Bay. Upon successful completion of the well, the applicant proposes to install an 8-inch pipeline for the production of the well. The first pipeline will be 2,162 feet long and connect the well to a second proposed pipeline. The applicant will bury the pipeline a minimum of 3 feet below the mudline by trenching, boring, or jetting. The applicant also proposes to install a second 8-inch pipeline from a previously permitted well, ST-100 Well No. 1, to an existing pipeline. The second proposed pipeline would be 15,447 feet long. The applicant will bury the pipeline a minimum of 3 feet below the mudline by trenching, boring, or jetting. There will be 11,310 total cubic yards of bay bottom material displaced during installation of both pipelines. CCC Project No.: 04-0076-F1 Type of Application: U.S.A.C.E. permit application #23326 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 §1251-1387). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Gulf Fiber Corporation; Location: The project is located in OCS federal waters, in the Gulf of Mexico, in the Galveston Area coastwise safety fairway, in Block 362, Offshore Texas. Project Description: The applicant proposes to modify Permit 21689 that authorized the installation of 810,546 feet of 1.5-inch in diameter fiber optic cable in the Gulf of Mexico. The applicant proposes to install the cable within the coastwise safety fairway to a depth of 3 feet below the Gulf bottom. The previously authorized permit required that 10 feet of cover be maintained crossing the fairway. The applicant states that 3 feet of burial depth is sufficient for protection against trawler door or anchor penetration given the shear strength of the sediments. The applicant realizes that a ship anchor weighing in excess of 5 tons could penetrate the sediments to a depth of more than 3 feet and is aware of the risk and is willing to absorb the associated costs for repair and lost service in this event. The cable will be installed by jetting using a remotely operated vehicle equipped with a water jet system. CCC Project No.: 04-0079-F1 Type of Application: U.S.A.C.E. permit application #21689(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Sterling Exploration and Production Co., LLC; Location: The project is located in Matagorda Bay along State Tracts 47, 48, and 52, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates NAD 27: Zone 14; Easting: 743008; Northing: 3159490 to the U.S.G.S. quadrangle map entitled: Keller Bay, Texas. Approximate UTM Coordinates NAD 27: Zone 14; Easting: 745858; Northing: 3158471. Project Description: The applicant proposes to install 9,758 linear feet of 2- to 4-inch flowline. Approximately 1.13 acre of native waterbottom will be temporarily affected by the jetting activity. CCC Project No.: 04-0082-F1; Type of Application: U.S.A.C.E. permit application #23321 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Parks and Wildlife Department; Location: The project is located in Aransas Bay, off of Goose Island State Park, on the Lamar Peninsula, 9 miles north of Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: St. Charles Bay, Texas. Approximate UTM Coordinates: Zone 14; Easting: 697257; Northing: 3112846. Project Description: The applicant proposes a shoreline protection and marsh construction project for Goose Island. The shoreline protection includes a 4,400-foot-long by 30-foot-wide breakwater and a 1,000-foot long by 50-foot-wide access channel. The proposed 24-acre marsh will be constructed with the use of confined dredged material from the access channel (5,500 yds3) as well as dredged material from the 5,500-foot-long TPWD channel (26,000 yds3) and the 4,600-foot-long Neptune Harbor channel (34,000 yds3). CCC Project No.: 04-0077-F1; Type of Application: U.S.A.C.E. permit application #23307 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 §1251-1387). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Byron and Sharon Cumberland; Location: The project is located at on Matagorda Bay at Lots 23 through 35 on Edgewater Street, Alamo Beach, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East Texas. Approximate UTM Coordinates: Zone 14; Easting: 738469; Northing: 3162909. Project Description: The applicant proposes to place 527 cubic yards of fill material into Matagorda Bay to construct a 390-foot concrete bulkhead and prevent further erosion of this property. Two hundred eighty nine cubic yards of oyster shell fill will be placed to construct a 12- inch thick pad in order to support a barge during bulkhead construction. Two hundred thirty eight cubic yards of clean fill material, from a borrow site owned by the applicant, is to be placed behind the bulkhead to stabilize the structure. The stated purpose for the fill is to reclaim eroded property on 13 lots in order to accommodate septic systems for a housing development. Local ordinance requires 4,000 square feet of unobstructed surface area for a septic system. CCC Project No.: 04-0087-F1; Type of Application: U.S.A.C.E. permit application #23298 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 §1251-1387).

Applicant: Laguna Development Group, Ltd.; Location: The project is located adjacent to Laguna Madre, southeast of the intersection of State Highway 100 and F.M. Road 510 in Laguna Vista, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Laguna Vista, Texas. Approximate UTM Coordinates: Zone 14; Easting: 671854; Northing: 2886993. Project Description: The applicant proposes to fill 0.86 acres of saltwater coastal flat wetlands associated with the construction of a 1,550 linear feet of bulkhead, of which 0.49 acres is after-the-fact. An additional 0.05 acres of jurisdictional area is to be filled in association with slope stabilization on either side of an existing 900-foot drainage ditch located on the north part of the property. The ditch contains a 0.55-acre mature mangrove community that is to be preserved as part of the applicant's proposed mitigation. Additional mitigation includes the enhancement of 1.43 acres of existing onsite wetlands. The proposed and existing bulkhead is intended to service a 70+ lot residential subdivision. The applicant further proposes to install a wildlife observation platform that is connected to the proposed bulkhead with a 70-foot-long by 6-foot-wide boardwalk. The applicant's agent has stated that a deed restriction/covenant will be established that will prohibit the construction of docks or any other structures waterward of the bulkhead. CCC Project No.: 04-0088-F1; Type of Application: U.S.A.C.E. permit application #23330 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 §1251-1387). Note: The consistency

review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Triton Coastal Ventures; Location: The project is located in and adjacent to Eckerts Bayou, Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates of the project site are: Zone 15; Easting: 311955; Northing: 3234319; mitigation site: Zone 15, Easting: 297760, Northing: 3223324. Project Description: The applicant proposes to fill a total of 0.40 acres of jurisdictional waters, including wetlands, for the purpose of constructing a waterfront residential subdivision. Fill will be discharged into 0.33 acres for the raising of pads for home sites. The remaining 0.07-acre of waters will be filled for the construction of a concrete breakwater 25 to 30 feet from and parallel to the existing shore. The proposed breakwater will be constructed of sacks of concrete stacked with breaks every 100 feet to allow for tidal exchange. Additionally, the applicant proposes to construct three piers, and a boardwalk parallel to the shoreline. The applicant proposes to mitigate for the impacts by excavating 3.1 acres of uplands of a 24-acre tract of land and creating high marsh habitat. The 24-acre tract would be placed into a conservation easement. CCC Project No.: 04-0089-F1; Type of Application: U.S.A.C.E. permit application #23140 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 §1251-1387).

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-200402090
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 24, 2004

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #167k) for global bond investment management services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program and one of the Texas Tomorrow Funds (Program). The funds to be managed are funds from contracts and investments of the Program. The Comptroller and the Board request proposals from qualified firms for global bond investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about July 6, 2004.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, April 2, 2004, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, April 2, 2004, 2:00 p.m. CZT. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Tuesday, April 13, 2004. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Thursday, April 15, 2004, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Wednesday, April 21, 2004. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - April 2, 2004, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - April 13, 2004, 2:00 p.m. CZT; Official Responses to Questions posted - April 15, 2004; Proposals Due - April 21, 2004, 2:00 p.m. CZT; Contract Execution - July 1, 2004, or as soon thereafter as practical; Commencement of Project Activities - July 6, 2004.

TRD-200402074
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 22, 2004

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Notice of Request for Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 -

618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #167l) for high yield bond investment management services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program and one of the Texas Tomorrow Funds (Program). The funds to be managed are funds from contracts and investments of the Program. The Comptroller and the Board request proposals from qualified firms for high yield bond investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about July 6, 2004.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, April 2, 2004, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, April 2, 2004, 2:00 p.m. CZT. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Wednesday, April 14, 2004. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, April 16, 2004, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Thursday, April 22, 2004. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - April 2, 2004, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - April 14, 2004, 2:00 p.m. CZT; Official Responses to Questions posted - April 16, 2004; Proposals Due - April 22, 2004, 2:00 p.m. CZT; Contract Execution - July 1, 2004, or as soon thereafter as practical; Commencement of Project Activities - July 6, 2004.

TRD-200402075
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 22, 2004

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/29/04 - 04/04/04 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 03/29/04 - 04/04/04 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200402080
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 23, 2004

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Concho Valley Workforce Development Board

Request for Vendor Enrollment

The Concho Valley Workforce Development Board through its One-Stop Contractor, ACS State and Local Solutions, operating the Texas Workforce Center of the Concho Valley is seeking enrollment from organizations to provide gasoline upon receipt of an authorized voucher by a program client in the following counties: Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton, and Tom Green.

All types of provider sources will be reviewed and considered for acceptance and use in accordance with the Federal and State guidelines.

Applicant Requirements: Proposers must have adequate personnel capabilities necessary to implement the goals and objectives of the program and to ensure compliance with the ensuing contract.

Contact Person: Requests for a copy of this application as well as any and all questions concerning this Request for Proposal are to be directed to Morris Apple, Texas Workforce Center of the Concho Valley, 202 Henry O. Flipper Street, San Angelo, Texas 76903, or e-mail: william.apple@twc.state.tx.us.

Application Deadline: All applications must be received by 3:00p.m., April 30, 2004.

The Texas Workforce Center of the Concho Valley is an Equal Employment Opportunity Employer.

TRD-200402015

Teri Sosa
Contract Manager
Concho Valley Workforce Development Board
Filed: March 18, 2004

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Texas Education Agency

Notice of Texas Education Agency Security Environment (TEASE) Access Required for Even Start Family Literacy Program eGrant Application

Even Start Family Literacy. The grant application for Even Start Family Literacy will only be available in the Texas Education Agency eGrants system at http://www.tea.state.tx.us/opge/egrant/index.html, with an expected publication date of April 19, 2004. All external customers and users anticipating a need to access the eGrants system to submit a competitive application under Even Start Family Literacy, or those who anticipate being part of a shared services arrangement, must have a username and password to access the eGrants system. Participants are encouraged to request Texas Education Agency Security Environment (TEASE) access no later than April 8, 2004, in order to obtain a TEASE username and password in a timely manner.

Any users who have previously applied for an eGrants TEASE username and password do not need to reapply. However, users are encouraged to review the role previously requested for their eGrants username and password to ensure it is appropriate. If the role is not correct, users will need to submit a new eGrants/expenditure report (ER) TEASE access request form indicating the change in role. If a username and password were assigned to an individual who should no longer have access, please complete the eGrants/ER TEASE access form to delete or revoke the username and password for that individual.

A TEASE username and password is required for each eGrants user, including authorized officials such as superintendents and executive directors who submit grant applications, employees or contractors who will assist in writing/completing eGrants, grant personnel who will be reporting progress on eGrants projects, and business office personnel who will be entering and/or certifying and submitting expenditure reports and requesting payment for various eGrants. For each user, a single TEASE username and password is valid for all grant expenditure reporting and all eGrants applications and is not limited to any one specific grant. Privileges listed under a role apply to all grants, progress/results reports, and expenditure reports.

To request a username and password, go to http://www.tea.state.tx.us/forms/tease/egrants_ext.htm. Attachment 1 gives detailed instructions on how to apply for eGrants and ER access.

Training Available on Texas Education Telecommunication Network (TETN). TEA is offering training via TETN (TETN Event #6718) on Friday, April 16, 2004, from 12:30 p.m. to 2:30 p.m. This training will cover the new Even Start Family Literacy grant application and will provide the opportunity for questions and answers. As space is limited, individuals planning to attend the event must reserve seating with their regional education service center.

Further Information. For clarifying information about the eGrants system or TEASE access, send questions via e-mail to eGrants@tea.state.tx.us.

TRD-200402109
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 24, 2004

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Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 3

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-025 from local educational agencies (LEAs) including public school districts, open- enrollment charter schools and regional education service centers; community-based organizations (CBOs); and other public or private entities, non-profit or for profit, or a consortium of two or more agencies, organizations, or entities to establish or expand community learning centers. Examples of agencies and organizations now eligible under the 21st Century Community Learning Center program include, but are not limited to: non-profit agencies, city or county government agencies, faith-based organizations, institutions of higher education, and for-profit corporations. A shared services arrangement of two or more LEAs is also eligible to apply.

An application must designate the specific campus(es) that meet the eligibility requirements of the grant in order to determine the students and families to be served in the 21st Century Community Learning Center(s). Eligible campuses are those that qualify for schoolwide programs under Title I, Section 1114, or schools that have a high percentage of low-income families (40% or more students identified as economically disadvantaged). One application will be limited to not more than five community learning center(s). Centers can be located in elementary or secondary schools or similarly-accessible facilities. Each community learning center may serve students from more than one eligible campus, but an eligible campus may not be served by more than one community learning center.

Description. The purpose of the Texas 21st Century Community Learning Centers Grant Program, Cycle 3, is to provide opportunities beyond the normal school day for communities to establish or expand activities in community learning centers that: (1) provide opportunities for academic enrichment, including providing tutorial services to help children, particularly students who attend low-performing schools, meet state and local student academic achievement standards in core academic subjects, such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities; drug and violence prevention programs; counseling programs; art, music, and physical education and fitness programs; and technology education programs that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development. Program services must be offered only when schools are not in session (before or after school, during holidays, or during summer recess). The program must be carried out in active collaboration with the schools the students attend. Applications must provide for partnerships between an LEA, a CBO, and other public or private organizations, if appropriate.

Dates of Project. Applicants should plan for a starting date of no earlier than October 1, 2004, and an ending date of no later than December 31, 2005. Applicants must begin the operation of the community learning centers no later than the beginning date of the spring semester for the 2004-2005 school year.

Project Amount. Approximately $38,310,000 is available for funding approximately 218 community learning centers during the 2004-2005 school year and the summer of 2005. The grant request may not be less than $50,000 or greater than $175,000 per center, not exceeding $875,000 for a total of five centers. Project funding in the second and third years will be based on satisfactory progress of the first and second year objectives and activities, respectively; general budget approval by

the U.S. Congress; the number of centers established; the number of students and campuses served by each center; and the activities to be implemented during out-of-school time throughout the grant period. This project is funded 100% from 21st Century Community Learning Center federal funds.

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 program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA and receive a basic average score of above 70 to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of the Texas 21st Century Community Learning Centers Grant Program, Cycle 3, on Tuesday, April 20, 2004, from 1:00 p.m. until 4:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional education service center. The conference will be videotaped. Pre- conference questions may be sent by e-mail to gkidwell@tea.state.tx.us prior to April 15, 2004. Each person attending will be required to sign a register setting out the representative's name, the applicant organization represented, its name, address, and telephone number. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from TEA's Division of Discretionary Grants Document Control Center using the contact information that follows.

Requesting the Application. A complete copy of RFA #701-04-025 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) 463-9269; 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/opge/disc/index.html 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. In order to ensure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any additional information that is different from, or in addition to, information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, June 10, 2004, to be considered for funding.

TRD-200402108

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 24, 2004

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Texas Commission on Environmental Quality

Enforcement Orders

An order was entered regarding Coastal Transport Company, Inc., Docket No. 2001-0847-PST-E on February 27, 2004 assessing $14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Hancock Water Control & Improvement District, Docket No. 2001-0590-MWD-E on February 27, 2004 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Darren Ream, Staff Attorney at 817/588-5878, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonora Investments, L.L.C. dba Sonora Industrial Park, Docket No. 2002-0280-PWS-E on February 27, 2004 assessing $2,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diana Grawitch, Staff Attorney at 512/239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Afton Park Civic Improvement Association dba Afton Water System, Docket No. 2002-0735-PWS-E on February 27, 2004 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Lemanczyk, Staff Attorney at 512/239-5915, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Car Shine, Inc. dba Copperfield Car Wash, Docket No. 2002-0680-PST-E on February 27, 2004 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin J. de Leon, Staff Attorney at 512/239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HMW Special Utility District dba Kipling Oaks Section 1, Docket No. 2002-0981-PWS-E on February 27, 2004 assessing $23,554 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Salman dba Stop N Drive, Docket No. 2003- 0345-PST-E on February 27, 2004 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2003-0519- AIR-E on February 27, 2004 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Budget Rent-A-Car Of El Paso, Inc., Docket No. 2003- 0854-PST-E on February 27, 2004 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David S. Smonko dba Lakeway Exxon, Docket No. 2003-0863-PST-E on February 27, 2004 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rick Ciampi, Enforcement Coordinator at 512/239-3119, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Craig E. Adams dba Circle M 2, Docket No. 2003-0873- PST-E on February 27, 2004 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City Of Galveston, Docket No. 2003-0881-PST-E on February 27, 2004 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mustang Valley Water Supply Corporation, Docket No. 2003-0574-PWS-E on February 27, 2004 assessing $788 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beeville, Docket No. 2003-1268-PWS-E on February 27, 2004 assessing $650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Schildwachter, Enforcement Coordinator at 512/239-2355, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saab Petroleum Corporation dba Gordon's Chevron, Docket No. 2003-1093-PST-E on February 27, 2004 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kason Automatic Transmission, Inc., Docket No. 2003- 1278-PST-E on March 1, 2004 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at 512/239-1105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melissa Rogers dba Bob's Town & Country Market, Docket No. 2003-0915-PST-E on February 27, 2004 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Bureau of Prisons, Docket No. 2003-0366- MWD-E on February 27, 2004 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at 409/899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Koch Pipeline Company, L.P., Docket No. 2003-1125- AIR-E on February 27, 2004 assessing $22,184 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ore City, Docket No. 2003-0396-MWD-E on February 27, 2004 assessing $10,751 in administrative penalties with $2,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teppco Crude Oil, L.P., Docket No. 2003-0682-AIR-E on February 27, 2004 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Food Fast Corporation, Docket No. 2003-1142-PST-E on February 27, 2004 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro Suppliers, Inc. dba Great Hills Texaco, Docket No. 2003-1146-PST-E on February 27, 2004 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palm Valley Distributing Company, Docket No. 2002- 0738-PST-E on February 27, 2004 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Zaid dba Papa's Food Mart, Docket No. 2003- 0989-PST-E on February 27, 2004 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kassam Memenji dba Sunrise Grocery 1, Docket No. 2003-0783-PST-E on February 27, 2004 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rakesh Jain dba Sea Isle Supermarket, Docket No. 2003- 1002-PST-E on February 27, 2004 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pirzada, Inc., Docket No. 2003-0796-PST-E on February 27, 2004 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael C. Barrilleaux dba C & M Patton Village Grocery, Docket No. 2003-1014-PST-E on February 27, 2004 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator at (512)239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ki Chong Dorsey dba Sun Coast Food Market, Docket No. 2003-0813-PST-E on February 27, 2004 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly McGuire, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C.W. & A., Inc., Docket No. 2003-0816-PST-E on February 27, 2004 assessing $820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order to terminate an agreed order was entered regarding Equistar Chemicals, L.P. formerly Occidental Chemical Corporation, Docket No. 1995-0386-AIR-E on February 27, 2004.

Information concerning any aspect of this order may be obtained by contacting Rebecca Nash Petty at 512/239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calidad Environmental Services, Inc., Docket No. 2003- 0190-IHW-E on February 27, 2004 assessing $4,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding the City of San Augustine, Docket No. 2002-1120- MWD-E on February 27, 2004 assessing $23,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Petroleum, L.P., Docket No. 2001-1354-PST- E on February 27, 2004 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kelly Mego, Staff Attorney at 817/588-5922, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200402094
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2004

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Enforcement Orders

A default order was entered regarding Galveston Environmental Services, Inc., Docket No. 2001-0540-IHW-E on March 16, 2004 assessing $48,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at 210/403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Utilities Company, Docket No. 2002-1088- PWS-E on March 12, 2004 assessing $36,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at 512/239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Environmental Controls of South Texas, Ltd., Docket No. 2002-0679-MSW-E on March 12, 2004 assessing $5,625 in administrative penalties with $5,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Snehal Patel, Staff Attorney at 713/422-8928, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding No Thi Ky Vo dba Kellys Texaco, Docket No. 2003- 0831-PST-E on March 12, 2004 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Dearborn Company, Docket No. 2003-1048-AIR-E on March 12, 2004 assessing $2,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phuong Cong Huynh dba P & H Food No. 2, Docket No. 2003-0892-PST-E on March 12, 2004 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2003-1095-AIR- E on March 12, 2004 assessing $2,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daren Day dba Mac's Shell, Docket No. 2003-0923-PST- E on March 12, 2004 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at 512/239-4489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thousand Trails, Inc., Docket No. 2003-0128-MWD-E on March 12, 2004 assessing $10,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kohettur, Inc., Docket No. 2003-0790-PST-E on March 12, 2004 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 7-Eleven, Inc., Docket No. 2003-1187-PST-E on March 12, 2004 assessing $1,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at 512/239-1105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Fina Oil & Chemical Company and Fina Pipeline Company, Docket No. 1995-1004-ISW-E on March 12, 2004 assessing $48,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at 512/239-4113, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200402095
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2004

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Notice of District Petition

Notices mailed March 19 through March 22, 2004

TCEQ Internal Control No. 02182004-D03; K. Mill Holdings, Ltd. (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 98 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Lakeland Development Company and Bank of Oklahoma, N.A., on the property to be included in the proposed District; (3) the proposed District will contain approximately 208.9 acres located within Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has also provided the TCEQ with a certificate evidencing the consent of Lakeland Development Company and Bank of Oklahoma, N.A. to the creation of the proposed District. By Ordinance No. 2003-1169 effective December 9, 2003, the City of Houston, Texas gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services; and (2) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing parks and recreational facilities permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $20,000,000.

TCEQ Internal Control No. 01152004-D04; Fort Bend County, Texas and Terramark Holdings, L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 148 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 151.59 acres located within Fort Bend County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-58, effective October 7, 2003, the City of Rosenberg, Texas gave its consent to the creation of the proposed District and authorized the Petitioner to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $9,000,000.

TCEQ Internal Control No. 02062004-D02; CW-LT I Development, L.P., Land Tejas Park Lakes East, Ltd., Wilson/Beltway, Ltd., and Brengrove Investments I, Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 400 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are seven lienholders, Peter Gold, trustee, Texas State Bank, International Bank of Commerce, Land Tejas Development Northpointe, L.L.C., Molly R. Gunn, Perry Homes and Newmark Homes, L.P., on the property to be included in the proposed District; (3) the proposed District will contain approximately 589.82 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioners have also provided the TCEQ with certificates evidencing the consent of Peter Gold, trustee, Texas State Bank, International Bank of Commerce, Land Tejas Development Northpointe, L.L.C., Molly R. Gunn, Perry Homes and Newmark Homes, L.P. to the creation of the proposed District. By Ordinance No. 2004-36, effective January 27, 2004, the City of Houston, Texas gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services; and (2) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing parks and recreational facilities permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $42,080,000.

TCEQ Internal Control No. 02052004-D01; Tuscan Lakes Development II, L.P. and Tuscan Lakes Investors II, L.P. (Petitioners) filed a petition for creation of Galveston County Municipal Utility District No. 44 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Texas State Bank, on the property to be included in the proposed District, and the before mentioned entity has consented to the petition; (3) the proposed District will contain approximately 435.429 acres located within Galveston County, Texas; and (4) the proposed District is within the corporate boundaries of the City of League City, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioners have also provided the TCEQ with a certificate evidencing the consent of Texas State Bank to the creation of the proposed District. By Ordinance No. 2003-13, effective April 8, 2003, the City of League City, Texas gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $41,250,000.

TCEQ Internal Control No. 02182004-D01; R. West Development, Co., Inc. and Mac- West, Inc. (Petitioners) filed a petition for creation of Brazoria County Municipal Utility District No. 24 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, The Casteel Partnership and Pearland State Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 621.6827 acres located

within Brazoria County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Alvin, Texas. The Petitioners have also provided the TCEQ with a certificate evidencing the consent of The Casteel Partnership and Pearland State Bank to the creation of the proposed District. By Ordinance No. 03-RRR, effective December 18, 2003, the City of Alvin gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create such a political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioners estimate that the cost of the project will be approximately $34,150,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200402093
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2004

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Notice of Water Rights Application

Notices mailed March 16, 2004 and March 18, 2004

APPLICATION NO. 5823; Brandon Bouma, dba Legacy Farms, L.P., Route 2, Box 240, Plainview, Texas 79072, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks to divert and use a maximum of 600 acre-feet of water per year from Running Water Draw, tributary of the White River, tributary of the Salt Fork Brazos River, tributary of the Brazos River, Brazos River Basin, at a maximum diversion rate of 3.34 cfs (1,500 gpm), from a point located at Latitude 34.169 N, Longitude 101.643 W, approximately 3.8 miles southeast of the City of Plainview, bearing South 75.387 East, 145.73 feet from the northwest corner of Section 6, Block D-6, G.C. & S.F. Ry. Co., Certificate No. 1/79, Hale County, for storage in a proposed 10 acre-foot off-channel reservoir with a surface area of 2.715 acres for subsequent agricultural purposes to irrigate 347 acres out of a 636.835 acre tract located in the above section and block. Evidence of applicant's ownership of the 636.835 acres is evidenced in a warranty deed dated July 30, 2002 in Volume 999, Page 3399 of the Hale County Deed Records and a land survey dated December 29, 2003 from Carl Joe Williams, Registered Professional Land Surveyor of Texas No. 2120. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on November 17, 2003. Additional information and fees were received on January 2, 2004. The Executive Director of the TCEQ has reviewed the application and has declared it to be administratively complete and filed it with the Office of the Chief Clerk on January 13, 2004. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5822; ICI Development, LLC, 4101 Gateway Drive, Colleyville, Texas 76034, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.143 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks authorization to add in-place recreational use to an existing dam and reservoir pursuant to TWC 11.142 on an unnamed tributary of Little Bear Creek, tributary of the West Fork of Trinity River, tributary of the Trinity River, the Trinity River Basin in Tarrant County. The reservoir has a capacity of 38 acre-feet with a surface area 5.84 acres at normal capacity. The reservoir is located 18 miles northeast from the City of Fort Worth. The centerline of the dam is approximately S44.43 E, 1,209.9 feet from the northwest corner of the George Linney Survey, Abstract No. 939, in Tarrant County, also being 32.864 N Latitude, 97.097 W Longitude. Ownership of dam and lands is evidenced by a General Warranty Deed dated August 20, 2002, and recorded in Volume 15929, Page 0270 in the Official Records of Kendall County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on April 28, 2003 and additional information was received on May 28, 2003, June 25, 2003, June 26, 2003, August 7, 2003, October 29, 2003, and February 12, 2004. The application was accepted for filing and declared administratively complete on February 20, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200402092
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2004

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 11, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Reola M Bonugli, Brothers' Paving Inc., Roy Soliz Backhoe Services Inc. And Ramon Soliz d/b/b R & Materials; SOAH Docket No. 582-03-1053; TCEQ Docket No. 2001-0851-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Reola M Bonugli, Brothers' Paving Inc., Roy Soliz, Backhoe Services, Inc and Ramon Soliz d/b/a R & Materials on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-1455.

TRD-200402096
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2004

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Request for Comments on the Revised 2004 Clean Water Act §305(b) Water Quality Inventory and the §303(d) List

The Texas Commission on Environmental Quality (commission or TCEQ) announces the availability of the Revised Draft 2004 Clean Water Act (CWA), §305(b) Water Quality Inventory and the §303(d) List. The report is an overview of the status of surface waters in the state, including concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. In addition, a draft summary is provided of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The report is used by TCEQ for management decisions including monitoring, planning, implementing, and funding best management practices to control pollution sources, and to develop a list of impaired waters for selecting water bodies for which total maximum daily load analyses will be initiated.

For 2004, TCEQ conducted a targeted water quality assessment and will submit an integrated report to the United States Environmental Protection Agency (EPA) following the format introduced in 2002. The report was developed using the 2000 Texas Surface Water Quality Standards adopted by TCEQ. The following aspects of the Draft 2002 report were reviewed to prepare the 2004 report using a targeted approach including: the use-attainment status for any water body was reviewed using recent data where it was demonstrated that the current listing status could be inaccurate; water bodies with concerns for water quality, and where there was insufficient data during the last assessment in 2002, were re-evaluated to identify water bodies that do not support the water quality standards (all areas of the water body were reassessed for the parameter of concern); the collection of 24-hour dissolved oxygen data is a priority for the commission and recently available data sets were evaluated for compliance with 24-hour average and minimum criteria; the use-attainment status for some water bodies was reviewed at the request of the TCEQ permits or Total Maximum Daily Load programs; when special projects were conducted that included a timely reassessment of water quality status as part of a TCEQ-approved work plan, the use-attainment status was reviewed; and changes to fish consumption advisories issued by the Texas Department of Health were identified.

The report is available on the TCEQ Web site at: http://www.tnrcc.state.tx.us/water/quality/04_twqi303d/04_index.html. Information regarding the public comment period may also be found on the Web site at: http://www.tnrcc.state.tx.us/water/quality/04_twqi303d/public_comment.html. Review and comment on individual water bodies and the summaries, as described on the Web site, are encouraged in the period before May 3, 2004.

Any data and information provided to TCEQ to refute or substantiate current assessments must be submitted in summary format, collected using approved TCEQ methods and materials, and consistent with TCEQ quality assurance requirements.

After the public comment period, TCEQ will evaluate all additional data or information received. If any additional data or information submitted influences the draft inventory, this will be reflected in the final Draft 2004 Water Quality Inventory and the §303(d) List submitted to the EPA for approval.

TCEQ will consider and respond to comments received on this revised draft, and to comments received during the January 23 - February 23 comment period, in the "Response to Comments" document posted on the Web site with the Draft 2004 Water Quality Inventory and the §303(d) List. TCEQ will not respond to comments regarding guidance issues other than those that impact changes implemented in 2004 or assessments in past years.

Individuals unable to access documents on the TCEQ Web site can contact Patrick Roques, MC-165, Texas Commission on Environmental Quality, Monitoring Operations Division, P.O. Box 13087, Austin,

Texas 78711-3087. Comments must be received by 5:00 p.m. on May 3, 2004. Information must be submitted in writing and cannot be accepted by phone.

TRD-200402079
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 23, 2004

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Office of the Governor

Request for Grant Applications (RFA) for Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office announces the availability of grants for eligible drug court programs.

Purpose: The purpose of the funding is to support drug court programs as defined in Chapter 469 of the Texas Health and Safety Code, which include the following essential characteristics:

(1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) Early identification and prompt placement of eligible participants in the program;

(4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) Monitoring of abstinence through weekly alcohol and other drug testing;

(6) A coordinated strategy to govern program responses to participants' compliance;

(7) Ongoing judicial interaction with program participants;

(8) Monitoring and evaluation of program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and,

(10) Development of partnerships with public agencies and community organizations.

Available Funding: State funding is authorized for these projects from amounts appropriated from the State of Texas General Revenue Fund. Total funding available for fiscal year 2005 under this RFA is $750,000.

Standards: Grantees must comply with the applicable standards adopted under Title 1, Part 1, Chapter 3, Texas Administrative Code.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship, to provide legal services for adult offenders, or to supplant federal, state, or local funds.

Eligible Applicants: Eligible applicants are counties with existing adult, family, or juvenile drug courts and/or counties in the process of developing a drug court that meets the essential characteristics outlined in the Texas Health and Safety Code, §469.001. In addition:

(1) The presiding judge of a drug court must be an active judge holding elective office or a master. Persons eligible for appointment may not be a former or retired judicial officer.

(2) Fees collected pursuant to Texas Health and Safety Code, §469.004, are considered program income and must be used for allowable project costs as reflected in an approved budget.

(3) Pursuant to Texas Health and Safety Code, §469.006, and House Bill 1287, 77th Legislature, counties with populations over 550,000 are required to establish a drug court. Applicants from these counties must:

(a) provide documentation that they established a drug court by September 1, 2002, or have sought federal drug court funding from the U.S. Department of Justice or other federal agency; and

(b) have at least 100 participants during the first four months of operation. Applicants who do not achieve required participation levels may have their CJD grants reduced or terminated. Failure to comply may also result in all grant payments for all CJD grant projects awarded to the county being placed on temporary hold.

(4) The applicant must ensure that grant funds will not be used to supplant federal, state, or local funds. Applicants may apply to use state drug court funds to provide a portion of the required twenty-five percent cash match for new federal grants.

Project Period: Grant-funded projects must begin on or after September 1, 2004, and will expire on or before August 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address at http://www.governor.state.tx.us.

Preferences: Preference will be given to continuation projects and projects that have pursued federal funds.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before June 1, 2004. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 to the Office of the Governor, Criminal Justice Division on or before June 1, 2004.

Selection Process: Completed applications will be reviewed by CJD staff and awarded based on eligibility and available funding. The executive director of CJD will make all final funding decisions.

Contact Person: If additional information is needed, contact Colleen Benefield at cbenefield@governor.state.tx.us or at (512) 463-1919.

TRD-200402073
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: March 22, 2004

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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
Amarillo	Amarillo Medical Specialists LLP	L05525	Amarillo	04	03/05/04
Amarillo	RCOA Imaging Services Inc	L05329	Amarillo	11	03/10/04
Amarillo	Northwest Texas Healthcare System Inc	L02054	Amarillo	70	03/09/04
Arlington	HealthSouth Diagnostic Centers of Texas LP	L05033	Arlington	18	03/03/04
Athens	East Texas Medical Center	L02470	Athens	33	03/10/04
Athens	East Texas Medical Center	L02470	Athens	34	03/15/04
Austin	Capital Cardiovascular Consultants	L05590	Austin	04	03/05/04
Austin	Columbia St Davids Healthcare System LP	L03273	Austin	53	03/11/04
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	95	03/12/04
Bellaire	Imaging Centers of Greater Houston LP	L05656	Bellaire	03	03/01/04
Big Spring	Alon USA LP	L04950	Big Spring	05	03/15/04
Carrollton	Medical Edge Healthcare Group Pa	L05555	Carrollton	02	03/09/04
Center	Tenet Healthcare Inc	L03608	Center	28	03/10/04
Cleburne	Walls Regional Hospital	L02039	Cleburne	26	02/27/04
Cleburne	Walls Regional Hospital	L02039	Cleburne	27	03/12/04
El Paso	Tenet Hospitals Limited	L02365	El Paso	50	02/26/04
El Paso	Cardinal Health 200 Inc Medical Products and Services Convertors Division	L02407	El Paso	26	03/10/04
El Paso	El Paso Healthcare System LTD	L02551	El Paso	44	03/15/04
Fort Worth	Cardiology Associates of Fort Worth PA	L05480	Fort Worth	07	03/01/04
Fort Worth	Texas Christian University	L01096	Fort Worth	36	02/27/04
Fort Worth	Texas Oncology PA	L05606	Fort Worth	06	03/12/04
Georgetown	Georgetown Healthcare System	L03152	Georgetown	30	03/12/04
Harlingen	Texas Oncology PA	L00154	Harlingen	29	03/03/04
Houston	The Methodist Hospital	L00457	Houston	120	02/27/04
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	88	03/04/04
Houston	Bellaire General Hospital LP	L02038	Houston	40	03/03/04
Houston	Heart Care Center of Northwest Houston	L05539	Houston	02	03/03/04
Houston	Spectracell Laboratories Inc	L004617	Houston	06	02/27/04
Houston	Interventional Cardiology Associates	L05294	Houston	05	03/09/04
Houston	River Oaks Imaging and Diagnostic LP	L05455	Houston	07	03/10/04
Houston	St Lukes Episcopal Health System Corporation	L00581	Houston	77	03/09/04
Houston	Texas Southern University	L03121	Houston	21	03/12/04
Houston	Memorial Hermann Hospital System	L00439	Houston	92	03/12/04
Houston	Institute of Biosciences and Technology	L04681	Houston	18	03/03/04
Jasper	Numed Imaging Centers Inc	L05202	Jasper	02	03/15/04
Lewisville	Columbia Medical Center of Lewisville Subsidiary LP	L02739	Lewisville	39	03/04/04
Marshall	Harrison County Hospital Association	L02572	Marshall	23	03/05/04

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	37	03/12/04
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	19	03/09/04
Plano	Network Cancer Care of Denton	L05348	Plano	14	03/03/04
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	80	03/10/04
Richardson	Richardson Diagnostic Imaging I LP	L05468	Richardson	04	03/04/04
Rockwall	Rowlett Cardiology Associates PA	L05450	Rockwall	02	03/09/04
San Angelo	Shannon Medical Center	L02174	San Angelo	50	03/10/04
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Mgmt	L01962	San Antonio	49	03/04/04
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	129	03/01/04
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	183	03/04/04
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	130	03/05/04
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	95	03/05/04
San Antonio	William Craig MD PA	L05378	San Antonio	04	03/09/04
San Antonio	ACA SA LTD	L05567	San Antonio	04	03/09/04
San Antonio	Trinity University Department of Biology	L01668	San Antonio	37	03/11/04
San Antonio	Baptist Imaging Center	L04506	San Antonio	42	03/10/04
Terrell	Terrell Hospital LP	L03048	Terrell	15	03/08/04
Throughout Tx	Fugro South Inc	L03875	Austin	16	03/15/04
Throughout Tx	AMEC Earth & Environmental Inc	L03622	El Paso	17	03/05/04
Throughout Tx	Weatherford US LP	L05291	Houston	06	03/05/04
Throughout Tx	Tracerco/Synetix Services A Business Unit of Johnson Matthey Inc	L03096	Houston	53	03/10/04
Throughout Tx	Oceaneering International Inc Solus Schall Division	L04463	Houston	37	03/10/04
Throughout Tx	Cooperheat MQS Inc	L00087	Houston	116	03/12/04
Throughout Tx	Tru Tec Services Process Diagnostic Division	L03913	La Porte	60	03/10/04
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	67	03/03/04
Throughout Tx	XRI Non Destructive Testing A Team Industrial Services Company	L05275	Pearland	33	03/05/04
Throughout Tx	X R I Non Destructive Testing	L05275	Pearland	34	03/12/04
Throughout Tx	Entech Laboratory Systems Inc	L05634	Perryton	02	03/05/04
Throughout Tx	E M Hobbs LP	L05738	Sonora	04	03/05/04
Throughout Tx	GCT Inspection Inc	L02378	South Houston	77	03/12/04
Throughout Tx	Pickett Jacobs Consultants Inc	L03690	Tyler	17	03/05/04
Victoria	Invista	L00386	Victoria	73	03/08/04
Waco	Hillcrest Baptist Medical Center	L00845	Waco	74	03/04/04
Webster	CHCA Clear Lake LP	L01680	Webster	60	03/09/04
Webster	CHCA Clear Lake LP	L01680	Webster	61	03/10/04
Webster	Roger C Willette MD PA	L05466	Webster	01	03/10/04
Webster	CHCA Clear Lake LP	L01680	Webster	62	03/12/04
Wichita Falls	Howmet Corporation	L05106	Wichita Falls	09	03/10/04
Winnie	Newpark Environmental Services of LP	L04999	Winnie	07	03/12/04

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Grapevine	NUMED Imaging Centers Inc	L05016	Grapevine	12	02/27/04
Throughout Tx	Jester Brothers Construction	L05057	Whitewright	01	03/12/04

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Patrick S O'Connor MD	L04160	San Antonio	4	03/08/04
Throughout Tx	Radiological Consultants Inc	L04309	Colorado Springs, CO	09	03/10/04
Throughout Tx	ERM Southwest Inc	L02936	Houston	19	03/11/04

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Healthsouth Diagnostic Centers of Texas LP	L05033	Arlington		03/02/04
Canyon	West Texas State University	L00583	Canyon		03/08/04
Dallas	Texas CMT Inc	L04766	Dallas		03/08/04
Houston	Memorial Hermann Hospital System	L01168	Houston		03/05/04
Plainview	Methodist Hospital Plainview	L02493	Plainview		03/08/04
San Antonio	City of San Antonio	L05052	San Antonio		03/08/04

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 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 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-200402076
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 23, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Gonzalez Chiropractic of El Paso

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 Gonzalez Chiropractic (registrant-R19134) of El Paso. A total penalty of $9,000 is proposed to be assessed the registrant 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-200402077
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 23, 2004

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Steeplechase Diagnostic and MRI Center, Inc. of Houston

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 Steeplechase Diagnostic and MRI Center, Inc. (registrant-M00152) of Houston. A total penalty of $4,000 is proposed to be assessed the registrant 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-200402078
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 23, 2004

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Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the 2004 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment

The Texas Department of Housing and Community Affairs ("the Department") announces the opening of a seventeen-day public comment period for the *State of Texas 2004 Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment* as required by the U.S. Department of Housing and Urban Development (HUD) as part of the overall requirements governing the State's consolidated planning process. The *State of Texas 2004 Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment* is submitted in compliance with 24 CFR 91.520 Consolidated Plan Submissions for Community Planning and Development Programs made effective on January 5, 1995. The seventeen-day public comment period begins April 2, 2004 and continues until 5:00 p.m., April 19, 2004.

The *State of Texas 2004 Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment* gives the Texas Department of Housing and Community Affairs an opportunity to evaluate its accomplishments during the past program year for the HOME Investment Partnerships program and the Emergency Shelter Grant (ESG) program. It also gives the Office of Rural Community Affairs and the Department of Health an opportunity to evaluate their accomplishments during the past program year for the Community Development Block Grant (CDBG) program and the Housing Opportunities for Persons with AIDS (HOPWA) program, respectively. The Plan includes the following: a summary of resources and programmatic accomplishments for each of the four programs covered in the Consolidated Plan; a series of narrative statements about various aspects of the Department's performance over the past program year; and a qualitative analysis of the Department's actions and experiences. The Department also addresses its success in meeting each of the goals and objectives set forth in the *2001-2003 State of Texas Consolidated Plan.*

Beginning April 2, 2004, the *State of Texas 2004 Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment* will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Center for Housing Research, Planning, and Communications at P.O. Box 13941, Austin, TX 78711-3941, or (512) 475-3976.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Center for Housing Research, Planning, and Communications, P.O. Box 13941, Austin, TX 78711-3941. For more information or to order copies of the *State of Texas 2004 Consolidated Plan Annual Performance Report - Reporting on Program Year 2003 - Draft for Public Comment* please contact the Center for Housing Research, Planning, and Communications at (512) 475-3976 or email at clandry@tdhca.state.tx.us

TRD-200402105
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 24, 2004

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Multifamily Housing Revenue Bonds (Tranquility Bay Apartments) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Silverlake Elementary School, 2550 County Road 90, Pearland, Texas 77584, at 6:00 p.m. on April 20, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Tranquility Housing, Ltd, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 246-unit multifamily residential rental development to be located to the north of CR 91 (Fite Road), to the south of F.M. 518 (West Broadway) and southeast of the intersection of West Broadway and Oak Road, at approximately 4800 CR 91 (Fite Road), Pearland, Brazoria County, Texas 77581. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512)

475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200402089
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 23, 2004

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Houston-Galveston Area Council

Public Meeting Notice

Public Hearing on the Draft 2025 Regional Transportation Plan

Houston-Galveston Area Council

3555 Timmons Lane

Houston, Texas 77027

Tuesday, April 13, 2004

2nd Floor, Conference Room A

6 p.m. - 8 p.m.

On Tuesday, April 13, 2004, the Houston-Galveston Area Council (H-GAC) will host a public hearing on the Draft 2025 Regional Transportation Plan (RTP). The 2025 RTP provides a framework for identifying transportation priorities and major transportation challenges, such as regional mobility, air quality and safety. The public is encouraged to attend this important meeting and provide comments to H-GAC on the draft plan.

The public comment period on the Draft 2025 RTP began **Friday, March 19, 2004**. Comments must be received by H-GAC no later than **5 p.m., Monday, April 19, 2004**. Copies of the Draft 2025 RTP are available on H-GAC's Transportation Web site, **www.h-gac.com/transportation**, or by calling Ursurla Williams at (713) 993-2455. Written comments may be submitted to Alan Clark, MPO Director, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, emailed to alan.clark@h-gac.com or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Kim Green at (713) 993-4577 to make arrangements.

TRD-200402101
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 24, 2004

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Texas Department of Insurance

Company Licensing

Application to change the name of CNA GROUP LIFE ASSURANCE COMPANY to HARTFORD LIFE GROUP INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200402104
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 24, 2004

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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 admission to Texas of INSURANCE SPECIALISTS, INC. (using the assumed name of GEORGIA INSURANCE SPECIALISTS, INC.), a foreign third party administrator. The home office is NORCROSS, GEORGIA.

Application for admission to Texas of CREATIVE BENEFITS, INC., (using the assumed name of CBI Benefits Administrators, Inc.),a foreign third party administrator. The home office is Vista, California.

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-200402103
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 24, 2004

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Legislative Budget Board

Request for Proposals for Regional Education Service Centers

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP #HB7.2004.SPR.0005) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of the Regional Education Service Centers. The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 28, 2004, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact John O'Brien, Deputy Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 19, 2004, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10:00 a.m. CZT, on March 19, 2004.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. O'Brien at: (512) 475-2902, not later than 2:00 p.m. CZT, on Monday, April 5, 2004. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than April 8, 2004, or as soon thereafter as practical.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 19, 2004.

Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 19, 2004, 10:00 a.m. CZT;

Questions Due - April 5, 2004, 2:00 p.m. CZT;

Official Responses to Questions Posted - April 8, 2004, or as soon thereafter as practical;

Proposals Due - April 19, 2004, 2:00 p.m. CZT;

Contract Execution - May 3, 2004, or as soon thereafter as practical;

Commencement of Project Activities - May 28, 2004, or as soon thereafter as practical.

TRD-200402097
John O'Brien
Deputy Director
Legislative Budget Board
Filed: March 24, 2004

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Request for Proposals for South San Antonio ISD

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP #HB7.2004.SPR.0004) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of South San Antonio Independent School District (South San Antonio ISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about April 29, 2004, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact John O'Brien, Deputy Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 5, 2004, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10:00 a.m. CZT, on March 5, 2004.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. O'Brien at: (512) 475-2902, not later than 2:00 p.m. CZT, on Monday, March 22, 2004. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than March 23, 2004, or as soon thereafter as practical.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 6, 2004. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 5, 2004, 10:00 a.m. CZT;

Questions Due - March 22, 2004, 2:00 p.m. CZT;

Official Responses to Questions Posted - March 23, 2004, or as soon thereafter as practical;

Proposals Due - April 6, 2004, 2:00 p.m. CZT;

Contract Execution - April 13, 2004, or as soon thereafter as practical;

Commencement of Project Activities - April 29, 2004, or as soon thereafter as practical.

TRD-200402091
John O'Brien
Deputy Director
Legislative Budget Board
Filed: March 24, 2004

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Request for Proposals for Texas A&M University

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP #HB7.2004.HE.0001) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of Texas A&M University. The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 14, 2004, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact John Barton, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 5, 2004, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10:00 a.m. CZT, on March 5, 2004.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. Barton at: (512) 475-2902, not later than 2:00 p.m. CZT, on Thursday, March 11, 2004. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than March 19, 2004, or as soon thereafter as practical.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 2, 2004. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 5, 2004, 10:00 a.m. CZT;

Questions Due - March 11, 2004, 2:00 p.m. CZT;

Official Responses to Questions Posted - March 19, 2004, or as soon thereafter as practical;

Proposals Due - April 2, 2004, 2:00 p.m. CZT;

Contract Execution - April 23, 2004, or as soon thereafter as practical;

Commencement of Project Activities - May 14, 2004, or as soon thereafter as practical.

TRD-200402099
John O'Brien
Deputy Director
Legislative Budget Board
Filed: March 24, 2004

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Request for Proposals for University of Texas, Austin

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP #HB7.2004.HE.0002) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of the University of Texas at Austin. The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 28, 2004, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 5, 2004, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10:00 a.m. CZT, on March 5, 2004.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 16, 2004. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. Parr at: (512) 475-2902, not later than 2:00 p.m. CZT, on Thursday, March 11, 2004. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than March 19, 2004, or as soon thereafter as practical.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 5, 2004, 10:00 a.m. CZT;

Questions Due - March 11, 2004, 2:00 p.m. CZT;

Official Responses to Questions Posted - March 19, 2004, or as soon thereafter as practical;

Proposals Due - April 16, 2004, 2:00 p.m. CZT;

Contract Execution - May 6, 2004, or as soon thereafter as practical;

Commencement of Project Activities - May 28, 2004, or as soon thereafter as practical.

TRD-200402100
John O'Brien
Deputy Director
Legislative Budget Board
Filed: March 24, 2004

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Nortex Regional Planning Commission

Request for Proposal

Nortex Regional Planning Commission is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2004, with the option of auditing its financial statements for each of the three subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, OMB Circular A-133, and the State of Texas Single Audit Circular.

To obtain copies of this Request for Proposals, please contact Joyce Reynolds, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307, telephone (940) 322-5281. A bidder's conference is scheduled for April 27, 2004, 2:00 p.m., CST, at the offices of Nortex Regional Planning Commission, 4309 Jacksboro Highway, Suite 200, Wichita Falls, Texas 76302 to answer any and all questions. All proposals must be received no later than 4:30 p.m., CST, on May 25, 2004. Proposals received after the specified date and time will not be considered.

TRD-200402026
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: March 18, 2004

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Texas Department of Public Safety

Public Hearing Notice

The Texas Department of Public Safety in accordance with Administrative Procedure and Texas Register Act, Texas Government Code, Chapter 2001 et seq., and Texas Transportation Code, Chapter 548, is holding a public hearing on Tuesday, April 13, 2004, at 9:00 a.m. at the Texas Department of Public Safety Criminal Law Enforcement Building (Building E), in the Auditorium, 6100 Guadalupe Street, Austin, Texas 78773. Visitor parking is available, but limited, in the department parking lot.

The purpose of the hearing is to receive comments from all interested persons regarding adoption of amendments to two administrative rules proposed for adoption by the department. The rules are: §21.1, concerning Standards for Vehicle Equipment; and §23.15, concerning Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings. These rules are proposed for adoption under the authority of Texas Transportation Code, Chapters 547 and 548. The proposed rules were published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2261 and 2265).

The hearing is in response to a request for public hearings received from the Texas State Inspection Association.

To facilitate seating at the public hearing, persons interested in attending are encouraged to submit advance written notice of their intent to attend the hearing. Persons making comments, to insure consideration of those comments, are encouraged to submit them in written form at or before the hearing. To accommodate these comments, the public comment period is extended until April 13, 2004, 5:00 p.m. All correspondence should be addressed to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0543 or by fax at (512) 424-2774. To be included all correspondence must be received no later than 5:00 p.m. on April 13, 2004 and should refer to "Proposed Rule 37 TAC §23.15" and/or "Proposed Rule 37 TAC §21.1" in the subject line or at the beginning of the text.

Individual comments may be limited to five minutes in duration, depending upon the number of attendees.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact E. Eugene Summerford at (512) 424-2777, three work days prior to the meeting so that appropriate arrangements can be made.

TRD-200402064
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: March 22, 2004

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 15, 2004, Tiagris Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60461. Applicant intends to reflect a change in ownership/control, and a name change.

The Application: Application of Tiagris Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 29460.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2004. 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 29460.

TRD-200402012
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 17, 2004

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 18, 2004, Focal Communications Corporation of Texas filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60232. Applicant intends to reflect a change in ownership/control.

The Application: Application of Focal Communications Corporation of Texas for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 29477.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2004. 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 29477.

TRD-200402086
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2004

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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 March 11, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Centel Communications for a Service Provider Certificate of Operating Authority, Docket Number 29453 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas, Verizon Southwest, and United Telephone Company of Texas, Incorporated, doing business as Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2004. 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 29453.

TRD-200402025
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2004

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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 March 15, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Image Access, Incorporated, doing business as NewPhone, for a Service Provider Certificate of Operating Authority, Docket Number 29467 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service 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 April 7, 2004. 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 29467.

TRD-200402014
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2004

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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 March 18, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Connect Insured Telephone Incorporated, doing business as Connect I.T. for a Service Provider Certificate of Operating Authority, Docket Number 29481 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by the Houston Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2004. 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 29481.

TRD-200402087
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2004

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 19, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Verizon Wireless' request for 2,000 additional telephone numbers.

Docket Title and Number: Petition of Verizon Wireless for Review of Pooling Administrator's Denial of Application for Numbering Resources. Docket Number 29486.

The Application: Verizon Wireless requested the commission review and reverse the NANPA or Neustar denial of its request for additional telephone numbers in the Longview and Granbury rate centers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 16, 2004. 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 29486.

TRD-200402088
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2004

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Notice of Petition for Rulemaking to Address Municipal Authorized Review of Access Line Reporting

The Public Utility Commission of Texas (commission) received a petition for rulemaking on March 23, 2004, from the City of Dallas (City). The City requested that the commission initiate a rulemaking to address municipal authorized review of access line reporting. The petition is assigned Project Number 29498, *The City of Dallas Request to Initiate Rulemaking to Address Municipal Authorized Review of Access Line Reporting.* Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall, not later than the 60th day after the date the petition is filed, either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding.

The City proposes a new rule, §26.469, to be entitled *Municipal Authorized Review of a Certificated Telecommunication Provider's Business*

Records. The new rule would establish uniform guidelines for a municipal authorized review of a certified telecommunications provider's access line reports, pursuant to Texas Local Government Code, Chapter 283.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, April 23, 2004. Copies of the petition may be obtained from the commission's Central Records Division, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us under Project Number 29498.

Questions regarding this notice of petition should be directed to Mark Gladney, Staff Attorney, Legal and Enforcement Division, at (512) 936-7234, or Adriana Gonzales, Rules Coordinator, Policy Development Division, at (512) 936-7223. 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 inquiries and comments concerning this petition for rulemaking should refer to Project Number 29498.

TRD-200402102
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2004

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Revised Request for Proposals for Market Information Services to the Commission Pursuant to Texas Utilities Code, Subchapter F

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) related to the determination of a control premium for valuation of electric utility stranded costs. This RFP is issued pursuant to the PUCT's authority under Title II, Texas Utilities Code, §39.262.

To be considered, the proposals must arrive at the PUCT on or before 3:00 p.m., C.S.T., Friday, April 16, 2004. The commission expects to designate a vendor on or before May 5, 2004, and the vendor must be prepared to commence service during the month of May, 2004.

Project description. The Public Utility Regulatory Act (PURA) Chapter 39 (specifically, §§39.001, 39.201, 39.252, and 39.262) allows electric utilities with generation-related assets to recover the reasonable excess costs over the market value of those assets. Electric utilities having such costs (called "stranded costs") are eligible to file for recovery of these costs in docketed true-up proceedings beginning in 2004. In these proceedings, the amount of a utility's recoverable stranded costs will be determined by comparing the book value of its generation assets to the market value of those assets. PURA §39.262(h) sets out certain methods by which utilities may determine the market valuation of their generation assets. One of these valuation methodologies--the Partial Stock Valuation Method--allows for the commission to convene a valuation panel of three financial experts for the purpose of determining whether the price of the common stock of a transferee corporation holding the generation assets reflects a fair market valuation of the total common stock equity or whether a control premium exists for the retained interest. If the panel determines that a control premium exists for the retained interest, the panel will determine the amount of the control premium. To the extent that the valuation panel determines that a control premium exists, the amount of market valuation ascribed to a utility's generation assets will be higher, and in turn the amount of stranded costs to be recovered by the utility from rate payers will be lower. The costs and expenses of the panel, as approved by the commission, will be paid by the transferee corporation.

Interested respondents may wish to review PURA §39.262 and PUCT Substantive Rule §25.263 (True-up Proceeding) in their entirety and other relevant PUCT rules and statutes that are available on the PUCT website at www.puc.state.tx.us/rules/index.cfm.

Eligible Proposers. Pursuant to PURA §39.262(h)(3), which sets forth the eligibility criteria for the valuation panel, the PUCT is requesting proposals from the top 10 nationally recognized investment banks with demonstrated experience in the United States electric industry as indicated by the dollar amount of public offerings of long-term debt and equity of United States investor-owned electric companies over the immediately preceding three years as ranked by the publications *Securities Data* or *Institutional Investor* or their successors. As determined by Thomson Media--the acquiring company of *Securities Data*--for the years 2001, 2002, and 2003, the ten investment banks meeting the above criteria were:

Citigroup

Lehman Brothers

Credit Suisse First Boston

Morgan Stanley

Goldman Sachs & Company

Merrill Lynch & Company

JP Morgan

Barclays Capital

Bank of America Securities LLC

UBS

Price. Costs must be justified in terms of activities and objects of expenditure and must be reasonable and necessary to provide the required services. Services to be purchased from subcontractors, including any amounts subcontracted to historically underutilized businesses (HUBs); consultants; and other entities must be specified. If a proposer believes that there are additional tasks critical to this RFP, the proposer should recommend those tasks and why the additional tasks are needed. The commission prefers that the proposed costs be stated on a fixed-fee basis, inclusive of expenses.

Selection criteria. The evaluation team will recommend selection of a proposal for this program based on 1) the proposer's ability to provide the required services, 2) demonstrated competence and qualifications of the proposer and the panelists, and 3) the reasonableness of the proposed fee. A team of staff evaluators will review all the proposals submitted. A complete description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the proposal. A complete copy of the RFP may be obtained by written request to Bob Saathoff, Director of Accounting, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by email bob.saathoff@puc.state.tx.us. The RFP will be available Friday, April 2, 2004 and will be mailed on that date to all parties who have requested a copy. You may also download the RFP from the PUCT website www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at www.marketplace.state.tx.us.

Deadline for receipt of proposals. Proposals must be received no later than 3:00 p.m. on Friday, April 16, 2004, in the Public Utility Commission of Texas Central Records, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701. Proposals received in Central Records after 3:00 p.m. on Friday, April 16, 2004 will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. Regardless of the method of submission of the proposal, the commission will rely solely on the time/date stamp of Central Records in establishing the time and date of receipt. Proposals should be filed under Project Number 29078.

TRD-200402085
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2004

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Office of Rural Community Affairs

Feasibility Study Grant, FY 2004

The Office of Rural Community Affairs (Office) announces the availability of the Feasibility Study Grant to assist small rural hospital determine the financial and non-financial impact of the Critical Access Hospital (CAH) designation.

PROGRAM PURPOSE

The purpose of the Feasibility Study Grant Program is to assist small rural hospitals in Texas assess the impact and benefit of converting to a Critical Access Hospital. The Office provides funding assistance to support studies that evaluate the financial and non-financial impact of the CAH designation, including identifying opportunities and strategies for improving financial performance and growth, increasing operational efficiency and productivity, enhancing systems and processes to improve quality of care, and positioning programs and services to meet current and future community needs.

AWARD AMOUNT

Funds for the Feasibility Study Grant are made available through the Rural Medicare Hospital Flexibility (Flex) Program. Awards will be given in amounts not exceeding $5,000 per grant to pay for the cost of conducting the feasibility study; however, the Office will only reimburse grantees for the actual cost of the study up to $5,000.

USE OF FUNDS

Funds may only be used to pay for the cost of the feasibility study. The Office will reimburse the grantee for the actual cost of the study up to $5,000. Funds cannot be used to pay for costs incurred for work performed by the Board or staff of the hospital/facility. The Office will not reimburse for any cost incurred by the applicant prior to the date of the executed contract, which is the date that the contract is signed by the Executive Director of the Office or his designee.

ELIGIBILITY REQUIREMENTS

Only hospitals located in a non-metropolitan (rural or frontier) county (see Rural-Metro County Designation map at www.orca.state.tx.us/maps/index.htm) as defined by the federal Office of Management and Budget (OMB) are eligible to apply for the Feasibility Study Grant. Preference will be given to hospitals located in a frontier area and those with 50 or fewer beds. Facilities that have been awarded the Feasibility Study Grant in the past and those that have submitted an application requesting the CAH designation are not eligible for funding consideration.

APPLICATION DEADLINE

Applications must be post-marked on or received by the Office of Rural Community Affairs by 4/30/04 to be considered for funding. Applications submitted electronically or by facsimile transmission will not be accepted.

PROGRAM CONTACT

The program guide and application for Feasibility Study Grant is available at: www.orca.state.tx.us. Address questions and submit the completed, signed application to:

Quang Ngo

CAH/Flex Program Coordinator

Office of Rural Community Affairs

1700 N. Congress, Suite 220

Phone: (512) 936-6729

Email: qngo@orca.state.tx.us

TRD-200402084
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: March 23, 2004

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to provide analysis, evaluation and recommendations for the Energy Management Program within the Physical Plant Department.

Information may be obtained by contacting:

Paul Barzak

Assistant Director of Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

or e-mail at pbarzak@tamu.edu

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Proposals must be received on or before 2:00 p.m., April 7, 2004.

TRD-200402013
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: March 17, 2004

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Texas Department of Transportation

Public Notice--Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800-68-PILOT.

TRD-200402050
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 19, 2004

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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 vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist,

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

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.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

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 R. L. Shipe, 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-200402083
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 23, 2004

How to Use the Texas Register

Information Available: The 14 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 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.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 16, April 9, July 9, and October 8, 2004). 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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