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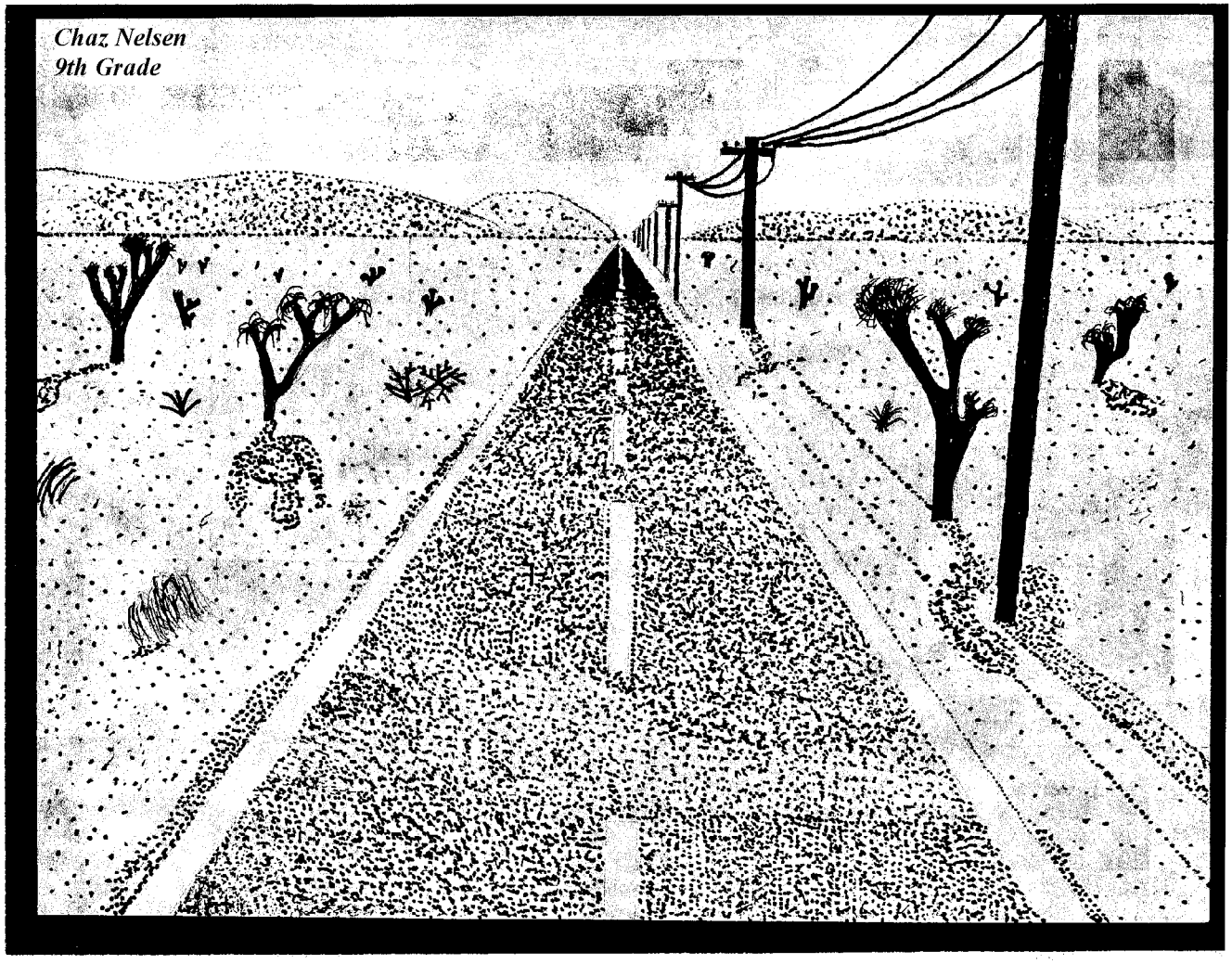

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN ADDITION

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 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-0206-GA

Requestor:

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a commissioned peace officer employed by the state violates section 36.07 of the Penal Code by working off-duty for a private employer (Request No. 0206-GA)

Briefs requested by May 19, 2004

RQ-0207-GA

Requestor:

Mr. Wayne Thorburn, Commissioner

Texas Appraiser Licensing and Certification Board

Post Office Box 12188

Austin, Texas 78711-2188

Re: Authority of the Texas Appraiser Licensing and Certification Board to establish educational requirements for an appraiser trainee (Request No. 0207-GA)

Briefs requested by May 20, 2004

RQ-0208-GA

Requestor:

The Honorable Bill Hill

Dallas County District Attorney

Administration Building

411 Elm Street, 5th Floor

Dallas, Texas 75202

Re: Whether a sheriff's civil service system may limit the hiring practices of a sheriff (Request No. 0208-GA)

Briefs requested by May 20, 2004

RQ-0209-GA

Requestor:

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Whether a person may waive the prohibition on public access to his or her criminal history information that is subject to an order of nondisclosure (Request No. 0209-GA)

Briefs requested by May 20, 2004

RQ-0210-GA

Requestor:

Mr. Randall H. Riley, Executive Director

Texas Building and Procurement Commission

Post Office Box 13047

Austin, Texas 78711

Re: Whether the functions of the former Child Care Development Board have been transferred to the Texas Building and Procurement Commission or to the Texas Workforce Commission (Request No. 0210-GA)

Briefs requested by May 21, 2004

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

TRD-200402804
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 27, 2004

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Opinions

Opinion No. GA-0181

Mr. Robert L. Cook

Executive Director

Texas Parks and Wildlife Department

4200 Smith School Road

Austin, Texas 78744

Re: Whether a licensed crab fisherman must obtain permission from the owner of submerged land in order to place crab traps at that location (RQ-0130-GA)

S U M M A R Y

A licensed crab fisherman need not obtain permission from the owner of submerged land that lies beneath tidal waters in order to fish crab traps at that location. These waters are owned by the State of Texas and are open to the public for fishing in accordance with applicable Parks and Wildlife Code provisions and implementing regulations.

Opinion No. GA-0182

Mr. Robert L. Cook

Executive Director

Texas Parks and Wildlife Department

4200 Smith School Road

Austin, Texas 78744-3291

Re: Whether the Texas Parks and Wildlife Department may convey real property or an interest in real property the State received under a court-approved final judgment "solely for the use and benefit of the . . . Department, acting in the Public Trust . . . only for public park purposes, for promoting public beach access, and for off-beach parking" (RQ-0131-GA)

S U M M A R Y

Assuming that the relevant Agreed Final Judgment would permit it, the Parks and Wildlife Department may not convey an easement in donated real property to an adjoining property owner unless the Department has concluded that owning the easement interest is not in the Department's best interest, under section 13.009 of the Parks and Wildlife Code. Similarly, the Department may not convey the donated real property in its entirety under section 13.008 or an easement interest in donated real property under section 13.009 to a person or entity for a use consistent with the Agreed Final Judgment unless the Department first determines that its ownership of the property or interest is no longer in its best interest.

Opinion No. GA-0183

The Honorable Burt R. Solomons

Chair, Committee on Financial Institutions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether 49 U.S.C. §14501(c)(1) preempts chapter 145 of the Texas Civil Practice and Remedies Code (RQ-0123-GA)

S U M M A R Y

The employee background-check requirement established by section 145.002 of the Texas Civil Practice and Remedies Code is preempted by 49 U.S.C. §14501(c)(1) to the extent the state-law requirement applies to motor carriers regulated by federal law. The background-check requirement is not preempted to the extent it applies to motor carriers' intrastate transportation of household goods. *See* 49 U.S.C. §§13102(10) (2000) (defining "household goods"), 14501(c)(2)(B) (preserving state authority over motor carriers' transportation of household goods). Although interstate transportation of property, including household goods, is generally governed by federal law, the chapter 145 "presumption of no negligence" might apply in a state-law tort action against a motor carrier that is not preempted by federal law.

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

TRD-200402780
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 27, 2004

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EMERGENCY RULES

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §§303.200, 303.205, 303.210, 303.215, 303.220, 303.225, 303.230, 303.235

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new §§303.200, 303.205, 303.210, 303.215, 303.220, 303.225, 303.230 and 303.235 with the new effective date to commence on May 6, 2004, at the expiration of the original 120-day effective period for an additional 60-day period or until otherwise withdrawn by the commission. The text of the new section was originally published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 573).

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402726
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective Date: May 7, 2004
Expiration Date: July 7, 2004
For further information, please call: (512) 475-0595

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CHAPTER 313. STATE SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.1 - 313.23

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new Title 10, Part 7, Chapter 313, §§313.1 - 313.23, regarding the state-sponsored inspection and dispute resolution process as provided for in Title 16, Property Code and in Property Code Chapter 27, as amended by House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01) with the new effective date to commence on May 6, 2004, at the expiration of the original 120-day effective period for an additional 60-day period or until otherwise withdrawn by the commission. The text of the new section was originally published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 574).

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402724
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective Date: May 7, 2004
Expiration Date: July 7, 2004
For further information, please call: (512) 475-0595

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CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION

SUBCHAPTER B. CERTIFICATION OF ARBITRATORS

10 TAC §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, 318.32

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30 and 318.32 with the new effective date to commence on May 6, 2004, at the expiration of the original 120-day effective period for an additional 60-day period or until otherwise withdrawn by the commission. The text of the new section was originally published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 578).

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402725
Susan Durso
General Counsel
Texas REsidential Construction Commission
Effective Date: May 7, 2004
Expiration Date: July 7, 2004
For further information, please call: (512) 475-0595

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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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.2

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.2, concerning guidelines for changing or extending 9-1-1 service arrangements.

This action is proposed as part of Rule Review of Chapter 251, pursuant to Government Code, Section 2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with amendments to this rule to streamline reporting requirements for the regional planning commissions (RPCs). The associated instructions for reporting are being proposed as a new proposed Program Policy Statement, a more formal version of the agency's former Program Policies and Procedures.

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

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

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

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

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

§251.2. Guidelines for Changing or Extending 9-1-1 Service Arrangements.

(a) Purpose. The purpose of this rule is to establish minimum requirements for implementation and reporting of 9-1-1 service arrangements in order to protect against degradation of service.

(b) [~~(a)~~] Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions [~~When used in this rule, the following words and terms shall have the meanings identified in paragraphs (1)-(21) of this subsection, unless the context of the word or term clearly indicates otherwise~~].

[~~(1) 9-1-1 Administrative Entity--A municipality, a county, an emergency communication district (District), a regional planning commission (RPC) or any other political subdivision that provides 9-1-1 administrative services.~~]

[~~(2) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.~~]

[~~(3) 9-1-1 Database--An organized collection of information, which is typically stored in computer systems that are comprised of fields, records (data), and indexes. In 9-1-1, such databases include master street address guides (MSAG), telephone numbers, emergency service numbers (ESN), and telephone customer records. This information is used for the delivery of location information to a designated public safety answering point (PSAP). Use of the 9-1-1 database must be authorized by the Commission on State Emergency Communications (Commission) and the RPC. The database is developed and maintained by the local government agency and/or the RPC as described within the regional strategic plan in accordance with Commission Rule 251.9 of this title (relating to Guidelines for Database Maintenance Funds).~~]

[~~(4) 9-1-1 Equipment and Services--Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 wireline or wireless call to an appropriate PSAP.~~]

[~~(5) 9-1-1 Network Provider--The current operator of the selective router/switching that provides the interface to the public safety answering point (PSAP) for 9-1-1 service.~~]

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

[~~(7) Automatic Number Identification (ANI)--A system which permits the identification of the caller's telephone number. For purposes of this rule, the term has the same meaning as in 47 C.F.R. §20.18.~~]

[~~(8) Customer Premise Equipment (CPE)--The terminal equipment at a PSAP or secondary answering location.~~]

[(9) Competitive Local Exchange Carrier or Certified Local Exchange Carrier (CLEC)--Another name for a local exchange carrier (LEC) after Congress, in 1996, passed a law to bring competition to local telephone services.]

[(10) Emergency Communications District (District)--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a District created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, D, or E.]

[(11) Local Exchange Carrier (LEC)--A Telecommunications Carrier (TC) under the state/local Public Utilities Act that provides local exchange telecommunications services. Also known as Incumbent Local Exchange Carriers (ILECs), Alternate Local Exchange Carriers (ALECs), Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Certified Local Exchange Carriers (CLECs), and Local Service Providers (LSPs).]

[(12) Local Number Portability (LNP)--A process by which a telephone number may be reassigned from one Local Exchange Carrier to another.]

[(13) Private Switch Emergency Service (PS9-1-1)--A service offering which enables either ANI or ALI to be provided to a PSAP when a 9-1-1 call originates from Direct Inward Dialing (DID) stations served by a private switch, e.g., a PBX. PS9-1-1 is offered to governmental entities such as RPCs, Districts, counties, and cities that provide emergency response services.]

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

[(15) Regional Strategic Plan--A plan for the establishment and operation of 9-1-1 service throughout the region that a RPC serves. The plan must meet the standards established by and be amended in accordance with the standards established by the Commission.]

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

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

[(18) Service Provider--A company providing a telephone service or a commercial mobile radio service (CMRS) to a service user.]

[(19) Wireless E9-1-1 Phase I Service--The service by which the wireless service provider (WSP) delivers to the designated PSAP the wireless end user's call back number and cell site/sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 administrative entity.]

[(20) Wireless E9-1-1 Phase II Service--The service by which the WSP delivers to the designated PSAP the wireless end user's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.]

[(21) Wireless Service Provider--The wireless service provider and all its affiliates, collectively referred to as "WSP."]

(c) [(b)] Industry standard. All goods, services, systems, or technology purchased with 9-1-1 funds shall be consistent with the current industry standard. The authority for the industry standard for 9-1-1 networks, equipment, and databases is the National Emergency Number Association (NENA). [Policy and Procedures. As authorized by Health and Safety Code, Chapter 771, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The Commission is responsible for administering the implementation of statewide 9-1-1 service. The Commission is also responsible for minimum performance standards for the operation of 9-1-1 service to be followed in developing regional plans. One of the most fundamental components of any 9-1-1 service operation and any regional strategic plan is how the 9-1-1 service will be provided by the telecommunications service provider(s) directly connecting to the Public Safety Answering Point (PSAP). Changing the tandem and/or database service arrangements for direct connection to the PSAP, adding additional tandem, wireless, private switch, competitive local exchange (CLEC), and/or database service providers, or extending current service arrangements for a fixed period may potentially adversely affect the level, quality, and costs of 9-1-1 service and may also potentially adversely effect other service providers that rely on another service provider for interconnection to the PSAP (e.g., other service providers need to know which provider to send Automatic Number Identification (ANI) information and Automatic Location Information (ALI) records, the format for ALI records, the procedures for modifying 9-1-1 database information, and how 9-1-1 service will be provided to their end-user customers). It is the policy of the Commission that the highest level of 9-1-1 emergency service continues to be provided notwithstanding the new competitive telecommunications environment. Therefore, any agreement by a RPC with a service provider to change or to extend 9-1-1 service arrangements for a fixed period requires RPC notification to the Commission of a regional strategic plan amendment. For Districts requesting 9-1-1 funds in accordance with established rules and procedures for 9-1-1 service arrangements, the extent to which the guidelines below are satisfied may be considered in allocating equalization surcharges.]

(d) [(c)] Vendor requirements [Guidelines].

(1) Changes or extensions of 9-1-1 service arrangements must include the following:

(A) The service provider making the proposal to the RPC [or District] verifies in writing, as part of the proposed agreement, that:

(i) Reasonable notice of the proposal (i.e., at least 10 days before a joint planning meeting) has been provided to the current service provider (if a change in service providers is involved) and to other potentially affected service providers.

(ii) The service provider also verifies that at least one joint planning meeting occurred with at least 10 days notice to all affected service providers that they may participate in the joint planning meeting;

(iii) As a result of the joint planning meeting either each technical issue or objection by other service providers has fully been resolved or an impartial statement of each unresolved issue or objection has been provided. (A joint planning meeting is open to evaluate all alternatives and is not limited to a discussion of one service provider's proposal.)

(iv) An inventory of each affected exchange, central office, tandem, private switch, PBX, or Mobile Telephone Switching Office (MTSO) has been provided to all affected service providers and the RPC/District that is involved.

(v) Cost verification of all costs under the proposal and an itemized comparison with all costs under current rates (e.g., itemized list and comparison of all charges for each level of service, for all database service, etc.) Any and all changes in E9-1-1 or 9-1-1 service features (i.e., all additional service features or reductions in service features that may result from the proposal) must be clearly specified. The service provider must also explain the justifications for any and all changes and why those changes do not degrade the level of 9-1-1 service and are consistent with providing the highest level of 9-1-1 service to all customers.

(vi) The service provider shall take full responsibility to professionally and timely coordinate all 9-1-1 service changes and modifications with all impacted telecommunications service providers, including, but not limited to: wireline, wireless, database and private switch service providers involved in the geographic area.

(vii) The service provider shall verify/certify that any necessary new or modified interconnection agreements relating to 9-1-1 service will be approved by the Public Utility Commission of Texas before the effective date of the proposed agreement and as necessary thereafter.

(viii) The proposal includes a statement of work to be performed that includes:

(I) an implementation schedule;

(II) diagrams of all proposed changes;

(III) how testing will be conducted and documented;

(IV) contingency plans and physical diversity;

(V) how interfaces with other service providers will be accomplished and coordinated;

(VI) a comprehensive list of all components and processes necessary for implementation;

(VII) a comprehensive list of all components and processes necessary for database service implementation, including Emergency Service Number (ESN) assignments, Master Street Address Guide (MSAG) revisions, selective routing tables, Emergency Service Routing Digit (ESRD), wireless cell site locations and distribution to other service providers;

(VIII) an outline of all associated costs; and

(IX) an explanation of any potential Customer Premises Equipment (CPE) impacts, or necessary modifications.

(ix) The proposal provides for wireless service providers to be able to deliver wireless Phase I or wireless Phase II information on request, and any modifications necessary to deliver callback and location information on/or before the deadlines as required by the Federal Communications Commission.

(x) The proposal provides for and enables long-term number portability (LNP) or that any modifications necessary for LNP will be specified.

(xi) The proposal specifies any additional costs to any PSAP or 9-1-1 entity for any modifications necessary during the period of the agreement because of Number Plan Area (NPA) splits and/or existing tandem or other network limitations.

(xii) The proposal provides that there will be no additional costs to any PSAP or 9-1-1 entity to maintain the current level of E9-1-1 service, except as specifically set forth in an itemized list that is part of the proposed agreement.

(xiii) No further agreement by the RPC is necessary to implement the proposal (e.g., the service provider and not the RPC is responsible for any and all coordination with other parties or service providers that may be necessary to implement the proposal).

(xiv) A most favored nation provision (i.e., a provision that requires the best price provided to any other similarly situated entity in Texas for comparable service) is included in the agreement and the service provider will automatically reduce the rates and charges in the agreement if comparable service is offered in Texas at a lower rate or charge by that service provider to any similarly situated other PSAP or 9-1-1 entity.

(xv) The service provider will comply with all applicable law, Commission and Public Utility Commission of Texas rules or regulations relating to 9-1-1 service.

(B) RPC Requirements. The RPC shall ensure [~~providing notification of the plan amendment verifies in writing, as part of the amendment,~~] that:

(i) Competitive procurement procedures were used in accordance with Texas Uniform Grant Management Standards (UGMS) and CSEC Rule 251.8 [~~or an explanation of the applicability of an exception to competitive procurement requirements~~];

(ii) All neighboring or adjacent 9-1-1 entities that could potentially be affected by the plan amendment have been given reasonable notice [~~provided a copy of the plan amendment either before or concurrently with the filing of the plan amendment with the Commission~~];

(iii) All appropriate modifications are made to current interlocal agreements; and

(iv) All changes are reported to the CSEC according to CSEC policy [~~reflected in the current regional strategic plan including narrative descriptions of the changes and schematics of affected equipment and network components~~].

(2) Applicability to Emergency Communications Districts (Districts). Districts requesting 9-1-1 funds in accordance with established rules and procedures for 9-1-1 service arrangements shall ensure that any changes or extensions of service arrangements meet or exceed the guidelines for RPCs in this rule [~~section~~].

(3) Costs. Annual budgeted costs associated with 9-1-1 service arrangements shall be monitored by Commission staff for consistency with this rule [~~section~~]. Such costs that are determined by Commission staff to not be consistent with this section shall be reviewed by the Commission.

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 April 26, 2004.

TRD-200402762
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 305-6933

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1 TAC §251.5

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.5, concerning the use of 9-1-1 funds for equipment management and disposition.

This action is proposed as part of Rule Review of Chapter 251, pursuant to Government Code, Section 2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with amendments to ensure consistency with Texas Uniform Grant Management Standards (UGMS). Reporting forms attached to the previous version of this rule have been revised and are now included in a new proposed Program Policy Statement, a more formal version of the agency's former Program Policies and Procedures.

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

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

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

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.071, 771.0711, 771.072, 771.075, 771.078, 771.079; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

§251.5. Guidelines for 9-1-1 Equipment Management and Disposition.

(a) Purpose. The purpose of this rule is to establish the Texas Uniform Grant Management Standards (UGMS) as the required procedure for the management and disposition of capital equipment and controlled assets purchased with 9-1-1 funds. Other instructions provided in this rule are in addition to the direction provided in UGMS. [As authorized by the Texas Health and Safety Code, Chapter 771, the Commission on State Emergency Communications (CSEC) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Section 771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions. Each regional planning commission shall develop a plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the CSEC.]

(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions [The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise].

[(1) 9-1-1 Equipment--Equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP)s and as defined in Rule 251.6, Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation.]

[(2) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code. Chapter 771.]

[(3) 9-1-1 Program Assets--9-1-1 and Addressing Capital Equipment purchased with 9-1-1 Funds.]

[(4) Addressing Equipment--Equipment acquired partially or in whole with 9-1-1 funds, and/or Addressing Pool funds, designed to support and/or facilitate the work associated with addressing completion and/or addressing maintenance activities, as defined in Rule 251.3, Guidelines for Addressing Funds.]

[(5) Addressing Activities--The work associated with the addressing of a county as defined in §251.3 of this title (relating to Guidelines for Addressing Funds).]

[(6) Addressing Pool Funds--Funds directed to statewide addressing use including, but not limited to federal or state grants, contributions, donations, and telephone rate case settlement distributions; but, which exclude 9-1-1 Service Fee, either restricted or unrestricted in use.]

[(7) Applicable Law--Includes, but is not limited to, the State Administration of Emergency Communications Act, Chapter 771, Texas Health and Safety Code; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant Management Standards, Title 1, Sections 5.151 - 5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules."]

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

[(9) Capital Replacement Cost--The cost of a piece of equipment that was originally identified to be amortized (i.e. the original cost for equipment.)]

[(10) Controlled Equipment--Items and components that comprise the technology used to answer and deliver 9-1-1 calls whose cost is less than $5,000 and have a useful life of at least one year. Used at the discretion of the RPC for items that tracking is deemed necessary.]

[(11) Emergency Communications District--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, D.]

[(12) Intangible Assets--Includes items such as labor for PSAP room prep, electrical wiring costs, labor for the assembly of equipment, or any costs for the delay or transfer of equipment.]

[(13) Interlocal Agreement--A contract cooperatively executed between local governments or other political subdivisions of the state to perform administrative functions or provide services, relating to 9-1-1 telecommunications.]

[(14) Local Government--A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.]

[(15) Maintenance--The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.]

[(16) Maintenance Plan--A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.]

[(17) Contract for Services--A contract executed between the Regional Planning Commission (RPC) and the CSEC that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.]

[(18) Non-Recurring Charge--The amount of cost identified as the entire lump sum, or one time, cost for 9-1-1 equipment replacement. The charge may be inclusive of an out right purchase of equipment or the primary cost for the implementation of leased equipment through a major telephone provider.]

[(19) Public Safety Answering Point--A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law, Texas Health and Safety Code, Chapter 771. Also referred to as a "PSAP".]

[(20) Recorders--Devices that capture and retain sound, including but not limited to the following:]

[(A)] Voice Loggers--A device that records sound on a permanent source for later review.]

[(B) Instant Recall Recorders--A device that records and temporarily stores calls for immediate review.]

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

[(22) Strategic Plan--As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support plan levels of 9-1-1 service within a defined area of the state. The strategic plan normally covers at least a three year planning period, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.]

[(23) Tangible Assets--Only those items that are tangible may be considered for capital costs. Tangible assets include, but are not limited to, any capital equipment such as the ANI/ALI Controllers, answering position units, integrated workstations, addressing computers, GIS workstations, plotters, or any other technical piece of equipment.]

[(24) Uniform Grant Management Standards (UGMS)--As developed by the Governor's Office of Budget and Planning, January 1998, under the authority of the Texas Government Code, Chapter 783.]

[(25) Useful Life--The period of time that a piece of capital equipment can consistently and acceptably fulfill its' service or functional assignment.]

(c) Management and Disposition of Equipment. Each RPC is responsible and accountable for all 9-1-1 Equipment, Database Maintenance [and Addressing] Equipment, and controlled assets in its region purchased with 9-1-1 funds. [, as approved in its strategic plan and will contract with each of its participating Local Governments to ensure, at a minimum, that: all issues of equipment ownership, transfer of ownership, control and/or disposition of equipment acquired with 9-1-1 funds shall be identified within interlocal agreements; and, all contract provisions for equipment shall be consistent with Uniform Grant Management Standards (UGMS) as published by the Governor's Office of Budget and Planning, January 1998.]

[(1) Ownership of equipment acquired with 9-1-1 funds will vest in the RPC upon acquisition, or in the local government as agreed to within the applicable interlocal agreement.]

[(2) Transfer of ownership of equipment acquired with 9-1-1 funds shall be designated and approved in writing by the RPC, and agreed upon within the interlocal agreement.]

[(A) Before any such transfer of ownership, the RPC should evaluate the adequacy of controls of the prospective receiver to ensure that sufficient controls and security exist by which to protect and safeguard the equipment purchased with 9-1-1 funds;]

[(B) Transfer of ownership documents shall be prepared by the RPC and signed by both parties upon transference in accordance with UGMS and the State Comptroller of Public Accounts;]

[(C) Upon transference of ownership, the receiving party shall assume responsibility for the proper use, maintenance, management, control and safeguarding of the equipment.]

[(3) Control of equipment shall be the responsibility of the party to whom ownership is assigned.]

[(A) The owner of the equipment shall have an asset management system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment.]

[(B) Any loss, damage, or theft of equipment shall be investigated. Cases of theft will be pursued to the fullest extent of the law.]

[(C) Local government and/or other responsible party shall provide reimbursement to RPC, or owner, for damage to 9-1-1 and Addressing equipment caused by intentional abuse, misuse or negligence by PSAP employees, County/Addressing personnel, or other persons to whom custodial responsibility is assigned. This provision shall not include ordinary wear and tear or ordinary day-to-day use of equipment.]

[(4) Disposition of equipment shall take place when original or replacement equipment acquired with 9-1-1 funds is obsolete, failing repeatedly, or scheduled for replacement; or, when the equipment is no longer needed for the original project or program.]

[(A) Methods used to determine per-unit fair market value must be documented, kept on file and made available to the RPC and CSEC upon request, and as outlined in the remainder of this rule.]

[(B) Equipment may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. If sold, the resulting revenue shall be credited to the RPC local funds and recorded as "Other Revenue." If transferred to another program funded by federal or state funds, the transfer of ownership shall be documented.]

[(C) Equipment may be used for trade-in value to offset the cost of replacement.]

(d) Interlocal agreement. For all equipment not maintained on the RPC's premises, RPCs will contract with each of its participating local governments to ensure, at a minimum, that:

(1) All issues of ownership, transfer of ownership, control, and/or disposition of equipment and controlled assets acquired with 9-1-1 funds shall be identified within interlocal agreements.

(2) All contract provisions for equipment and controlled assets set forth in the interlocal agreement shall be consistent with UGMS.

(e) [~~(d)~~] Maintenance.[~~-~~] Maintenance procedures shall be in place to keep the property in good condition.

(1) RPCs [~~Regional planning commissions~~] funding the purchase and/or lease of 9-1-1 equipment shall develop and adopt maintenance plans covering the equipment involved as part of the regional plan within 30 days of purchase. Maintenance plans shall be provided to the CSEC upon request.

(2) The Commission shall review maintenance costs for consistency with funding priorities and the approved RPC strategic plan [~~Emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for the maintenance of 9-1-1 equipment shall provide a maintenance plan for the equipment involved within 30 days of purchase~~].

[~~(3) Maintenance plans shall be provided to the CSEC in conjunction with equipment plan amendments or district requests submitted to the CSEC. For equipment purchased and/or leased prior to the adoption of this rule, maintenance plans for regional planning commissions shall be submitted to the CSEC for consideration no later than the beginning of the next budget cycle from the date of adoption of this rule.~~]

[~~(4) Annual budgeted costs associated with the maintenance of 9-1-1 equipment shall be monitored by the CSEC staff for consistency with approved maintenance plans. Such costs that are determined by the CSEC staff to not be consistent with approved maintenance plans shall be reviewed and approved by the CSEC.~~]

(f) Property Records. Property records shall be maintained and provided to the CSEC upon request.

(1) Equipment meeting the definition of capital equipment shall be listed on the inventory. In addition to the controlled assets listed in UGMS that must be included on the inventory, the CSEC requires that computers, modems, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipments, and sign-making machines, purchased entirely or in part with 9-1-1 funds, be reflected in the RPC's inventory.

(2) CSEC requires a physical inventory to be taken and the results reconciled to the property records annually. An annual certification of assets shall be provided to CSEC according to CSEC policy.

[~~(e) Requirements for Capital Tracking. A Capital Asset Schedule that lists 9-1-1 related equipment by item shall be included in each regional planning commission's strategic plan. Strategic plans are required under the Health and Safety Code, Chapter 771, and §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation). A Capital Asset Schedule shall be maintained by the regional council in a spreadsheet or database that includes the following information for each item listed.~~]

[~~(1) Date Acquired;~~]

[~~(2) Description;~~]

[~~(3) Location of the Equipment;~~]

[~~(4) Identifying Number (Serial, Asset Tag, etc.);~~]

[~~(5) Percent of State Participation (Cost Sharing);~~]

[~~(6) Original Recovery Value;~~]

[~~(7) Life Assigned (In Years);~~]

[~~(8) Responsible Agency (Person in Possession);~~]

[~~(9) Estimated Replacement Date;~~]

[~~(10) Addressing Program Asset? (Y/N).~~]

[~~(f) Requirements for Capital Fund Expenditures. Expenditures from the capital recovery schedule shall be reported on the following Financial Status Report submitted to the CSEC as required §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation).~~]

[~~(1) The RPC shall submit with the FSR a "Capital Recovery Asset Disposal Notice" (as promulgated by the CSEC) for each item that is replaced using Capital Recovery Funds as follows.~~]
[Figure: ~~1 TAC §251.5(f)(1)~~]

[~~(2) Should additional funds be needed, the balance of funds needed for costs above original equipment costs must be identified in the strategic plan in the corresponding county narrative and submitted to CSEC through an amendment.~~]

(g) Control System. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. A description of the control system shall be provided to CSEC upon request. [~~Addressing Capital Equipment. Costs for the replacement of addressing equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines that meet the definition of Capital Equipment, shall be included in the schedule.~~]

(h) Disposition. Funds generated by the disposition of equipment shall be reported to CSEC on the Financial Status Report according to CSEC policy. A disposition report shall be provided to the CSEC annually according to CSEC policy. [~~Emergency Communication Districts. Those districts requesting 9-1-1 funds in accordance with established rules and procedures for the replacement of 9-1-1 equipment shall provide a replacement plan for the equipment involved.~~]

[~~(i) Annual Certification. Regional planning commissions shall submit an "Annual Certification of 9-1-1 Assets" (as promulgated by the CSEC) to the CSEC at least once each fiscal year. In accordance with UGMS, a physical inventory of the property must be taken and the results reconciled with the property records at least once every year. The RPC shall document and maintain all such inventory records, and will submit copies to the CSEC upon request.~~]
[Figure: ~~1 TAC §251.5(i)~~]

(j) [~~(j)~~] Monitoring. The CSEC reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs for compliance with this rule as well as all applicable law, policies and procedures. All monitoring activities will be conducted in accordance with §251.11 of this title (relating to Monitoring Policies and Procedures).

(j) [~~(k)~~] Other Issues.

(1) The requirements established in this rule also apply to an Emergency Communications District that has purchased Equipment with 9-1-1 Equalization Surcharge Funds. [~~management and disposition of equipment shall follow UGMS. Funds acquired from the disposal of assets shall be returned to the regional planning commission as "Other Revenue."~~]

(2) The Texas State Property Accounting Policies and Procedures Manual shall be referenced for guidance when questions arise to particular questions not covered in this rule.

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 April 26, 2004.

TRD-200402763
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 305-6933

♦ ♦ ♦

1 TAC §251.6

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

This section is proposed as part of Rule Review of Chapter 251 pursuant to Government Code, §2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

The amendment provides updated language and removes the definitions from this section and places it within a new proposed rule that will contain all pertinent definitions in one location to help reduce unnecessary duplication and ensure consistency of definitions. Parts of this section may be incorporated into Program Policy Statements in the future that will allow for more detailed instructions and flexibility to meet program needs. Other revisions align the strategic plan budget levels with the current 2004-2005 components, and reflects the new budget components for the 2006-2007 plan. Revisions were also made to (g), Amendments to Regional Strategic Plans, in order to provide examples of the occasions that require an amendment to be presented to the Commission.

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

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

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

The amendment is proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

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

(a) Purpose. The purpose of this rule is to provide the structure and guidelines for regional strategic plans, funding of the plans, and amendments to the plans.

(b) [~~(a)~~] Background [~~Policy and Procedures~~]. As authorized by the Texas Health and Safety Code, Chapter 771 the [~~Advisory~~] Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with §771.055, such service implementation shall be consistent with regional plans developed by regional planning commissions (RPC). These regional plans must meet standards established by the Commission and "...include a description of how money allocated to the region under this chapter is to be allocated in the region." Section 771.057 addresses amendments to regional plans and indicates that such amendments may be adopted in accordance with procedure established by the Commission.

(c) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.

(d) [~~(b)~~] Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following four [~~three~~] major strategic plan levels (in order of priority) for [~~through~~] state fiscal years 2004-2005 [~~year 2003~~].

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

(A) Network;

(B) Wireless Phase I;

(C) Database;

(D) Equipment Lease;

(E) Equipment Purchase [~~Language Line~~];

(F) Language Line; and [~~Equipment maintenance;~~]

(G) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and [~~directly support and enchance 9-1-1 call delivery and data maintenance for~~] the level of service provided to the region.

(A) Database [~~Addressing~~] Maintenance;

(B) MIS [~~Graphic MSAG~~];

(C) Mapped ALI [~~MIS~~];

(D) PSAP Room Prep [~~Mapped ALI~~];

(E) PSAP Training [~~PSAP Room Prep~~];

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

(G) Wireless Phase II.

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

(A) Network Diversity;

(B) Training Positions;

(C) Emergency Power;

(D) Recorders;

(E) Pagers;

(F) [~~Ancillary~~] Maintenance and [~~&~~] Repair[~~;~~] (ancillary equipment); [~~and~~]

(G) Other.

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide auxiliary enhancements to the 9-1-1 system of a county subject to Health and Safety Code, Chapter 771, with a population over 700,000, or the county that has the highest population within an RPC participating in the Commission program to include, but not limited to:

(A) Design of a 9-1-1 System;

(B) Purchase of Equipment;

(C) Maintenance of Equipment; and

(D) Personnel Match.

(e) [~~(c)~~] New Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following four [~~three~~] major strategic plan levels (in order of priority) beginning state appropriations [~~fiscal~~] year 2006 [~~2004~~].

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

(A) Network;

(B) Wireless [~~Phase I~~];

(C) Database;

(D) Equipment Lease;

[~~(E) Equipment Purchase;~~]

(E) [~~(F)~~] Language Line; and

(F) [~~(G)~~] Equipment maintenance.

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

(A) Database [~~Addressing~~] Maintenance;

(B) MIS;

(C) Mapped ALI

(D) PSAP Room Prep;

(E) PSAP Training; and

(F) Public Education. [~~; and~~]

[~~(G) Wireless Phase II.~~]

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

(A) Network Diversity;

(B) PSAP Supplies; and [~~Training Positions;~~]

[~~(C) Emergency Power;~~]

[~~(D) Recorders;~~]

[~~(E) Pagers;~~]

(C) [~~(F)~~] Ancillary Maintenance and [~~&~~] Repair. [~~; and~~]

[~~(G) Other.~~]

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide auxiliary enhancements to the 9-1-1 system of a county subject to Health & Safety Code Chapter 771 with a population over 700,000, or the county that has the highest population within an RPC participating in the Commission program to include, but not limited to:

(A) Design of a 9-1-1 System;

(B) Purchase of Equipment;

(C) Maintenance of Equipment; and

(D) Personnel match.

(f) [~~(d)~~] Strategic Plans. Regional strategic plans developed in compliance with Chapter 771 shall include a strategic plan that projects financial operating information [~~regional 9-1-1 service costs,~~] at least two years into the future; and strategic planning information [~~program goals and strategies~~] at least five years into the future.

(1) The Commission shall establish the format of strategic plans for the sake of identifying overall statewide requirements in its implementation.

[~~(2) Strategic plans shall be reviewed and amended, as appropriate, on a biennial basis.~~]

[~~(3) Each biennial review and update of strategic plans shall reflect a reconciliation of all actual implementation costs by component incurred for the year involved against projected strategic plan costs and revenues.~~]

(2) [~~(4)~~] Strategic plans shall be consistent with the four [~~three~~] major implementation priority levels identified above[~~, in subsection (b)(1), (2) and (3) of this section~~], and with all applicable Commission policies and rules.

(3) [~~(5)~~] A RPC [~~regional planning commission~~] shall submit financial [~~and performance~~] reports at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, strategic plan priority level and component. [~~The performance report shall be submitted along with each financial report requesting 9-1-1 funds and shall reflect the progress of implementing the region's strategic plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.~~]

(4) A RPC shall submit performance reports at least quarterly on a schedule to be established by the Commission. The performance report shall reflect the progress of implementing the region's strategic plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.

(g) [~~(e)~~] Amendments to Regional Strategic Plans.

(1) Amendments to regional strategic plans are required in order to request Commission approval prior to taking actions or making expenditures that are not authorized under the current plan or allowed within Commission policy. Examples of occasions when an amendment must be submitted to the Commission include, but are not limited to: [~~A regional planning commission may make changes to its approved regional strategic plan to accommodate unanticipated requirements, and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission policies and procedures.~~]

(A) Requests for approval of items under Commission Rule 251.3, Use of Revenue in Certain Counties; [~~The changes do not require additional service fees or equalization surcharge funds; and~~]

(B) Requests to shift budget authority from the Administrative budget to the Program budget, and vice versa; [~~The changes are consistent with all Commission policies and procedures.~~]

(C) Requests to increase the number of staff and/or percentage of staff time charged to the 9-1-1 program (FTE);

(D) Requests to add a call-taking position at a PSAP;

(E) Requests for exceptions to Commission policy;

(F) Requests for additional funds; and

(G) As required by other Commission rule, or upon a request from the Commission.

(2) Requests for amendments [~~Changes made~~] to the regional plan shall [~~must~~] be submitted [~~reported~~] in writing to the Commission no more than twice a year on a schedule to be established by the Commission. The documentation required for changes will be an amended budget, narrative, related worksheets and a letter indicating executive approval of the amendment according to Commission policy.

(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission for review and consideration contingent upon the availability of such funds within level priorities as established by the Commission.

(h) [~~(f)~~] Allocation of Revenue.

(1) Service Fee allocation - Consistent with §771.056 (d), and §771.078, the Commission shall allocate, by contract, service fee revenue to RPCs [~~regional planning commissions~~] contingent on the availability of appropriated funds.

(2) Equalization Surcharge Funds.[-]

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

(B) Consistent with this rule, the Commission shall allocate, by agreement, equalization surcharge funds and service fees to RPCs [~~regional planning commissions~~] based upon statewide strategic plan contingent on the availability of appropriated funds over a two-year period.

(C) The Commission may allocate equalization surcharge to an emergency communication district (District) based on District [~~district~~] requests and availability of appropriated funds.

(D) Equalization surcharge funds shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II, and III activities in that order.

(E) If sufficient equalization surcharge funds are not available to fund all RPC [~~regional planning commission~~] strategic plan and District [~~district~~] requests, funds shall be allocated to provide a consistent level of 9-1-1 service throughout the State of Texas in accordance with the priority levels described. Such allocation methods may include, but are not limited to, one or more of the following:

(i) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds;

(ii) Requesting that regional strategic plans be adjusted to allow for more implementation time as appropriate; and/or

(iii) In order of priority, proportionally allocating available funds among requesting agencies.

(F) The Commission may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.

(i) [~~(g)~~] Funding Parameters. The Commission will look favorably on plan amendments for tandem and/or database service arrangements and ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include the following when the equipment is for 9-1-1 call delivery: surge protection devices, uninterrupted power source (UPS), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and other back-up communication services.

(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery and they do not replace other paging or radio alerting systems. Funding for paging will be limited to systems, where alternative systems or the systems now in use cause significant delay in 9-1-1 call delivery and where existing radio systems can be modified to accommodate paging. Funding for pagers (receivers) will be limited to three, providing pagers to only necessary core responders within an organization (e.g., in a 15-member volunteer emergency medical group, only the on-call ambulance driver and one or two attendants would be furnished pagers).

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch); however, 9-1-1 funding will not be authorized for systems whose capacity clearly exceed actual or anticipated 9-1-1 requirements. Shared funding of larger systems to accommodate both a 9-1-1 PSAP and a PSAP operating agency's other needs will be considered on a case-by-case basis. Other considerations include:

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on each answering position used to answer emergency calls on a regular basis. (This means one recording channel per 9-1-1 answering position instead of one channel per incoming line.)

(B) The Commission will also fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services. This recording capability will be limited to the minimum amount required to record the transfer of the caller and relaying of information to the service provider.

(C) The Commission will fund the purchase of voice recorders as justified, to record 9-1-1 call delivery. Call volumes requiring recording in excess of 90 minutes per day will normally be required to justify larger systems.

(D) The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.

(E) Funding for search capability for recorders will be limited to the ability to locate an event by date and time.

(F) The Commission will not normally fund the purchase of both voice logging recorders and instant playback recorders in the same location.

(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to use the same recording equipment funded by the regional strategic plan [~~Regional Strategic Plan~~], the following guidelines will apply to determine the amount to be funded by the Commission:

(i) When the minimum size of recorder that can be purchased to serve the PSAP provides more channels than are needed by the PSAP to record the delivery of 9-1-1 calls, the other agency may use the extra channels and all funding will be provided by the Commission.

(ii) When the PSAP requires a given size of recording equipment, and the other agency requires additional channels, the Commission will fund the size of recording equipment needed to record only the delivery of 9-1-1 calls, and the other agency will fund all additional equipment.

(iii) When the recording requirements of the other agency requires additional features or capabilities than would be required by the PSAP alone, the Commission will fund the equivalent amount of the system needed to serve the 9-1-1 functions of the PSAP alone. For instance, if the PSAP could use a recording system to record the delivery of 9-1-1 calls, but another agency needs to record a radio channel that requires the capacity of a larger recorder, the Commission will fund the equivalent cost of the smaller system.

(H) To assist the Commission in reviewing and approving requests for funding for voice recording devices for 9-1-1 call delivery, requests for funding should include a worksheet, provided by the Commission, for each PSAP location.

(I) In reviewing requests for recording systems, the Commission will award funding, when justified, for the actual costs of basic recording systems not to exceed $10,000 on 4-channel or equivalent systems, and not to exceed $20,000 on up to 10-channel or equivalent recording systems. Requests for any other recording systems will require separate approval by the Commission.

(J) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional strategic plan [~~Regional Strategic Plan~~].

(j) [~~(h)~~] Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if an emergency power system is required to insure the ability to answer 9-1-1 calls in the event that the standard power supply is interrupted. A PSAP that receives a relatively small number of emergency calls per day may be able to provide acceptable service without the availability of ANI or ALI for short periods of time. If the same PSAP is located in a location that is subject to prolonged power outages, it may need emergency power sources. Other considerations include:

(1) Where conditions exist that indicate a need for emergency power systems to support 9-1-1 call delivery, UPS should be considered as the emergency power system. Emergency generators (power backup) should be approved only in locations with a documented history of or potential for extended interruptions of commercial power supplies. Generally, 9-1-1 funding will not be used to provide both a generator and UPS. At least 75 percent of the capacity of any UPS system or generator funded should directly support an existing (or planned) 9-1-1 system.

(2) Each request for UPS must include a worksheet showing the calculations used to determine the system size and batteries required. This worksheet must identify all equipment to be powered and the operating voltage and current drain of each piece of equipment. The request for UPS must identify the load capacity of the system requested and the length of time the batteries will operate the PSAP 9-1-1 equipment. The request should also indicate whether the 9-1-1 equipment has any built-in UPS capability.

(3) The length of time that a UPS battery will be required to provide emergency power is a major factor in determining the cost of the UPS system. Each request for UPS must provide information justifying the size of the batteries requested. Information concerning the history of power failures at the PSAP location and the average time to restore power should be obtained from the local power company.

(4) If the history of power failures, or the expected restoration time, is more than can be economically justified for UPS batteries, an emergency generator can be considered. Any request for an emergency generator, in addition to a UPS, shall include a comparison of the cost of a UPS with sufficient batteries to the cost of the combination of the UPS and an emergency generator.

(5) There may be circumstances that justify the installation of an emergency generator (backup power), in addition to an UPS, as the primary system for a PSAP location. In these cases, the request for the emergency generator must include an explanation and comparison of the relevant costs.

(6) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to share the emergency power system funded by the Commission, the following guidelines will apply to determine the amount to be funded by the Commission:

(A) When the minimum size of emergency power system that can be purchased to serve the PSAP provides more capacity than is needed by the PSAP, the other agency may use the extra capacity and all funding will be provided by the Commission.

(B) When the PSAP requires a given size of emergency power system, and the other agency requires additional capacity, the Commission will fund the size of emergency power equipment needed to supply the PSAP alone and the other agency will fund all additional capacity.

(7) Funding may be approved for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. Documented justification must be provided.

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

[~~(1) 9-1-1 Call Delivery--Delivery of a 9-1-1 call to the agency responsible for providing the emergency service required.~~]

[~~(2) 9-1-1 Funds--Funds assessed and disbursed in accordance with Chapter 771 of the Texas Health and Safety Code.~~]

[~~(3) Emergency Communications District--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Health and Safety Code, Chapter 772, Subchapter B, C, or D.~~]

[(4) Paging Systems--A radio system capable of transmitting tone, digital, and/or voice signals to small receiving devices designed to be carried by an individual.]

[(5) Power Backup--Power provided by a generator in the event regular utility services are interrupted.]

[(6) Recorders--Devices that capture and retain sound, including, but not limited to the following:]

[(A) Voice Loggers--A device that records sound on a permanent source for later review.]

[(B) Instant Recall Recorder--A device that records and temporarily stores calls for immediate review.]

[(7) Regional Strategic Plan--Each regional planning commission shall develop and plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the Commission.]

[(8) Regional Planning Commission (RPC)--A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG), or simply, a regional council.]

[(9) Security Devices--Devices whose use is specific to the protection of 9-1-1 systems from intentional damage.]

[(10) Strategic Plan--As part of a regional strategic plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support planned levels of 9-1-1 service within a defined area of the state. The strategic plan shall cover a two year financial planning period and a five year plan outlining regional goals and strategies, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.]

[(A) Strategic Plan Component--Within a 9-1-1 implementation priority level, a category of 9-1-1 activity and/or equipment generally associated with 9-1-1 implementation cost.]

[(B) Strategic Plan Level--A Commission established statewide implementation priority generally associated with a level of 9-1-1 service - e.g., Automatic Number Identification, ANI.]

[(11) Surge Protection Devices--Devices designed to protect sensitive electronic equipment by preventing excessive electrical power from reaching and damaging such equipment.]

[(12) Uninterrupted Power Source (UPS)--Equipment that is designed to provide a constant power source for electronic systems. Capable of operating independently, for a designated period of time, should public or emergency electrical power sources fail.]

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 April 26, 2004.

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Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 305-6933

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1 TAC §251.7

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.7, concerning the inclusion of third-party software applications into the 9-1-1 integrated workstation environment.

This action is proposed as part of Rule Review of Chapter 251, pursuant to Government Code, Section 2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with substantive revision to the rule to add a requirement that mapping of telephone number (TN) data is tested for accuracy prior to "going live" with Mapped ALI at a PSAP.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, however, local governments may incur costs dependent upon the applications they choose to incorporate into the 9-1-1 workstation.

Mr. Mallett has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be improved accountability and clarification of expanded guidelines and provisions for the use of third-party applications into 9-1-1 integrated workstation environment. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to individuals, as no individuals have a duty to comply with the rules as proposed. There is no anticipated local employment impact as a result of enforcing the section.

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

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

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

§251.7. Guidelines for Implementing Integrated Services.

(a) Purpose. It is the purpose of this rule to allow for the integration of appropriate technologies into the 9-1-1 call-taking equipment that enhance or facilitate the delivery of the 9-1-1 call, while providing safeguards to protect the 9-1-1 equipment from failure due to the integration of faulty or inappropriate applications.

(b) [(a)] Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions. [When used in this rule, the following words and terms shall have the meanings identified below, unless the context and use of the word or terms clearly indicates otherwise:]

[(1) 9-1-1 Database. An organized collection of information, which is typically stored in computer systems that are comprised of fields, records (data), and indexes. In 9-1-1, such databases include master street address guides (MSAG), telephone numbers, emergency

service numbers (ESN), and telephone customer records. This information is used for the delivery of location information to a designated public safety answering point (PSAP). Use of the 9-1-1 database must be authorized by the Commission on State Emergency Communications (Commission) and the Regional Planning Commission (RPC). The database is developed and maintained by the local government agency or the RPC as described within the regional strategic plan in accordance with Commission §251.9 of this title (relating to Guidelines for Database Maintenance Funds).]

[(2) 9-1-1 Funds. Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.]

[(3) 9-1-1 Call Taking Position. Equipment acquired with 9-1-1 funds to answer the delivery of an emergency 9-1-1 call. The position is defined as the equipment necessary to answer the call, not the associated personnel. A position consists of a device for answering the 9-1-1 calls, a device to display 9-1-1 call information, and the related telephone circuitry and computer or router equipment necessary to ensure reliable handling of the 9-1-1 call.]

[(4) Addressing Completion. A county addressing project that has developed a comprehensive MSAG, assigned street addresses and notified the residents of their 9-1-1 address, provided the MSAG and new or changed address information associated with the particular telephone numbers to the applicable telephone companies, submitted corrected address errors to the telco, and established a maintenance methodology in accordance with Commission §251.9 of this title (relating to Guidelines for Database Maintenance Funds).]

[(5) Address Maintenance Plan. A plan that identifies a cost effective program for the maintenance of addressing in a county. For regional planning commissions (RPC) this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.]

[(6) Digital Map. A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and location information, data sets related to emergency service provider boundaries, as well as other associated data.]

[(7) Emergency Communications District (District). A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, or D.]

[(8) Integrated Services. Primary or third party computer software applications that have been installed or implemented on an existing 9-1-1 call taking position's workstation that were not designed or intended for the workstation at the time of purchase or not loaded onto the workstation by the equipment vendor when originally installed at the PSAP.]

[(9) Graphical Display of Location Information. The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call, or inquiry, that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations, and the ability to zoom, pan and show other related geographical information or features.]

[(10) Geographic Information System (GIS). A system of computer hardware, software and procedures used to store, analyze, and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.]

[(11) Regional Planning Commission. A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).]

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

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

[(14) Wireless Phase II E9-1-1 Service. The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number, cell site/sector information, as well as, X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.]

[(15) Wireless Service Provider. The wireless service provider and all its affiliates, collectively referred to as "WSP."]

[(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the Commission has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of service. In the funding of such projects, it has been the policy of the Commission to fund geographic information systems and the development of digital maps to support such activities. The Commission recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Integration of new technology and 9-1-1 functionality are enhancing and facilitating the delivery of an emergency call. It is the policy of the Commission that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of integrated services funded in part or in whole by the 9-1-1 funds referenced above. Integrations scheduled in a region's approved Regional Strategic Plan do not require separate Commission approval for implementation. Integrations approved in the Regional Strategic Plan do require that the RPC submit a notification amendment and testing documentation to the Commission as verification of compliance with this rule. When a region desires to implement an integrated service that was not considered in its Regional Strategic Plan or is not listed in paragraph (1)(A) of this subsection, then Commission approval must be obtained before procurement. A RPC or District receiving equalization surcharge funds from the Commission shall meet the following requirements listed in paragraphs (1)-(2) of this subsection:]

(c) Integrated Services. A regional planning commission (RPC) shall meet the following requirements for integration:

(1) Integrated Services

(A) Eligible Services. Personal Computer (PC) based Integrated Workstation (IWS) 9-1-1 call-taking equipment has the capability of expanding the traditional 9-1-1 Automatic Number Identification (ANI) and Automatic Location Identification (ALI) feature functionality to allow for additional public safety software applications.

The Commission is supportive of such advancement in emergency services call-taking capabilities; however, to ensure the integrity of 9-1-1 is maintained, only the following features [~~listed in clauses (i)-(viii) of this subparagraph~~] are eligible integrated services:

(i) Expanded or Supplemental Location Information;

(ii) Call Recording and Playback;

(iii) Paging;

(iv) Texas Law Enforcement Teletype Services (TLETS);

(v) Computer Aided Dispatch Gateway;

(vi) Graphical/Mapping Displaying of Location;

(vii) Call Handling Protocols; and

(viii) Information Management (MIS).

(B) Other Services. Integrated services other than the above-mentioned applications [~~listed in clauses (i)-(viii) of Subparagraph (A)~~] must have a demonstrated applicability to the direct provisions of delivering 9-1-1 and emergency call-taking services and will require Commission approval.

(C) System Security. Operating procedures should be established by the RPC, and security measures taken and demonstrated, to ensure than non-Commission-approved software applications cannot be integrated into the IWS platform. At no time should the 9-1-1 call-taking equipment permit access to the Internet.

(D) Memory Usage. Baseline memory and CPU usage of the operating system should maintain the "80/20" performance rule, thereby demonstrating that 80% of the total memory and CPU is available to the operating system applications, while 20% of the total memory and CPU remains unused. The installation and use of software should not lead to the degradation of equipment or services subsequent to the installation of the ancillary software.

(E) Testing. [~~(C)~~] Prior to integrating and deploying the expanded applications onto a IWS 9-1-1 call-taking environment, the following testing [~~listed in clauses (i)-(iii) of this subparagraph~~] must be [~~demonstrated to the Commission~~] completed according to Commission policy, to ensure the stability and reliability of the 9-1-1 system:

(i) Documented "Lab" testing shall be completed by the IWS Vendor and RPCs or Districts demonstrating the successful integration of the authorized applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating together on the IWS workstation.

~~*I(ii)* Baseline memory and CPU usage of the operating system should maintain the "80/20" performance rule, thereby demonstrating that 80% of the total memory and CPU is available to the operating system applications, while 20% of the total memory and CPU remains unused. The installation and use of software should not lead to the degradation of equipment or services subsequent to the installation of the ancillary software.I~~

(ii) [~~(iii)~~] Documented "Live" testing in a PSAP shall also be completed by the IWS Vendor with cooperation and coordination by the RPC or District, demonstrating the successful integration of the authorized applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating on the IWS workstation, as well as a standardized set of basic call-taking functions.

(F) Testing Documentation. Documentation of the testing shall be maintained by the RPC, and submitted to the Commission upon request.

~~I(D) Operating procedures should be established by the RPC or District, and security measures taken and demonstrated, to ensure that non-Commissioned-approved software applications cannot be integrated into the IWS platform.I~~

(2) Graphical Display (Mapped ALI [~~and Wireless Phase II~~])

[~~(A)~~] Requirements of RPC. Prior to the implementation of graphical display of location information [~~for a county system,~~] at a PSAP, a RPC [~~or District~~] shall meet the following requirements: [~~listed in clauses (i)-(iii) of this subparagraph;~~]

(A) [~~(i)~~] Complete the county addressing project.

(B) [~~(ii)~~] Develop a digital map in accordance with standards to be determined by the Commission.

(C) [~~(iii)~~] Establish and adopt a maintenance plan of the county digital map, county addressing project, and the associated county 9-1-1 database. The plan shall be submitted to the Commission upon request.

(D) Perform testing to ensure that the telephone number (TN) data is mapping correctly on the PSAP screen prior to implementing mapped ALI "live" at a PSAP.

~~I(B) The maintenance plan shall be provided to the Commission in conjunction with strategic plan annual review or District requests submitted to the Commission following the adoption of this rule in accordance with established Commission policy.I~~

~~I(C) Annual budgeted costs associated with authorized integrated services, as outlined in this rule, shall be monitored by the Commission staff for consistency with approved maintenance plans and systems costs. Such costs that are determined by Commission staff to not be consistent with the approved strategic plan, shall be presented for review and approval by the Commission.I~~

(d) Applicability to Emergency Communications Districts (Districts). This rule shall apply to Districts receiving 9-1-1 Equalization Surcharge funds.

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 April 26, 2004.

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Paul Mallett
Executive Director
Commission on State Emergency Communications
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For further information, please call: (512) 305-6933

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1 TAC §251.8

The Commission on State Emergency Communications (CSEC) proposes an amendment §251.8, concerning proposed guidelines for the procurement of equipment services with 9-1-1 funds.

This action is proposed as part of Rule Review of Chapter 251, pursuant to Government Code, Section 2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with amendments made to ensure consistency with Texas Uniform Grant Management Standards (UGMS).

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, although cost savings are possible as a result of established competitive bidding for expenditures of all 9-1-1 funds.

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

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

The proposal is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

§251.8. Guidelines for the Procurement of Equipment and Services with 9-1-1 Funds.

(a) Purpose. The purpose of this rule is to establish the Texas Uniform Grant Management Standards (UGMS) as the required procedure for purchases made with 9-1-1 funds. Other instructions provided in this rule are in addition to the direction provided in UGMS. This rule is not intended to prohibit a regional planning commission's (RPC) use of more stringent competitive procurement practices. [Policy and Procedures. As authorized by Chapter 771 of the Texas Health and Safety Code, the Advisory Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. This rule establishes procurement guidelines and minimum competitive procurement requirements.]

[(1) This rule applies to any procurement by a 9-1-1 administrative entity, which exceeds $2,000, to be paid with funds from 9-1-1 emergency service fees and 9-1-1 equalization surcharges from the State program.]

[(2) This rule is not intended to prohibit a 9-1-1 administrative entity's use of more stringent competitive procurement requirements or practices.]

(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions [The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise].

[(1) 9-1-1 Administrative Entity - A municipality, a county, an emergency communication district, a regional planning commission or any other political subdivision that provides 9-1-1 administrative services.]

[(2) 9-1-1 Equipment and Services - Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP).]

[(3) 9-1-1 Funds - Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.]

[(4) Emergency Communication District - A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service, or a district created under Subchapter B1, C2, or D3, the Texas Health and Safety Code, Chapter 772.]

[(5) NENA - The National Emergency Number Association, a not-for-profit corporation founded to further the national goal of "One Nation, One Number."]

[(6) Regional Planning Commission (RPC) - A commission established under Chapter 391, Local Government Code.]

(c) Funding. Funds allocated for the procurement of certain 9-1-1 equipment, database services, and network services will be subject to Commission funding priorities and policies.

(d) Statewide Procurement. The Commission reserves the right to procure certain 9-1-1 equipment, database services, and network services for the State program based on best value and upon determination of which goods or services are in the State program's best interest. In instances of statewide procurement, the Commission will work with the RPCs and local governments to ensure that such purchases of goods or services are consistent with local 9-1-1 systems' infrastructure and best meet the needs of the local governments.

(e) Industry Standard. All goods, services, systems, or technology purchased with 9-1-1 funds shall be consistent with the current industry standard. The authority for the industry standard for 9-1-1 networks, equipment, and databases is the National Emergency Number Association (NENA).

(f) Capital Purchases. Goods, services, systems, technology, or projects with an aggregate value grater than $5,000, or otherwise defined as capital items by the Texas Comptroller of Public Accounts, shall be regarded as capital purchases.

(g) [(c)] Competitive Procurement Required. Competitive procurement is required for all purchases defined as capital purchases, including lease contracts with a value of greater than $5,000. [Except as otherwise specifically provided in this rule, all procurements in excess of $2,000 by a 9-1-1 administrative entity, to be paid with 9-1-1 funds, shall be conducted in accordance with the provisions of Article III, Source Selection and Contract Formation, of the Texas Association of Regional Councils' Model Procurement Policy, which are hereby incorporated by reference in this rule and copies of which may be obtained from the Texas Association of Regional Councils, 1305 San

Antonio Street, Austin, Texas 78701, or other limits established by locally adopted procurement policy, whichever is more restrictive. In addition, all definitions applicable to Article III which are set forth in the Model Procurement Policy shall apply and are incorporated herein by reference along with any other provision of the Model Procurement Policy cited in Article III.]

(1) Exceptions for sole source may be used when consistent with UGMS. Prior written concurrence from the Commission is required for any sole source purchase expected to exceed $25,000.

(2) Purchases made by RPCs through a state agency or other qualified cooperative purchasing program shall be considered to satify this section of the rule.

(3) Purchases of tariffed goods or services meeting the definition of capital purchases are subject to competitive procurement. A RPC may not contract to pay a vendor an amount higher than its tariffed price.

(4) Modifications to leases with a nonrecurring cost of greater than $5,000 are considered capital purchases subject to competitive procurement.

[(1) For purchases in excess of $2,000, but less than $10,000, the provisions of Section 3-204 b. of the Model Procurement Policy, Competitive Telephone or Facsimile Bids (informal competitive bids) shall apply.]

[(2) For purchases in excess of $10,000, but less than $25,000, the provisions of Section 3-204 c. of the Model Procurement Policy, Competitive Written Bids or Quotations shall apply.]

[(3) For purchases exceeding $25,000, the provisions of Section 3-202 of the Model Procurement Policy, subdivisions 1.a., d., e., and f. are incorporated herein.]

[(4) For sole source procurement, the provisions of Section 3-205 of the Model Procurement Policy shall apply. Prior written concurrence from the Commission is required for any sole source procurement expected to exceed $25,000.]

[(5) Compliance with those provisions in the Model Procurement Policy, which apply to specific funding sources or programs, such as JTPA, is not required under this rule.]

(h) Historically Underutilized Businesses (HUBs). RPCs shall take affirmative steps to contract with HUBs according to the RPC's HUB plan included in the regional strategic plan.

(i) [(d)] Record Retention. All procurement-related records must be maintained by a [9-1-1 administrative entity] RPC in accordance with the RPC's adopted procurement policy, and made available to the Commission upon request. [in accordance with the provisions of Article II, Part B: Record Retention, of the Texas Association of Regional Councils' Model Procurement Policy, which are hereby incorporated by reference in this rule, except to the extent such provisions apply to specific funding sources or programs.]

[(e) Procurement of Statewide Services. 9-1-1 administrative entities may procure certain 9-1-1 equipment, database services and network services through contract with the Texas Building and Procurement Commission (TBPC) or the Commission.]

[(1) The Commission reserves the right to procure certain 9-1-1 equipment, database services and network services for the State program based on best value and upon determination of which goods or services are in the State program's best interest. In instances of statewide procurement, the Commission will work with the RPCs and local governments to ensure that such purchases of goods or services are consistent with local 9-1-1 systems' infrastructure and best meet the needs of the local governments.]

[(2) Funds allocated for the procurement of certain 9-1-1 equipment, database services and network services will be subject to Commission funding priorities and policies.]

[(f) End-to-End Lease Arrangements. 9-1-1 administrative entities shall have the option of procuring 9-1-1 customer premises equipment (CPE), database and network services through end-to-end lease arrangements, only when proper procurement procedures and guidelines are utilized and documented. The RPC must demonstrate, through proper procurement procedures and documentation, that the tariffed services are economically advantageous to the 9-1-1 administrative entity.]

[(1) All such CPE lease arrangements shall identify features and equipment subject to the terms and conditions set forth in the RPC's Local Exchange Carrier's (LEC) Texas Public Utility Commission (PUC) approved tariff. Tariffed services are provided solely for the use and benefit of the 9-1-1 administrative entity.]

[(2) Additions, modifications or the removal of features from the leased CPE, with a total value below the $2,000 threshold set forth in this rule, may be made by the LEC at the 9-1-1 administrative entity's request.]

[(3) Subsequent to the initial contract period, the tariffed services may be automatically renewed annually for an additional 12 month period unless:]

[(A) either party notifies the other of its intent to terminate the lease arrangement at least 90 days prior to the contract anniversary date;]

[(B) CPE, valued in excess of $2,000 is to be completely removed and replaced by new equipment; or]

[(C) the necessity for additions and/or modifications to the CPE becomes excessive, for any 12 month contract period.]

[(g) NENA Standards. All procurement of 9-1-1 equipment, database services and network services must adhere to the NENA recommended standards for network, data and PSAP/CPE, as developed by the NENA Technical Committee and as approved by the NENA Executive Board.]

(j) [(h)] Code of Ethics. Employees of RPCs, whose salary is funded in whole or in part with 9-11- funds, [9-1-1 administrative entities or employees of entities receiving 9-1-1 emergency service fees and 9-1-1 equalization surcharges] shall adhere to the following ethical standards . RPCs shall establish policies to ensure that the code of ethics is addressed in the procurement of all 9-1-1 equipment and services and provide a copy of this policy to the Commission upon request. An Employee may not: [, listed in paragraphs (1)-(4) of this subsection. An administrative entity employee may not:]

(1) Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;

(2) Solicit or accept anything of value from an actual potential vendor;

(3) Be employed by, or agree to work for, a vendor or potential vendor; or

(4) Knowingly disclose confidential information for personal gain. RPCs shall establish policies to ensure that the above code

of ethics is addressed in the procurement of all 9-1-1 equipment and services. The administrative entity may have future 9-1-1 funds withheld and/or be required to reimburse the Commission the amount of the misappropriated funds.

(k) [~~(i)~~] Compliance. If a 9-1-1 administrative entity fails to comply with the provisions of this rule, the Commission may take action to recover any excessive costs clearly shown to have been paid as a result of infractions of this rule. [~~may consider the 9-1-1 administrative entity's lack of compliance in fixing the rate of the 9-1-1 emergency service fees, in determining the allocation of 9-1-1 equalization surcharges, or in taking any other action that is consistent with Section _____.43 (relating to Enforcement) of the Texas Uniform Grant Management Standards, as adopted by reference in §5.144 of this title (relating to Adoption by Reference).~~]

(l) [~~(j)~~] Applicability of State Procurement Statutes. To the extent of any conflict between this rule and applicable state statutes prescribing procurement methods, such statutes shall be followed.

(m) Applicability to Emergency Communications Districts (Districts). The requirements set forth in this rule also apply to Districts receiving 9-1-1 equalization funds.

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 April 26, 2004.

TRD-200402767
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 305-6933

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1 TAC §251.14

The Commission on State Emergency Communications (CSEC) proposes new §251.14, concerning general provisions and definitions.

The new proposed section contains all definitions to words and terms used in the other rules within Chapter 251. This consolidation of provisions and definitions helps reduce unnecessary duplication and ensures consistency of definitions.

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

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

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

The new section is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.072, 771.075, and 771.0751, 771.079; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

§251.14. General Provisions and Definitions.

(a) Purpose. The Commission on State Emergency Communications (Commission) herein establishes the following general provisions for defining terms utilized within the context of Commission rules. This rule allows for compilation of all technical and 9-1-1 industry related terms used in the rulemaking process.

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

(1) 9-1-1 Administrative Entity--A municipality, a county, an emergency communication district (District), a regional planning commission (RPC) or any other political subdivision that provides 9-1-1 administrative services.

(2) 9-1-1 Call Delivery--Delivery of a 9-1-1 call to the agency responsible for providing the emergency service required.

(3) 9-1-1 Call Taking Position--Equipment acquired with 9-1-1 funds to answer the delivery of an emergency 9-1-1 call. The position is defined as the equipment necessary to answer the call, not the associated personnel. A position consists of a device for answering the 9-1-1 calls, a device to display 9-1-1 call information, and the related telephone circuitry and computer and/or router equipment necessary to ensure reliable handling of the 9-1-1 call.

(4) 9-1-1 Database--An organized collection of information, which is typically stored in computer systems that are comprised of fields, records (data), and indexes. In 9-1-1, such databases include master street address guides (MSAG), telephone numbers, emergency service numbers (ESN), and telephone customer records. This information is used for the delivery of location information to a designated public safety answering point (PSAP). Use of the 9-1-1 database must be authorized by the Commission and RPC. The database is developed and maintained by the local government agency and/or the RPC as described within the regional strategic plan in accordance with Commission Rule 251.9, Guidelines for Database Maintenance Funds.

(5) 9-1-1 Database Record--A physical record, which includes the telephone subscriber information to include the caller's telephone number, related location information, and class of service, and also conforms to NENA adopted database standards.

(6) 9-1-1 Equipment and Services--Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 wireline or wireless call to an appropriate PSAP, including equipment to maintain the database.

(7) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(8) 9-1-1 Governmental Entity--An RPC or District, as defined in Texas Health and Safety Code Chapter 771.001, and Chapter

772, Subchapter B, C, D, or F that administers the provisioning of 9-1-1 service.

(9) 9-1-1 Governmental Entity Jurisdiction--As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(10) 9-1-1 Network--The dedicated network of equipment, circuits, and controls assembled to establish communication paths to deliver 9-1-1 emergency communications.

(11) 9-1-1 Network Provider--The current operator of the selective router/switching that provides the interface to the public safety answering point (PSAP) for 9-1-1 service.

(12) 9-1-1 Operator--The PSAP operator receiving 9-1-1 calls.

(13) 9-1-1 Program Assets--9-1-1 and Addressing Capital Equipment purchased with 9-1-1 Funds.

(14) 9-1-1 System--The communications infrastructure, equipment, and services assembled to establish, extend, or improve communication paths to deliver voice and/or data necessary for the answering of and response to a 9-1-1 call.

(15) Address Maintenance Plan--A plan that identifies a cost effective program for the maintenance of addressing in a county. For regional planning commissions (RPC) this plan is part of a regional plan as described by Chapter 771 of the Texas Health and Safety Code.

(16) Addressing Completion--A county addressing project that has developed a comprehensive MSAG, assigned street addresses and notified the residents of their 9-1-1 address, provided the MSAG and new or changed address information associated with the particular telephone numbers to the applicable telephone companies, submitted corrected address errors to the telco, and established a maintenance methodology in accordance with Commission Rule 251.9, Guidelines for Database Maintenance Funds.

(17) Answering Point--A communications facility established as an answering location to receive the voice and/or data communications necessary for the answering of and response to 9-1-1 calls and other emergencies.

(18) Applicable Law--Includes, but is not limited to, the State Administration of Emergency Communications Act, Chapter 771, Texas Health and Safety Code; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant Management Standards, Title 1, Sections 5.151 - 5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules."

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

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

(21) Call Associated Signaling (CAS)--A method for delivery of the mobile directory number (MDN) of the calling party plus the emergency service routing digits (ESRD) from the wireless network through the 9-1-1 selective router to the PSAP. The 20 digits of data delivered are sent either over Feature Group D (FG-D) or ISUP from the wireless switch to the 9-1-1 router. From the router to the PSAP, the 20-digit stream is delivered using either Enhanced Multi-Frequency (EMF) or ISDN connections.

(22) Call Back Number--The mobile directory number (MDN) of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if a 9-1-1 call is disconnected. In certain situations, the MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to, situations affected by illegal use of Service (such as fraud, cloning, and tumbling) and uninitialized handsets and non-authenticated handsets.

(23) Capital Equipment--Items and components whose cost is over $5,000 and have a useful life of at least one year.

(24) Capital Equipment Asset--Items and components whose cost is over $5,000 and which have a useful life of at least one year.

(25) Capital Purchase--a procurement of items, systems, or services that cost over $5,000 in the aggregate, and that have a useful life of at least one year.

(26) Capital Replacement Cost--The cost of a piece of equipment that was originally identified to be amortized (i.e. the original cost for equipment.)

(27) Cell Sector--An area, geographically defined by WSP (according to WSP's own radio frequency coverage data), and consisting of a certain portion of all of the total coverage area of a Cell Site.

(28) Cell Sector Identifier--The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

(29) Cell Site--A radio base station in the WSP Wireless Network that receives and transmits wireless communications initiated by or terminated to a wireless handset, and links such telecommunications to the WSP's network.

(30) Cell Site/Sector Information--Information that indicates, to the receiver of the information, the location of the Cell Site receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.

(31) Class of Service--A standard acronym, code or abbreviation of the classification of telephone service of the Wireless End User, such as WRLS (wireless), that is delivered to the PSAP CPE.

(32) Commission on State Emergency Communications (CSEC)--Also referred to as the Commission.

(33) Competitive Local Exchange Carrier or Certified Local Exchange Carrier (CLEC)--Another name for a local exchange carrier (LEC) after Congress, in 1996, passed a law to bring competition to local telephone services.

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

(35) Contract for 9-1-1 Services (Contract)--An agreement executed between the regional planning commission (RPC) and the Commission that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

(36) Controlled Asset--Items and components that have a cost of $5,000 or less and have a useful life of at least one year.

(37) Controlled Equipment--Items and components whose cost is less than $5,000 and have a useful life of at least one year.

(38) Customer Premise Equipment (CPE)--The terminal equipment at a PSAP or secondary answering location.

(39) Digital Map--A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and location information, data sets related to emergency service provider boundaries, as well as other associated data.

(40) Emergency Communications District (District)--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a District created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, D, or E.

(41) Emergency Notification Services--A service or system that provides local governmental entities the ability to notify citizens of a warning or alert regarding emergency situations which may jeopardize human life or property. Emergency notification services can utilize multiple methods of transmission to include voice technologies via telephone systems; data technologies via facsimile; e-mail, Internet services and paging systems; and broadcast technologies via television, radio, or Internet.

(42) Emergency Service Number (ESN)--A number stored by the selective router/switch used to route a call to a particular PSAP.

(43) Emergency Service Routing Digits (ESRD)--As defined in J-Std-034, an ESRD is a digit string that uniquely identifies a base station, cell sector, or sector. This number may also be a network routable number (but not necessarily a dialable number).

(44) Enhancements--Infrastructure, equipment, personnel and services funded for certain counties as defined in Commission Rule 251.3, Use of Revenue in Certain Counties, that would not otherwise be approved for allocation of 9-1-1 funds as part of the regional strategic plan.

(45) ESRK--Emergency Service Routing Key (ESRK) is a 10-digit routable, but not necessarily dialable, number translated from a cell sector identifier at the SCP that is used by the selective router to route wireless E9-1-1 calls to the appropriate PSAP. The ESRK is also the search-key for the mating of data that is provided to a PSAP by different paths, such as via the voice path and ALI data path. In daily use, the term ESRK is used to distinguish operational environments where the routing digits are assigned on a per destination PSAP basis as opposed to a per origination cell sector basis, which is the strict technical definition of an ESRD.

(46) FCC--The Federal Communications Commission.

(47) FCC Order--The Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-102, released July 26, 1996, and as amended by subsequent decisions.

(48) Geographic Information System (GIS)--A system of computer hardware, software and procedures used to store, analyze, and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(49) Graphical Display of Location Information--The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call, or inquiry, that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations, and the ability to zoom, pan and show other related geographical information or features.

(50) Host ALI Records--Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Wireless End User making a 9-1-1 call.

(51) Hybrid CAS/NCAS--This method for wireless E9-1-1 call delivery uses a combination of CAS and NCAS techniques to deliver the location and call back numbers to a PSAP. The MSC sends the location and call back information to a selective router using the standard CAS interface defined in J-Std-034. The selective router then uses an NCAS approach to deliver the information to a PSAP. That is, the selective router sends the location and call back information to the wireline emergency services database and the caller's call back number, or MDN, to the PSAP. The MDN is then used as a key to retrieve the cell/tower information for PSAP display.

(52) Intangible Assets--Includes items such as labor for PSAP room prep, electrical wiring costs, labor for the assembly of equipment, or any costs for the delay or transfer of equipment.

(53) Integrated Services--Primary or third party computer software applications that have been installed or implemented on an existing 9-1-1 call taking position's workstation that were not designed or intended for the workstation at the time of purchase or not loaded onto the workstation by the equipment vendor when originally installed at the PSAP.

(54) Integrated TDD--the TDD has been incorporated into the CPE equipment.

(55) Interlocal Agreement--A contract cooperatively executed between local governments or other political subdivisions of the state to perform administrative functions or provide services, relating to 9-1-1 telecommunications.

(56) J-Std-034--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the delta changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies that the interconnection between the mobile switching center (MSC) and the 9-1-1 selective router/switch is via

(A) an adaptation of the Feature Group-D Multi Frequency (FG-D protocol), or

(B) the use of an enhancement to the Integrated Services Digital Network User Part (ISUP) Initial Address Message (IAM) protocol. In this protocol, the caller's location is provided as a ten-digit number referred to as the emergency services routing digits (ESRDs). The protocol NENA-03-002, Recommendation for the Implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP, is the corollary of J-Std-034 FG-D protocol.

(57) J-Std-036--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), that defines standards for E9-1-1 service relating to CAS, NCAS wireless E9-1-1 solutions, and to make provision for introduction of location determination technology for Phase II delivery of wireless E9-1-1 calls. Additional proposed solutions such as Hybrid are not referenced. Standards include, but are not limited to, required data elements, and signaling protocols. J-Std-034 addresses E9-1-1 Phase I, and J-Std-036 addresses E9-1-1 Phase II.

(58) Local Exchange Carrier (LEC)--A Telecommunications Carrier (TC) under the state/local Public Utilities Act that provides local exchange telecommunications services. Also known as Incumbent Local Exchange Carriers (ILECs), Alternate Local Exchange Carriers (ALECs), Competitive Local Exchange Carriers

(CLECs), Competitive Access Providers (CAPs), Certified Local Exchange Carriers (CLECs), and Local Service Providers (LSPs).

(59) Local Government--A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.

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

(61) Local Number Portability (LNP)--A process by which a telephone number may be reassigned from one Local Exchange Carrier to another.

(62) Maintenance--The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.

(63) Maintenance Plan--A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions this plan is part of a regional plan as described by Chapter 771 of the Texas Health and Safety Code.

(64) Master Street Addressing Guide (MSAG)--A database maintained by the local government agencies or regional planning commissions which lists all street segments and their associated address information for the purpose of validating and updating telephone number records. An MSAG record consists of: street directional (when applicable); street name; house number low and high ranges; whether the range is odd ranges (O) even (E) or contains both odd and even ranges (B); the associated community name; state; Emergency Service Number (ESN); and telephone exchange. MSAG records will meet NENA standards or a statewide standard as determined by the Commission.

(65) Mobile Directory Number (MDN)--A 10-digit dialable directory number used to call a Wireless Handset.

(66) Mobile Switching Center (MSC)--A switch that provides stored program control for wireless call processing.

(67) NENA--The National Emergency Number Association, a not-for-profit corporation founded to further the national goal of "One Nation, One Number."

(68) NENA 02-010--A standard set of formats and protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee.

(69) NENA 03-002--A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol, referenced in paragraph (25) of this subsection, is the corollary protocol of NENA 03-002.

(70) Non-Callpath Associated Signaling (NCAS)--This method for wireless E9-1-1 call delivery delivers routing digits over existing signaling protocol, including commonly applied CAMA trunking into and out of selective routers or SS7 into selective routers. The voice call is set up using the existing interconnection method that the wireline company uses from an end office to the router and from the router to the PSAP. The ANI delivered with the voice call is an emergency service routing key (ESRK), not a MDN. Where SS7 signaling (or other facility with 20-digit signaling capability) is in place, the MDN as well as the ESRK may be delivered over the voice path. All data, including the MDN and cell sector that receives the call, is delivered to the PSAP via the data path within the ALI record.

(71) Non-Recurring Charge (NRC)--The amount of cost identified as the entire lump sum, or one time, cost for 9-1-1 equipment replacement. The charge may be inclusive of an out right purchase of equipment or the primary cost for the implementation of leased equipment through a major telephone provider.

(72) Paging Systems--A radio system capable of transmitting tone, digital, and/or voice signals to small receiving devices designed to be carried by an individual.

(73) Phase I E9-1-1 Service Area(s)--Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service.

(74) Power Backup--Power provided by a generator in the event regular utility services are interrupted.

(75) Private Switch Emergency Service (PS9-1-1)--A service offering which enables either ANI or ALI to be provided to a PSAP when a 9-1-1 call originates from Direct Inward Dialing (DID) stations served by a private switch, e.g., a PBX. PS9-1-1 is offered to governmental entities such as RPCs, Districts, counties, and cities that provide emergency response services.

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

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

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

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

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

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

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

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

(80) Recorders--Devices that capture and retain sound, including but not limited to the following:

(A) Voice Loggers--A device that records sound on a permanent source for later review.

(B) Instant Recall Recorders--A device that records and temporarily stores calls for immediate review.

(81) Security Devices--Devices whose use is specific to the protection of 9-1-1 systems from intentional damage.

(82) Selective Router--A switching office placed in front of a set of PSAPs that allows the networking of 9-1-1 calls based on the ESRD assigned to the call.

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

(84) Service Control Point (SCP)--A centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.

(85) Service Provider--A company providing a telephone service or a commercial mobile radio service (CMRS) to a service user.

(86) Stand-Alone TDD--a separate TDD unit that is not connected to the CPE.

(87) Standard Wireless E9-1-1 Service Agreement--The standard Phase I and/or Phase II Wireless E9-1-1 Service Agreement, as applicable, provided by the Commission and available on the Commission's web site.

(88) Strategic Plan--As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support plan levels of 9-1-1 service within a defined area of the state. The strategic plan normally covers at least a three year planning period, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.

(89) Surge Protection Devices--Devices designed to protect sensitive electronic equipment by preventing excessive electrical power from reaching and damaging such equipment.

(90) Tangible Assets--Only those items that are tangible may be considered for capital costs. Tangible assets include, but are not limited to, any capital equipment such as the ANI/ALI Controllers, answering position units, integrated workstations, addressing computers, GIS workstations, plotters, or any other technical piece of equipment.

(91) TDD--the acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).

(92) TDD Detectors--monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then utilizes a TDD to communicate.

(93) Unaddressed County--A county in Texas, which has not completely assigned new addresses and provided all new or changed addresses to telephone companies under a county addressing process.

(94) Uniform Grant Management Standards (UGMS)--As developed by the Governor's Office of Budget, Planning and Policy under the authority of Chapter 783 of the Texas Government Code.

(95) Uninitialized Call--Any wireless E9-1-1 call from a wireless handset which, for any reason, has either not had service initiated or authenticated with a legitimate WSP.

(96) Uninterrupted Power Source (UPS)--Equipment that is designed to provide a constant power source for electronic systems. Capable of operating independently, for a designated period of time, should public or emergency electrical power sources fail.

(97) Useful Life--The period of time that a piece of capital equipment can consistently and acceptably fulfill its' service or functional assignment.

(98) Vendor--A third party used by either the 9-1-1 Governmental Entity or WSP to provide services.

(99) Wireless 9-1-1 Call--A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(100) Wireless E9-1-1 Phase I Service--The service by which the wireless service provider (WSP) delivers to the designated PSAP the wireless end user's call back number and cell site/sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 administrative entity.

(101) Wireless E9-1-1 Phase II Service--The service by which the WSP delivers to the designated PSAP the wireless end user's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.

(102) Wireless Service Provider (WSP)--The wireless service provider and all its affiliates, collectively referred to as "WSP."

(103) WSP Subscribers--Wireless telephone customers who subscribe to the Service of WSP and have a billing address within a 9-1-1 Governmental Entity Jurisdiction.

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

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Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 305-6933

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Health and Human Services Commission (HHSC) proposes to amend §355.8061, concerning the payment for hospital services, in its Medicaid Reimbursement Rates chapter. The proposed amendment provides for supplemental payments to state government owned or operated hospitals for outpatient services. The purpose of the supplemental payment is to recognize the

unique role that state public hospitals play in the Texas healthcare delivery system for the Medicaid population. As a result, the proposed amendment will implement changes to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there will be fiscal implications to state and local government as a result of enforcing or administering the proposed amendment. The fiscal implications to state health and human services agencies will be negligible as a result of enforcing or administering this amendment. State governments will incur additional cost to administer this amendment, however, additional revenues will offset any such costs which are estimated to be minimal. Increased federal matching funds to state government owned or operated hospitals are estimated to be $1,405,858 in State Fiscal Year 2004; $1,717,365 in State Fiscal Year 2005; $1,717,365 in State Fiscal Year 2006; $1,717,365 in State Fiscal Year 2007; and $1,717,365 in State Fiscal Year 2008.

David Palmer, Director, Rate Analysis, has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be to better compensate these facilities for the value of services provided to Medicaid and uninsured or underinsured patients and ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles. There is no anticipated impact on small businesses and micro-businesses to comply with the amendment as proposed as they will not be required to alter their business practices as a result of the amended section. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no anticipated impact on local employment.

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

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

Written comments on the proposal may be submitted to Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed amendment will be held May 24, 2004 at 10:00 a.m. in the public hearing room at the Texas Health and Human Services Commission, 11209 Metric Boulevard, Building H, Austin, Texas 78758. To comply with federal regulations, a copy of the proposed amendment is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

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

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

§355.8061. Payment for Hospital Services.

(a) The Health and Human Services Commission (commission) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1) - (4) of this subsection.

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

(5) Notwithstanding other provisions of this attachment, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for outpatient services provided to Medicaid patients.

(A) Supplemental payments are available under this subsection for outpatient hospital services provided by state government-owned or operated hospitals on or after December 13, 2003. To qualify for a supplemental payment, the hospital must be owned or operated by the state of Texas.

(B) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and the outpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this attachment. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.321, using the most recent cost report data available.

(C) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(i) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned of operated hospitals; and

(ii) multiplying the percentage calculated in clause (i) of this subparagraph by the aggregate supplemental payment calculated in subparagraph (B) of this paragraph.

(D) Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

(E) Supplemental payments made under this subsection when combined with other outpatient payments made under this attachment shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.325.

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

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402745
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 424-6576

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1 TAC §355.8063

The Health and Human Services Commission (HHSC) proposes to amend §355.8063, concerning the reimbursement methodology for inpatient hospital services, in its Medicaid Reimbursement Rates chapter. The proposed amendment adds language to provide for supplemental inpatient payments to state government owned or operated hospitals and the publicly owned hospital or hospital affiliated with a hospital district in Midland County. The purpose of supplemental payment is to recognize the unique role that these hospitals play in the Texas healthcare delivery system for the Medicaid population. As a result, the proposed amendment will implement changes to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

Tom Suehs, Chief Financial Officer, has determined that for the first five years the proposed amendment is in effect, there will be fiscal implications to state and local governments as a result of enforcing or administering the proposed amendment. The fiscal implications to state health and human services agencies will be negligible as a result of enforcing or administering this amendment. State governments will incur additional cost to administer this section, however, additional revenues will offset any such costs which are estimated to be minimal. Increased federal matching funds to state government owned or operated hospitals are estimated to be $10,807,814 in State Fiscal Year 2004; $20,173,570 in State Fiscal Year 2005; $20,180,000 in State Fiscal Year 2006; $20,180,000 in State Fiscal Year 2007; and $20,180,000 State Fiscal Year 2008. Increased federal matching funds to local government affiliated hospitals are estimated to be $203,083 in State Fiscal Year 2004; $20,173,570 in State Fiscal Year 2005; $20,180,000 in State Fiscal Year 2006; $20,180,000 in State Fiscal Year 2007; and $20,180,000 State Fiscal Year 2008.

David Palmer, Director Rate Analysis, has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be increased compensation to these facilities for the value of services provided to Medicaid and uninsured or underinsured patients and ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles. There is no anticipated impact on small businesses and micro-businesses to comply with the amendment as proposed as they will not be required to alter their business practices as a result of the amended section. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no anticipated impact on local employment.

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

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

Written comments on the proposal may be submitted to Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed amendment will be held May 24, 2004 at 10:00 a.m. in the public hearing room at the Texas Health and Human Services Commission, 11209 Metric Boulevard, Building H, Austin, Texas 78758. To comply with federal regulations, a copy of the proposed amendment is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

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

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

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) - (s) (No change.)

(t) Non-State Owned Urban Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this chapter, supplemental payments will be made each state fiscal year in accordance with this subsection to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Midland, Tarrant, and Travis [~~counties on or after July 6, 2001~~]. Supplemental payments will be made for inpatient services on or after July 6, 2001 for Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis counties. Supplemental payments will be made for inpatient services on or after February 7, 2004 for Midland county.

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

(u) (No change.)

(v) State Owned Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this attachment, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for inpatient services provided to Medicaid patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by state government-owned or operated hospitals on or after December 13, 2003. To qualify

for a supplemental payment, the hospital must be owned or operated by the state of Texas.

(2) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and the inpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this attachment. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.272, using the most recent cost report data available.

(3) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(A) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned of operated hospitals;

(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (2) of this subsection.

(4) Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

(5) Supplemental payments made under this subsection when combined with other inpatient payments made under this section shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.271.

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 April 26, 2004.

TRD-200402746
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 424-6576

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.5

The Texas Residential Construction Commission (the "commission") proposes a new rule at Title 10, Part 7, Chapter 300, §300.5, regarding the establishment of statutorily mandated task forces pursuant to provisions of the Property Code Chapters 430 and 436 and in accordance with Government Code Chapter 2110, regarding advisory committees.

Section 300.5, relating to Task Forces, provides for the commission's appointment of members to three separate task forces for purposes of obtaining advice in areas of mold reduction and remediation, rain harvesting and water recycling, and residential arbitrators and arbitration. The rule further provides for the composition, responsibilities, meeting requirements and reporting requirements for each task force.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period that the new rule is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the new rule. There will be a minimal fiscal implication to the state due to the reimbursement of travel expenses for task force members.

Mr. Thomas has also determined that for each year of the first five-year period the new rule is in effect the public will benefit from the knowledge that the commission gains through the work of each task force in their respective areas of expertise. Such advice from the task forces will lead to actionable recommendations for the commission's consideration with the aim toward the reduction of mold exposure, water conservation, and cost-effective dispute resolution.

Mr. Thomas has also determined that there will be no impact on large, small and micro-businesses as a result of the adoption of this rule.

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

Interested persons may submit written comments (16 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule.

The new rule is proposed to establish statutorily mandated task forces to advise the commission in areas of mold reduction and remediation, rain harvesting and water recycling, and residential arbitrators and arbitration. The rule further provides for the composition, responsibilities, meeting requirements and reporting requirements for each task force. The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Property Code §430.003, which provides for the establishment of a task force concerning mold reduction and remediation; Property Code §430.004, which provides for the establishment of a task force to develop design recommendations for rain harvesting and water recycling; Property Code §436.004, which provides for the establishment of a task force concerning residential arbitrators and arbitration; and Gov't Code Chapter 2110, which relates to agency advisory committees.

The statutory provisions affected by the proposal are set forth in the Title 16, Property Code §§408.001, 430.003, 430.004, and 436.004 and Gov't Code Chapter 2110.

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

§300.5. Task Forces.

(a) The commission shall appoint three separate task forces to be referred to as the Mold Reduction and Remediation Task Force, the Rain Harvesting and Water Recycling Task Force, and the Residential Arbitrators and Arbitration Task Force.

(b) Composition. The commission shall appoint a reasonable number of task force members to each task force, not to exceed twenty-four members on each task force. The commission may appoint one or more commissioners to participate as a member of any task force. The membership of each task force must reflect a balanced representation between the affected industry and consumers and include any express

statutory membership representations as further described in this section. Each task force shall select a presiding officer from among its members. Notwithstanding the above provisions of this subsection, the Mold Reduction and Remediation Task Force must include representation by public health officers of this state, health and medical experts, mold abatement experts and representatives of affected consumers and industries.

(c) Duration. The Rain Harvesting and Water Recycling Task shall be abolished on the fourth anniversary of the date of creation, unless the commission affirmatively votes to continue the task force in existence. The Mold Reduction and Remediation Task Force shall be abolished on December 31, 2005. The Residential Arbitrators and Arbitration Task Force shall be abolished on September 1, 2007, as prescribed by the Act.

(d) Conditions of membership. The term of office for each member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term. Task force members shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(e) Responsibilities. Each task force shall undertake the following responsibilities as statutorily required:

(1) the Mold Reduction and Remediation Task Force shall advise the commission regarding the adoption of standards that are designed to reduce the general population's exposure to mold and shall consider the feasibility of adopting permissible limits for exposure to mold in indoor environments;

(2) the Rain Harvesting and Water Recycling Task Force shall advise the commission and assist in the development of design recommendations for residential construction that encourages rain harvesting and water recycling; and

(3) the Residential Arbitrators and Arbitration Task Force shall study and advise the commission regarding residential arbitrators and arbitration.

(f) Meetings. Task force meetings may be conducted by telephone conference. Each task force shall be subject to meeting at the call of the presiding member. A quorum shall consist of a majority of the task force membership.

(g) Reports. After each task force meeting, the presiding member shall prepare a report to the commission regarding its activities and recommendations.

(1) The presiding member shall file with the commission, a report containing:

(A) the minutes of the meeting;

(B) a memo summarizing the meeting; and

(C) a list of its recommendations, if any.

(2) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.

(h) Evaluation of costs and effectiveness. The commission shall evaluate each task force annually. Evaluation shall be conducted by an evaluation team appointed by the Executive Director. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(1) each task force's work;

(2) each task force's usefulness; and

(3) the costs related to each task force's existence, including the cost of agency staff time spent in support of each task force's activities.

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 April 26, 2004.

TRD-200402744
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0595

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CHAPTER 302. FEES

10 TAC §302.2

The Texas Residential Construction Commission (the "commission") proposes a new rule at Title 10, Part 7, Chapter 302, §302.2, regarding fees for providing copies of public information pursuant to provisions of the Texas Government Code Chapter 552.

Section 302.2, relating to Fees for Public Information, provides that the commission will determine the fees for providing copies of public information in accordance with the rules adopted by the Texas Building and Procurement Commission.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period that the new rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new rule.

Mr. Thomas has also determined that for each year of the first five-year period the new rule is in effect, the public will benefit from the agency's consistent application of the rules related to fees for copies of public information adopted by the Texas Building and Procurement Commission.

Mr. Thomas has also determined that there will be no impact on large, small and micro-businesses as a result of the adoption of this rule.

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

Interested persons may submit written comments (16 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule.

The new rule is proposed to notify the public that the agency will charge fees for copies of public information consistent with the rules adopted by the Texas Building and Procurement Commission on the subject. The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Government Code §552.262, which requires that governmental bodies use the rules adopted by the Texas Building and Procurement Commission to determine charges for making copies of public information.

The statutory provisions affected by the proposal are set forth in the Title 16, Property Code, §408.001 and Government Code §552.262.

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

§302.2. Fees for Public Information.

The commission's fees for providing public information will be determined in accordance with the rules promulgated by the Texas Building and Procurement Commission under Title 1, Texas Administrative Code, §§111.61 - 111.70 (Cost of Public Information).

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 April 26, 2004.

TRD-200402742
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0595

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CHAPTER 303. REGISTRATION
SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §§303.200 - 303.210

The Texas Residential Construction Commission (the "commission") proposes for comment new rules at Title 10, Part 7, Chapter 303, Subchapter C, §§303.200, 303.201, 303.202, 303.203, 303.204, 303.205, 303.206, 303.207, 303.208, 303.209 and 303.210, regarding the registration and qualification of third-party inspectors who take part in the state-sponsored inspection and dispute resolution process described in Title 16, Property Code.

The rules are proposed to comply with new legislation, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new rules are proposed under new Chapter 427, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides, in part, that third-party inspectors who take part in the state-sponsored inspection and dispute resolution process must be registered with the state and must meet certain statutory qualifications to serve in that capacity.

Section 303.200 states the commission will register two types of inspectors to serve as neutral third parties in the state-sponsored inspection and dispute resolution process.

Section 303.201 provides that the commission will conduct background checks on individuals who apply under this subchapter to serve as third-party inspectors.

Section 303.202 provides that individuals seeking to register as third-party inspectors must submit a completed application on a commission-prescribed form accompanied by the appropriate fee and must meet the qualifications required under the Act for the type of inspections they wish to perform and provide evidence of their qualifications.

Section 303.203 states that the commission shall utilize information gleaned from the application and the applicant's background check to determine if an applicant is fit to carry out the duties of serving as an inspector under the Act. It further lists certain factors that the commission will review in determining the fitness of applicants who have a criminal history to serve as third-party inspectors.

Section 303.204 provides that after an applicant has been approved to serve as a third-party inspector, the commission will promptly notify the applicant and provide a certificate of registration, which shall be effective for one year from the date on the certificate.

Section 303.205 addresses the procedure and requirements for denying an application for registration.

Section 303.206 provides the process and requirements for appealing the denial of an application under §303.205.

Section 303.207 addresses the statutorily-required commission-developed training program for third-party inspectors and the requirement that registered third-party inspectors complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

Section 303.208 provides that registered third-party inspectors notify the commission in writing of material changes in the information provided as a part of the application within thirty (30) days of the change. It further provides that a material change includes, but is not limited to, a change of address or a change in criminal history as a result of a previously unadjudicated or undisclosed criminal charge other than traffic tickets or Class C misdemeanors that are not of crimes involving moral turpitude.

Section 303.209 addresses the renewal of third-party inspector registration.

Section 303.210 provides that the commission may revoke a registration approved under this subchapter if the commission determines that the registrant is no longer qualified or fit to serve or if the registrant fails to timely disclose to the commission a relationship that could reasonably be considered to create a conflict of interest or impair the inspector's neutrality in serving as a third-party inspector under the Act.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rule is in effect the public will benefit from the registration of inspectors who will participate in the state-sponsored inspection and dispute resolution process as a neutral third-party to assist homeowners and builders in resolving disputes related to alleged construction defects.

Mr. Thomas has also determined that there will be no effect on large, small and micro-businesses as a result of the adoption of the proposed rule.

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

Interested persons may submit written comments (16 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is twenty-one (21) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments received after that date will not be considered.

The commission is particularly interested in receiving comments on the proposed text of §303.202(c)(3) and (d)(3) in so far as the statute expresses an intent to preclude from registration those inspectors who earn their living by providing expert witness services to such a degree that more than ten (10) percent of their gross income is derived from providing such services. The commission is seeking input on the language that would best solicit the appropriate information from all applicants regardless of the method by which they are compensated, including those inspectors who are salaried employees, those who are in partnerships and those who are sole proprietors.

The new rule is proposed to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code. Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16. Property Code Chapter 427 provides for the registration and qualification of persons who will participate in the state-sponsored inspection and dispute resolution process as third-party inspectors.

The statutory provisions affected by the proposed rule are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature, R.S.

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

§303.200. Inspector Registration.

(a) The commission shall accept applications for two types of third-party inspectors to participate in the state-sponsored inspection and dispute resolution process.

(b) The commission shall accept applications for:

(1) individuals who qualify under this subchapter to serve as inspectors on issues involving workmanship and materials; and

(2) individuals who qualify under this subchapter to serve as inspectors on issues involving a structural matter.

§303.201. Criminal Background Check.

In addition to reviewing other qualifications for individuals seeking to register as a third-party inspector under this subchapter, the commission shall conduct a criminal background check on each applicant.

§303.202. Application.

(a) An individual seeking to register with the commission as a third-party inspector to participate in the state-sponsored inspection and dispute resolution process must submit a completed application on a commission-prescribed form accompanied by the appropriate fee.

(b) An individual may submit an application to register with the commission to serve as both a workmanship and materials inspector and a structural inspector. The individual seeking to serve as both a workmanship and materials inspector and a structural inspector must qualify to serve as both.

(c) An individual who seeks to register as a third-party inspector for issues related to workmanship and materials shall:

(1) provide evidence that the individual has acquired a minimum of five (5) years of experience working in the field of residential construction;

(2) provide evidence that the individual holds a current ICC certification as a residential combination inspector;

(3) attest that the individual has not received more than ten (10) percent of the individual's gross income, as reported on the last federal income tax return filed by that individual, from providing expert witness services, including any retainer fee accepted for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action. Fees for expert witness services, including providing testimony or evidence in a legal action, received by the individual as a result of having served in the capacity of a registered third-party inspector may be excluded when calculating the percentage of gross income received from providing expert witness services under this subsection; and

(4) provide other information requested by the commission that the commission has determined is necessary to assess the applicant's qualifications and fitness to serve as a third-party inspector under the Act.

(d) An individual who seeks to register as a third-party inspector for issues involving a structural matter shall:

(1) provide evidence that the individual is a state-licensed professional engineer or a state-licensed architect;

(2) provide evidence that the individual has acquired a minimum of ten (10) years of experience working in the field of residential construction;

(3) attest that the individual has not received more than ten (10) percent of the individual's gross income, as reported on the last federal income tax return filed by that individual, from providing expert witness services, including retainer fees accepted for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action. Fees for expert witness services, including providing testimony or evidence in a legal action, received by the individual as a result of having served in the capacity of a registered third-party inspector may be excluded when calculating the percentage of gross income received for providing expert witness services under this subsection; and

(4) provide other information requested by the commission that the commission has determined is necessary to assess the applicant's qualifications and fitness to serve as a third-party inspector under the Act.

§303.203. Determination of Qualifications and Fitness.

(a) The commission shall review each application to determine if the applicant is qualified to serve as the type of inspector for which the individual has submitted an application and shall utilize all the information received as a result of the application, including the results of a criminal background check, to determine whether the applicant is fit to carry out the duties of a third-party inspector under the Act.

(b) In reviewing an application to determine if an applicant is fit to carry out the duties of serving as an inspector under this subchapter, the commission shall consider, among other things, whether the applicant has a criminal history and if so:

(1) the nature and seriousness of any crimes for which the applicant has a prior conviction or convictions, including whether a prior conviction is for a crime involving moral turpitude;

(2) the extent to which service as a registered inspector might offer the applicant an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the applicant's past criminal activity;

(4) the age of the applicant when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the applicant's last criminal conviction;

(6) the applicant's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the applicant's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's fitness to serve as a third-party inspector, as requested by the commission.

(c) An applicant must respond to a commission request for information on whether the applicant is qualified and fit to serve as a third-party inspector in order to complete the application process.

§303.204. Notice of Approved Registration.

(a) The commission shall notify individuals of its approval of their applications after the commission has made its determination under this subchapter no later than fifteen (15) days of receipt of a completed application accompanied by the appropriate fee.

(b) The commission shall provide registered inspectors with evidence of registration, which shall remain effective for at least one year from the effective date shown on the certificate of registration as determined by the commission, unless otherwise revoked or suspended.

§303.205. Denial of Registration.

(a) The commission shall deny an application for registration or for renewal of a registration if the commission is not satisfied that the applicant is qualified or fit to carry out the duties of serving as a third-party inspector under the Act.

(b) If the commission denies an application for a registration or a renewal, the commission shall provide written notice detailing its reason(s) for denial to the applicant not later than the 15th day after the date the commission receives the completed application and fee.

§303.206. Appeal of Denial.

(a) A person who receives a notice of denial under §303.205 may appeal the decision to the Executive Director by submitting a written request for appeal not later than thirty (30) days after receipt of the notice of denial.

(b) The decision of the Executive Director is a final agency decision not subject to further administrative appeal.

§303.207. Training.

(a) The commission shall develop an initial training program for third-party inspectors who conduct inspections under the Act.

(b) Individuals registered as third-party inspectors must complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

§303.208. Material Change in Information.

(a) Each individual who is registered as a third-party inspector under this subchapter shall report to the commission in writing any material change in the information provided to the commission pursuant to this subchapter within thirty (30) days of the change.

(b) A material change includes but is not limited to a change of address or contact information or a criminal charge made or adjudicated against the registered inspector since the date of the last application made to the commission other than a traffic ticket or a Class C misdemeanor charge that is not for a crime involving moral turpitude.

§303.209. Renewal.

(a) A registered third-party inspector may apply annually to renew the inspector's registration.

(b) A registered third-party inspector who seeks to renew a previously granted registration shall file an application for renewal on a commission-prescribed application accompanied by the appropriate fee as adopted by the commission.

(c) Applications for renewal shall be reviewed to determine whether the applicant continues to be qualified and fit to serve as a third-party inspector under the Act.

§303.210. Revocation of Registration.

(a) After notice and opportunity to be heard, the commission shall revoke the registration certificate of any person registered under this subchapter who is determined to be unfit or unqualified to continue serving as a third-party inspector under this subchapter.

(b) The commission may revoke a registration certificate approved under this subchapter if the commission determines that a third-party inspector knowingly failed to timely disclose to the commission a financial or personal relationship with a party to a dispute to which the inspector has been appointed under the state-sponsored inspection and dispute resolution process if that relationship could reasonably be considered by the another party to the dispute to create an incurable conflict of interest for the inspector or otherwise substantially impair the inspector's ability to serve as a neutral third-party in the dispute.

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 April 26, 2004.

TRD-200402740
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0595

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CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.1 - 313.26

The Texas Residential Construction Commission (the "commission") proposes for comment new rules at Title 10, Part 7, Chapter 313, Subchapter C, §§313.1-313.26 regarding

the state-sponsored inspection and dispute resolution process (SIRP) as provided for in Title 16, Property Code and in Property Code Chapter 27, as amended by House Bill 730 (Act effective Sept. 1, 2003, 78th Leg. R.S., ch. 458, §101).

The rules are proposed to comply with new legislation including House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01) and new Chapter 426, Property Code, which provide in part for an informal inspection and dispute resolution process to assist homeowners and builders in resolving post-construction disputes for alleged construction defects discovered after September 1, 2003.

Section 313.1 states the applicability of the state-sponsored inspection and dispute resolution process (SIRP) to post-construction disputes regarding alleged construction defects.

Section 313.2 describes the notice and opportunity to inspect required as a prerequisite to making a request to initiate the SIRP.

Section 313.3 describes the relevant time periods for a timely request for the SIRP.

Section 313.4 describes the process for making a request to participate in the SIRP.

Section 313.5 describes the information that must be included in a request to initiate the SIRP.

Section 313.6 provides information on the required notice of the initiation of the SIRP to other interested parties.

Section 313.7 provides information on a builder's obligations and potential liability as a result of receipt of notice of a request alleging a threat to health or safety.

Section 313.8 provides information regarding the required fees for inspection.

Section 313.9 describes the commission's initial review of the request.

Section 313.10 describes the builder's continuing right to inspect the affected home.

Section 313.11 describes the appointment process for the third-party inspector.

Section 313.12 describes the process by which a party to a dispute can object to the appointment of a third-party inspector.

Section 313.13 describes the process for conducting a home inspection.

Section 313.14 describes the third-party inspector's report.

Section 313.15 describes the requirements and procedures for requesting an extension of time.

Section 313.16 describes the form of the third-party inspector's report.

Section 313.17 provides for the delivery of the third-party inspector's report to the commission and to the parties to the dispute.

Section 313.18 provides for the reimbursement of inspection fees and costs under certain circumstances.

Section 313.19 provides for the time to appeal the third-party inspector's report.

Section 313.20 describes the appeals process.

Section 313.21 provides for an offer of repair.

Section 313.22 provides a procedure for responding to the offer of repair.

Section 313.23 provides for a supplemental offer of repair if the original offer is rejected.

Section 313.24 provides that an offer not accepted is deemed rejected after a period of twenty-five (25) days.

Section 313.25 describes the procedures for repair and inspection that follow acceptance of an offer of repair.

Section 313.26 provides for the establishment and payment of fees to third-party inspectors who are subpoenaed to provide expert witness services.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed rules. The fees collected by the commission under these rules will provide for the cost of providing the inspection and administrative costs to the commission in implementing and administering the SIRP.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rules are in effect the public will benefit from the implementation of the state-sponsored inspection and dispute resolution process in that it will assist homeowners and builders in resolving disputes related to alleged construction defects in a manner that is less costly and more efficient than other legal dispute resolution procedures.

Mr. Thomas has also determined that there will be no effect on large, small and micro-businesses as a result of the adoption of the proposed rules.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (16 copies) on the proposed rules to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is twenty-one (21) days from the date of publication of the proposed rules in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rules.

The new rules are proposed to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code, Chapter 426 and Property Code Chapter 27 as amended. Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Property Code Chapter 426 provides for the implementation of the SIRP and Property Code Chapter 27 includes statutory requirements that affect users of the SIRP.

The statutory provisions affected by the proposed rules are those set forth in the Title 16, Property Code Chapter 426, Property Code Chapter 27 and House Bill 730, 78th Legislature, R.S.

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

§313.1. Purpose.

(a) The state-sponsored inspection and dispute resolution process (SIRP) described in this chapter applies to a dispute that:

(1) is between a homeowner and a builder;

(2) arises from a transaction governed by the Act;

(3) is a result of alleged construction defect(s) that were discovered on or after September 1, 2003; and

(4) is the basis for a claim other than a claim solely for personal injury, survival, wrongful death or damage to goods.

(b) The commission will provide any person who contacts the commission to initiate the SIRP with information on the requirements and procedures for the SIRP covered by this chapter.

§313.2. Prerequisite to State-sponsored Inspection and Dispute Resolution Process (SIRP).

(a) Prior to filing a request to initiate the SIRP, a homeowner must give a builder a minimum of thirty (30) days written notice of any alleged construction defect(s).

(b) After notice has been provided in accordance with subsection (a) of this section, the homeowner must provide the builder or its designated consultants a reasonable opportunity to inspect the affected home, if the builder requests such an opportunity.

(c) If a homeowner contacts the commission to initiate the SIRP prior to having provided the builder with the written notice and the inspection opportunity required in this section, the homeowner will be provided with information regarding the requirements and the procedures for filing a request to initiate the SIRP and instructions on how to initiate the SIRP if the dispute is not resolved as a result of the thirty (30) day notice and opportunity to inspect provided for in this section.

§313.3. Notice of Defect Alleging Threat to Health or Safety.

A builder who receives written notice of an alleged construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. A builder who fails to respond in a reasonable time to a notice described in this section may be found liable in a civil proceeding for the homeowner's reasonable costs to cure the defect plus reasonable attorney's fees and expenses associated with curing the defect in addition to other damages that may be available to the homeowner.

§313.4. Timely Filing a Request to Initiate the SIRP.

A person must file a request to initiate the SIRP:

(1) on or before the second anniversary of the date of the discovery of the alleged construction defects, but not later than the thirtieth day after the expiration date of any warranty period applicable to the alleged construction defects(s); and

(2) on or before the tenth anniversary of

(A) the date of the initial transfer of title from the builder to the initial owner of the affected home, or

(B) if the transaction the subject of the dispute did not involve a title transfer, the date the construction commenced or the date on which the agreement describing the transaction was signed, whichever was earlier.

§313.5. Filing a Request to Initiate the SIRP.

(a) Either the homeowner or the builder may initiate the SIRP by filing a request with the commission.

(b) At the time the request is filed, if the affected home is not registered with the commission pursuant to Part 7, Chapter 303, Subchapter B, of this Title, the requesting party must also register the home with the commission on a commission-prescribed form, accompanied by the appropriate fee.

(c) If a person contacts the commission to initiate the SIRP, the commission will provide the person with information on how to file a request, including information on the applicable fees for conducting a third-party inspection, and with information on whether the affected home is registered and how to register the home if it is not.

§313.6. Information Required for the Request.

(a) The request shall be submitted on a commission-prescribed form and must include:

(1) a description of the transaction giving rise to the dispute, including,

(A) the date on which the title transferred from the builder to the initial homeowner, if the transaction giving rise to the dispute was for new home construction on the builder's lot; or

(B) the date on which the agreement describing the transaction was signed or work commenced, whichever is earlier, if the transaction giving rise to the dispute did not involve a title transfer, including new home construction on the homeowner's lot, a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(2) evidence that the homeowner provided the builder with written notice of the alleged construction defect(s) pursuant to §313.2(a) of this chapter, or that the builder received such notice from the homeowner of the alleged construction defect(s) at least thirty (30) days prior to filing the request;

(3) a general description of the builder's response to notice of the alleged construction defect(s) provided pursuant to §313.2(a) of this chapter, and if any portion of the builder's response was provided in writing, a copy of that response;

(4) a reasonably detailed description of the alleged construction defect(s);

(5) an itemization of the amounts of any known out-of-pocket expenses and engineering or consulting fees incurred by the homeowner in connection with the alleged construction defect(s);

(6) a list of the names and addresses of all professionals or other persons, known to the requestor, who have inspected the alleged construction defect(s) on behalf of the requestor and who have prepared any written materials regarding their inspection, if any; and

(7) any documents or other tangible things that depict the nature and cause of the alleged construction defect(s) and that depict the nature and extent of repairs necessary to remedy the construction defect(s), including, expert reports, photographs, and videotapes, if these documents and tangible things are either within the requestor's physical possession or if the requestor has the right to obtain the document or tangible thing from a third party, such as an agent or a representative of the requestor, and if those documents or other tangible things exist at the time the request is made.

(8) Notwithstanding the provisions of subsections (a)(6) and (a)(7) of this section, a requestor does not need to include with the request:

(A) any documents or tangible things that were prepared or developed in anticipation of litigation, for trial or for an arbitration proceeding by the requestor's attorneys or by the attorneys' representatives or agents for the requestor;

(B) any documents or tangible things that reflect communications between a requestor and the requestor's attorneys or the attorneys' representatives or agents on behalf of the requestor and that were made in anticipation of litigation, for trial or for an arbitration proceeding; or

(C) the name of any person who, before the request is submitted to the commission, inspected the home on behalf of the requestor in connection with a construction defect alleged in the request, so long as the requestor will not call upon this person as an expert or use any of the materials prepared by this person during either the SIRP or any action between the builder and the homeowner that arises out of an alleged construction defect that is the subject of the request.

(b) With regard to information provided under subsection (a)(6) and (a)(7), the party making the request who fails to submit the name of any person who inspected the home in connection with the alleged construction defect(s) that are the subject of the SIRP request on behalf of the requestor prior to the request being made may be prohibited from later designating that person who performed the inspection as an expert or from using any materials prepared by such person performing the inspection in the SIRP or any action arising out of any alleged construction defect(s) that is the subject of the request.

§313.7. Notice of the Request.

(a) The party who initiates the SIRP by filing a request shall send notice of the request, by certified mail, return receipt requested, to all other interested parties to the dispute and shall include a copy of the request and all information submitted with the request.

(b) Notice mailed to other interested parties under this section must be mailed to counsel for any interested party represented by counsel, if the requestor knows that the party is represented by counsel.

§313.8. Inspection fees.

(a) The commission will establish fees that are commensurate with the scope of the requested inspection and the type of construction defect(s) alleged and shall publish the fees established on its website and otherwise make it available to the public, including providing the information in writing to those who contact the commission to initiate the SIRP.

(b) The request to initiate the SIRP shall be accompanied by the appropriate inspection fees established by the commission.

(c) A homeowner who is able to show financial need may submit a request to reduce or waive the inspection fees.

(1) To submit a request to reduce or waive the inspection fees, the homeowner must file with the request to initiate an SIRP a sworn affidavit of inability to pay costs on a commission-prescribed form.

(2) The Executive Director will review any fee reduction or waiver request and affidavit submitted under this section and shall approve it or deny it.

(3) The Executive Director's decision on such a request is a final agency decision and is not subject to further administrative appeal.

§313.9. Initial Request Review.

(a) Upon receipt of a request to initiate the SIRP, the commission shall review the request to determine if it contains information alleging or otherwise demonstrating:

(1) that the dispute arises from a transaction governed by the Act;

(2) that the request is complete and includes the required attachments and the payment of the appropriate fees;

(3) that the affected home is registered with the commission;

(4) that the alleged construction defect(s) were discovered on or after September 1, 2003;

(5) that the request is timely under §313.4 of this chapter; and

(6) that the request involves a dispute between a homeowner and a builder regarding alleged construction defect(s) giving rise to a claim that is not:

(A) solely for personal injury, survival, wrongful death; or

(B) solely for damage to goods not including damage to the home; or

(C) for an alleged violation of §27.01, Business & Commerce Code, regarding Fraud in Real Estate and Stock Transactions; or

(D) based solely on a builder's wrongful abandonment of an improvement project before completion; or

(E) for an alleged violation of Property Code, Chapter 162, regarding Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

(b) If the commission determines that the request received is not complete or that the claim is not eligible for the SIRP, the commission shall so advise the homeowner and builder in writing, specifying in detail the reason(s) why the request is not complete or is not eligible for the SIRP.

(c) A requestor who has submitted an incomplete request will be provided an opportunity to supplement the request to cure its deficiencies.

(d) If the commission determines that the claim is not eligible for the SIRP, the commission will return the materials submitted to the requestor and will refund any inspection fees paid.

§313.10. Builder's Continuing Right to Inspect.

(a) In addition to the right to inspect under §313.2(b) of this chapter, at any time after a request to initiate the SIRP has been filed with the commission and prior to the conclusion of the SIRP, and upon written request from the builder, a builder shall be given a reasonable opportunity to inspect the affected home, or to have the home inspected, to determine the nature and cause of the alleged construction defect(s) and the nature and extent of repairs necessary to remedy the alleged construction defect(s).

(b) The builder may take reasonable steps during an inspection to document the alleged construction defect(s) and the condition of the home.

(c) If the homeowner delays the inspection for more than five (5) days after receipt of the builder's request to inspect under this subsection, any period for subsequent action to be taken by the builder or a registered third-party inspector as prescribed by this chapter shall be extended one day for each day the inspection is delayed by the homeowner beyond the fifth day.

§313.11. Appointment of Third-Party Inspector.

(a) No later than fifteen (15) days after a review under §313.9 of this chapter and a determination that the request is complete and contains information that the dispute is eligible for the SIRP, the commission shall appoint a third-party inspector to conduct an inspection and shall notify the homeowner and builder of the appointment in writing.

(1) Written notification under this subsection will be provided by the most expedient and effective means available to both parties to provide timely notice, including facsimile or electronic transmission.

(2) The commission, in its sole discretion, shall determine the most expedient and effective means available to both parties for transmission of the written notice of the appointment.

(b) The commission shall appoint a third-party inspector from the list of registered third-party inspectors maintained by the commission. The inspector appointed shall be the next available inspector on the list who performs inspections in affected home's geographic region and who has been qualified by the commission to perform the type of inspection required for the construction defect(s) alleged.

§313.12. Objection to the Third-Party Inspector Appointed.

(a) Each party shall have one opportunity to object to the third-party inspector appointed, with or without cause. The objection shall be submitted to the commission in writing and can be transmitted to the commission by mail, facsimile or electronic transmission within two (2) business days of receipt of notice of the appointment.

(b) Failure to timely notify the commission that a party objects to the third-party inspector appointed will serve as waiver of that party's right to object unless the party is able to show that it has acquired material information regarding a conflict of interest between the inspector appointed and the other party to the dispute that forms the basis for the objection that could not reasonably have been discovered prior to the expiration of the objection period.

(c) Following receipt of a party's objection, the commission shall appoint the next available third-party inspector from the list of registered third-party inspectors, who performs inspections in the home's geographic region and who has been qualified by the commission to perform the type of inspection required for the construction defect(s) alleged, and the commission shall notify the interested parties of the new appointment in accordance with §313.11 of this chapter.

§313.13. Home Inspection.

(a) If the commission does not receive a timely written objection to the third-party inspector appointed pursuant to this chapter, the commission shall contact the third-party inspector with information regarding the dispute, including the names of the interested parties and their counsel, if any. Unless the third-party inspector advises the commission of a conflict of interest with either of the parties to the dispute, the commission shall forward to the appointed third-party inspector a copy of the SIRP request and all documentation submitted with the request.

(b) As soon as practicable but no later than two (2) business days after receipt of the SIRP request, the appointed third-party inspector shall contact the homeowner to arrange a mutually convenient time to inspect the affected home. The third-party inspector shall notify the builder and the homeowner of the date and time of the inspection. The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) The third-party inspector shall gather all information and other data that the third-party inspector, in his sole professional judgment, deems relevant to the inspection and shall gather it by any reasonable means including taking photographs and measurements and interviewing the homeowner, the builder, and any consultants present. An interview under this subsection may take place outside the presence of others not aligned with the party subject to the interview, if the third-party inspector in his sole discretion deems it preferable for the orderly conduct of the inspection.

(d) The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing his duties in an impartial and professional manner.

(e) The third-party inspector shall not engage or employ the services of any testing company or any consultant.

(f) The builder shall submit to the third-party inspector any documentation or tangible things created or generated as a result of having received a notice of alleged defects under §313.2 of this chapter in order that the third-party inspector may consider that information when making findings and recommendations.

§313.14. The Third-Party Inspector's Report.

(a) If the alleged construction defect(s) described in the request involve workmanship and materials but do not include a structural matter, the third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection but not later than the 12th day after the date the third-party inspector receives the SIRP request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(b) If the alleged construction defect(s) described in the request involve a structural matter, the third-party inspector shall inspect the home as soon as practicable after receipt of the request from the commission but not later than the 12th day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission. The third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection given the inspector's findings and recommendations but not later than the 45th day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(c) The third-party inspector's report shall set forth the inspector's findings based on applicable warranty and building and performance standards; and shall include the inspector's recommendation for repairs, if any. Third-party inspectors shall consider a range of repair or remediation options to address the alleged construction defect(s).

(d) A third-party inspector's report shall not include a recommendation for payment of monetary damages, a price for the repairs recommended, or a determination of the value of any loss allegedly suffered by the homeowner.

§313.15. Extension of Time.

(a) A third-party inspector who conducts a structural inspection may request from the Executive Director an extension of time for a period of no longer than five (5) days for any deadline imposed on the third-party inspector under §313.14 of this chapter.

(b) A party to a dispute involving a claim related to an alleged structural defect may request an extension of time from the Executive Director for any deadline imposed on the third-party inspector under §313.14 of this chapter.

(c) The Executive Director shall grant an extension of time requested under subsection (a) of this section upon a showing of that the cause for the delay was not reasonably foreseeable by the third-party inspector when the appointment was made.

(d) The Executive Director shall grant an extension under subsection (b) of this section as follows:

(1) for a period of no longer than five (5) days without regard to cause if the extension is agreed to in writing by the other party to the dispute; or

(2) upon a showing of good cause if the request is made for an extension of greater than five (5) days; or

(3) upon a showing of good cause by the requesting party if not agreed to in writing by the other party to the dispute.

(e) The Executive Director's decision on whether to grant or deny an extension of time requested under this section is a final agency decision not subject to further administrative appeal.

§313.16. Form of Third-party Inspector's Report.

The third-party inspector's report shall be submitted to the commission on a commission-prescribed form, which shall include sufficient space for the third-party inspector to adequately explain his findings and recommendations.

§313.17. Delivery of the Third-party Inspector's Report.

The third-party inspector shall submit his report to the commission and the commission shall promptly transmit the report to the homeowner and the builder.

§313.18. Reimbursement of Fees and Costs.

If the third-party inspector's findings support all or a portion of the allegations of the requesting party, the commission may order the other party to reimburse all or part of the fees or costs of inspection paid by the requestor.

§313.19. Time to Appeal of the Third-party Inspector's Report.

(a) A homeowner or builder may appeal the third-party inspector's report and recommendation on or before the 15th day after receipt of the report by the appealing party.

(b) A party to the dispute may request an extension of time to file a notice of appeal of the third-party inspector's report.

(1) Upon a showing of good cause for an extension of time to file a notice of appeal, the Executive Director may extend the deadline by no more than five (5) days.

(2) The Executive Director's determination of good cause to grant or deny an extension under this subsection is a final agency decision and is not subject to further administrative appeal.

§313.20. Appeal Process.

(a) If a homeowner or builder appeals the findings or recommendations in a third-party inspector's report, the Executive Director shall refer the appeal to a three-person panel made up of state inspectors. If the request involves a structural matter, one of the state inspectors on the panel shall be a licensed professional engineer.

(b) The appellate panel shall conduct a review of the third party inspector's report and the written documents and tangible things considered by the third-party inspector in making the findings and recommendations, including but not limited to materials submitted with the request, any information or data gathered by the third-party inspector and documentation or tangible things provided to the third-party inspector by one of the parties during the SIRP and prior to the issuance of the report.

(c) The appellate panel shall make written findings of fact and shall recommend approval, rejection or modifications to the findings and recommendations of the third-party inspector or shall recommend that the matter be remanded to the third-party inspector for further action as directed by the appellate panel.

(d) The appellate panel shall report its findings and recommendations to the Executive Director not later than the 25th day after the notice of appeal is filed with the commission.

(e) The Executive Director shall review the report and shall transmit the appellate panel's rulings to the parties to the appeal not later than the 30th day after the date the notice of appeal is filed with the commission.

(f) A ruling by an appellate panel under this section is a final agency decision not subject to further administrative appeal.

§313.21. Offer to Repair.

(a) Not later than the 15th day after the third-party inspector's report has been transmitted to the parties by the commission, or if the third-party inspector's report has been appealed, not later than the 15th date following the date that the appellate panel's ruling has been transmitted to the parties, a builder may make a written offer of settlement to the homeowner to repair the alleged construction defect(s).

(b) The offer must be sent by certified mail, return receipt requested, to the homeowner at the homeowner's last known address or the homeowner's attorney, if the homeowner is represented by counsel.

(c) The offer may include either an agreement by the builder to repair or to have repaired by an independent contractor, partially or totally at the builder's expense, or at a reduced rate to the homeowner, any construction defect(s) included in the SIRP request.

(d) The offer shall include in reasonable detail the repairs to be made and shall provide that the repairs will be made within forty-five (45) days after the date the builder receives written notice of the homeowner's acceptance of the offer, except as delayed by the homeowner or by the occurrence of events beyond the builder's control.

§313.22. Response to Offer to Repair.

If the homeowner considers the builder's offer to repair under §313.21 of this chapter to be unreasonable, the homeowner shall notify the builder in writing on or before the 25th day after the date the homeowner receives the offer why the homeowner considers the offer to be unreasonable. The homeowner shall describe in reasonable detail the homeowner's reasons for concluding that the offer is unreasonable.

§313.23. Supplemental Written Offer to Repair.

Not later than the tenth day after the date the builder receives a written response from the homeowner under §313.22 of this chapter, the builder may make a supplemental written offer of settlement. The builder shall send any such supplemental written offer by certified mail, return receipt requested, to the homeowner, or if the homeowner is represented by counsel, to the homeowner's attorney.

§313.24. Offer Rejected.

An offer of repair made under this chapter that is not accepted by the 25th day after the date of receipt, is deemed rejected.

§313.25. Procedures Following Acceptance of Offer of Repair.

(a) If a homeowner accepts a builder's offer to repair under this chapter, the builder, upon completion of the repairs, shall engage, at the builder's expense, the third-party inspector who provided the report and recommendation under §313.14 to inspect the repairs and to determine whether the home, as repaired, complies with the applicable statutory warranty and building and performance standards adopted by the commission.

(b) Following the third-party inspector's post-repair inspection, the builder shall have a reasonable period, not to exceed fifteen (15) days, to address any minor cosmetic deficiencies necessary to fully complete the repairs.

§313.26. Third-Party Inspectors as Witnesses.

(a) If a commission-appointed third-party inspector who has conducted an inspection pursuant to this chapter is subpoenaed by a party to the dispute that was the subject of the inspection to provide testimony by deposition, in court or in any alternative form of dispute resolution proceeding, or to provide other expert witness services, the party who issues the subpoena must pay to the third-party inspector a reasonable fee and related expenses for the services requested.

(b) The commission shall establish reasonable fees for witness services performed by a registered third-party inspector who is subpoenaed to provide services as described in subsection (a) of this section.

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 April 26, 2004.

TRD-200402743
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0595

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Commission proposes to amend §3.80, relating to Commission Forms, Applications, and Filing Requirements, to add to Table 1, entitled Railroad Commission Oil and Gas Division Forms, the Security Administrator Designation (SAD) Form, the Form CF-1 (Commercial Facility Bond Form), and the revised version of the United States Environmental Protection Agency Form 8700-12 (RCRA Subtitle C Site Identification Form), as well as to correct the title of Form CF-2 (Commercial Facility Irrevocable Letter of Credit).

Recently amended §3.80, which became effective on April 12, 2004, includes revised language relating to electronic filing in anticipation of changes and/or new electronic filing opportunities that are developing in association with the expansion of the Electronic Compliance and Approval Process (ECAP) and the Commission's Oil and Gas Migration (OGM) Project. The OGM Project is a major initiative to move the Commission's outdated computer mainframe technologies to an open systems environment. In addition to improving the Oil and Gas Division's internal business processes and providing the public with access to accurate up-to-date information, the OGM Project is providing the Commission with opportunities to reassess its data reporting requirements and enhance electronic filing capabilities. The initial step for ECAP, an electronic commerce system that eliminates paper by capturing, storing, and transmitting oil or gas well permitting information electronically, converted the filing, review, and approval of a drilling permit application (Form W-1) to a completely electronic process. Now that the initial step is completed and the infrastructure is in place to support the filing, processing, and storage of drilling permits, ECAP has been incorporated into the Commission's OGM Project, which eventually will include all compliance permits and performance reports.

To provide for electronic filing in association with ECAP, several years ago the Commission developed a required authorization procedure through the filing and approval of a hard copy Master Electronic Filing Agreement (MEFA) and a Security Administrator Designation (SAD) Form. Before an operator could file electronically, both the Commission and operator representatives were required to sign the MEFA, which established the terms of agreement for electronic filing. Signing the SAD Form was also a condition of participation in ECAP. Upon Commission approval of the MEFA, the security administrator is notified of his or her assigned User ID. The security administrator could then distribute security by assigning additional User IDs to employees within the company and designating the forms they are authorized to file electronically through ECAP.

In the amendments to §3.80 that became effective on April 12, 2004, the Commission replaced language concerning requirements for electronic filing under ECAP and language relating to requirements for electronic filing under the Electronic Data Interchange (EDI) program with broader language to accommodate changes in the requirements for electronic filing associated with the Commission's new automated systems.

The new language included in §3.80, amended effective April 12, 2004, makes the MEFA unnecessary for electronic filing of oil and gas forms. (The MEFA is still a requirement for other electronic filings at the Commission.) Furthermore, the Commission proposes to revise the current SAD Form to conform the language to new §3.80 and to include the revised form in Table 1 of §3.80(a), entitled Railroad Commission Oil and Gas Division Forms, which lists all Oil and Gas Division forms and the date that each was adopted or last revised. The Commission also proposes to revise the instructions for obtaining permission to file electronically with the Commission. The changes to the SAD Form reflect the Commission's decision to expand its use to any electronic filing with the Commission, not just ECAP filing, and to allow third-party filers.

An operator wishing to file electronically with the Commission's Oil and Gas Division must complete and submit to the Commission a SAD Form. An operator may designate multiple security administrators. After receiving an operator's SAD Form, the Commission will issue to each designated security administrator a User ID that will allow the security administrator to access and update the Commission's electronic filing security system. The security administrator will then be responsible for assigning additional User IDs to individuals within the company and for maintaining that security. The distributed security design ensures that the control will rest within the operator's organization through each operator's designated security administrator(s). No MEFA will be required.

There will be no immediate changes for any operator that already has met the ECAP filing requirements. The SAD Form the operator previously filed will remain in effect after the revised SAD Form is adopted; however, there are 12 petroleum consultants/independent contractors or other non-operators who previously filed a SAD Form with the Commission who would be required to complete and submit a revised SAD Form once it is adopted if they wish to continue electronic filing on behalf of operators. In addition, operators who are currently filing with the Oil and Gas Division electronically and who have never submitted a SAD Form would be required to do so; however, all electronic filers would be required to have their software re- certified for any future new technical requirements that result from movement of programs from the Commission's mainframe to its new open systems environment. The Commission will provide advance notice of any future changes in electronic filing requirements.

The Commission also proposes to add to Table 1 Form CF-1, Commercial Facility Bond, and to correct the title of Form CF-2 to "Commercial Facility Irrevocable Letter of Credit."

Finally, the Commission proposes to add to Table 1 the revised version of the Form EPA 8700-12 (RCRA Subtitle C Site Identification Form), which the Environmental Protection Agency revised effective January 2004, and which is required by §3.98 of this title, relating to Standards for Management of Hazardous Oil and Gas Waste.

Leslie Savage, Oil and Gas Division planner, has determined that for each year of the first five years the amendments as proposed would be in effect, there will be no fiscal implications for local governments and no net fiscal implications for the state. The portion of the proposed amendments concerning the SAD Form and the procedures for electronic filing authorization are related to changes that the Commission already has planned in association with the OGM Project. Further, the Commission has endeavored to draft proposed language in the SAD Form and the electronic filing procedures with sufficient breadth to accommodate any of the possible options related to electronic filing that might be considered for adoption through the OGM Project.

Ms. Savage also has determined that for each year of the first five years that the amendments would be in effect, the primary public benefit would be more efficient government.

Ms. Savage has estimated that the cost of compliance with the proposed amendments to §3.80 for individuals, small businesses, or micro-businesses will be negligible. Currently, the Commission does not require electronic filing of any Oil and Gas Division documents or data; electronic filing of Oil and Gas Division information at the Commission is discretionary.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses. This statement must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Because entities required to file an organization report and affiliates of such entities performing operations within the jurisdiction of the Commission are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular entity required to comply with §3.80 may be a small business or a micro-business. However, the Commission has determined that it is likely that some operators would meet the definitions of these terms in Texas Government Code, §2006.001. The Commission assumes further that, during a given year, at least one entity desiring to make an electronic filing with the Commission in accordance with §3.80 would be an individual, small business, or micro-business. However, the revised SAD Form and associated revised procedures, as well as the inclusion in the rule of Form CF-1 and new EPA Form 8700-12, impose no mandatory additional costs. In fact, deletion of the requirement to file the MEFA should result in a decrease in the cost of filing electronically with the Commission. In addition, after an entity has completed the necessary requirements to enable the entity to file documents and data with the Commission electronically, the entity should save money previously spent on postage and handling.

For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes that, during a given year, at least one entity desiring to file electronically with the Commission in accordance with §3.80 would be an individual, small business, or micro-business and that the that the cost of writing, typing, copying, and mailing the revised SAD Form to enable the business to make electronic filings with the Commission would be $50. Therefore, the cost of complying with §3.80, as amended, would be $50 per employee if the entity has one employee, $2.50 per employee if the entity has 20 employees, and $0.50 per employee if the entity has 99 employees. Comparable cost per employee of electronic filing for the largest businesses affected by the proposed amendment would be $0.10 for an employer of 500 persons and $0.05 for an employer of 1,000 persons.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically requests comments and information on the proposed form changes that are part of this rulemaking. The Commission will accept comments for 30 days after publication in the *Texas Register*, and encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.80 pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; and §91.142, which requires the Commission to obtain specified information from a person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of performing operations which are within the jurisdiction of the Commission.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Issued in Austin, Texas on April 23, 2004.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance

with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

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

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

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-1295

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CHAPTER 7. GAS SERVICES DIVISION
SUBCHAPTER B. SPECIAL PROCEDURAL RULES

16 TAC §7.45

The Railroad Commission of Texas proposes to amend §7.45, relating to Quality of Service, to add wording in paragraph (5)(C)(i) to authorize a designee of the Attorney General in the Crime Victims Services Division of the Office of the Attorney General (CVSD) to certify that a person is a victim of family violence. Currently, §7.45(5)(C)(i) requires a gas utility to waive any requirement that an applicant for gas utility service pay a deposit if the applicant has been determined to be a victim of family violence, as defined in the Texas Family Code, §71.004, by a family violence center, by treating medical personnel, or by law enforcement agency personnel. This determination must be evidenced by the applicant's submission of a certification letter developed by the Texas Council on Family Violence. The waiver for gas utility deposits helps victims of family violence to obtain gas utility service in new and safer surroundings with relative ease. The proposed amendment would add one more entity--the Attorney General's designee in the CVSD--as authorized to certify that a person is a victim of family violence, thus allowing a person being assisted by the CVSD to obtain the certification letter without having to return to a family violence center, treating medical personnel, or law enforcement agency personnel for the required signature.

The Commission amended §7.45(5)(C)(i), effective November 10, 2003, based on comments by the Texas Council on Family Violence in other rulemaking proceedings. As amended, the rule requires a gas utility to waive any deposit requirement for residential service for an applicant who has been determined to be a victim of family violence as defined in Texas Family Code, §71.004, by a family violence center, by treating medical personnel, or by law enforcement agency personnel. This determination must be evidenced by the applicant's submission of a certification letter developed by the Texas Council on Family Violence and made available on its web site. This provision is similar to the rules and process for a waiver for electric utility and telephone utility deposits that are currently adopted by the Public Utility Commission (PUC) and currently in effect in 16 Tex. Admin. Code §25.478(a)(3)(D), relating to Credit Requirements and Deposits, for electric service providers, and 16 Tex. Admin. Code §26.24(a)(1)(B)(iv), also titled Credit Requirements and Deposits, for telecommunications service providers. The Commission's rule is similar to the two PUC rules except that the Commission's rule authorizes certification by law enforcement agency personnel in addition to certification by a family violence center or by treating medical personnel. This new proposed amendment extends certification authority to the CVSD.

Jackie Standard, Director of Licensing and Permits, Gas Services Division, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment. Any tariff filings by gas utilities required as a result of the proposed amendment would be handled by current Commission staff as part of the Commission's routine work. In addition, the work of the CVSD could be somewhat more streamlined by being able to provide a victim of family violence with the certification letter needed to obtain the gas utility deposit waiver.

Ms. Standard has determined that for each year of the first five years the amendment will be in effect, the public benefit will include the assurance that the services provided by gas utilities and the obligations imposed upon them in providing that service are just and reasonable. In addition, the public benefit will include slightly more streamlined assistance for victims of family violence, enabling those persons to effect separation from violent circumstances with a little less difficulty. When an incident occurs, the victim contacts the police or seeks a protective order. The police usually refer or take the victim to a hospital, and are required to advise the victim of the Crime Victims Compensation Fund. If there is a law enforcement victim liaison available, or if the medical facility has Sexual Assault Nurse Examiner (SANE) or Sexual Assault Response Team (SART) personnel, the victim will be assisted in completing the application for compensation, including certification letters for utility deposit waivers. However, if the victim is so traumatized that he or she is not able to make a rational decision concerning whether to leave the home, the victim would need to return to the law enforcement agency or medical facility to get the certification letter signed. Also, unless an advocate has already furnished a victim of family violence with the certification letter, a CVSD caseworker sends the letter to the victim and offers the waiver as an option because CVSD cannot demand that a victim seek a waiver. The victim then must take the letter to the shelter, medical personnel, or law enforcement to obtain an authorized signature, which the victim may or may not be able to get quickly, and perhaps not at all. Once signed, however, the victim would be able to submit the letter to the gas utility. By amending the rule to authorize a designee in the CVSD to sign the certification letter, victims of family violence could avoid that possible delay in obtaining a signed letter.

Ms. Standard has estimated that there may be a cost of compliance with the proposal for the individual, small business, or micro-business natural gas service provider. Such providers will not be required to expend funds to comply with the rule, but may experience some reduction in fees received, because some persons may not be required to pay a deposit. Forgoing the relatively small deposit amounts (averaging about $50) should not adversely affect a gas utility. Further, because the Commission exercises exclusive original jurisdiction over the rates and services of gas utilities outside municipal areas, the number of utility customers to whom this rule would apply is a very small percentage of all gas utility customers in Texas; the number of those

customers who might qualify for a deposit waiver in this instance is likely to be a small number. The Commission cannot find that there would be an increase in the number of persons qualifying for a gas utility deposit waiver just because CVSD would be authorized to sign certification letters. CVSD currently assists victims of family violence in obtaining the certification letters; the proposed amendment potentially does away with some of the delay in the process.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses, which must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

The proposed amendment does not alter the current deposit waiver requirement, which makes no distinction based on a utility's status as an individual, small business, or micro-business. Adding CVSD as an entity authorized to certify that a person is a victim of family violence is not likely to increase the number of waivers that an individual, small business, or micro-business utility must grant. Gas utilities within the jurisdiction of the Commission are required to file an Annual Report with the Commission that reports certain operational and financial information; such data include certain costs and revenues.

The Commission has determined that there are approximately eight (8) small businesses and eighteen (18) micro-businesses out of a total of thirty-three (33) natural gas distribution utilities. The smallest small business has been identified as having annual revenues of approximately $236,000. The smallest micro-business has been identified as having annual revenues of approximately $115. The combined eight (8) small businesses and eighteen (18) micro-businesses, twenty-six (26) utilities, generate approximately $130 million dollars per year. For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes that at least one gas utility that is an individual, small business, or a micro-business will be required to grant a waiver of its deposit requirement. The Commission further assumes that the cost of complying with §7.45, as amended, would be the loss of one deposit that otherwise would be collected. For the smallest small business with annual revenue of $236,000, the standard deposit as stated in its tariff is approximately $75, making the cost of compliance $3.17 per $100 of sales. For the smallest micro-business with $115 of annual revenue, the standard residential low-density deposit as stated in its tariff is based on a formula but does not exceed $100. Forgoing collection of this deposit is a cost of compliance of $86.96 per $100 of sales.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and the comments should refer to Gas Utilities Docket No. 9449. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Standard at (512) 463-7118. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendment under Texas Utilities Code, §102.001, which gives the Railroad Commission exclusive original jurisdiction over the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality; Texas Utilities Code, §102.151, which requires gas utilities to file schedules showing all rates for a gas utility service, product, or commodity offered by the gas utility and each rule or regulation that relates to or affects a rate of the gas utility or a gas utility service, product, or commodity furnished by the gas utility; Texas Utilities Code, §104.001, which vests in the Railroad Commission all the authority and power of this state to ensure compliance with the obligations of gas utilities in Texas Utilities Code, Title 3, Subtitle A, and which authorizes the regulatory authority to adopt rules for determining the classification of customers and services; Texas Utilities Code, §104.005, which prohibits a gas utility from directly or indirectly charging, demanding, collecting, or receiving from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates filed under Texas Utilities Code, §102.151; and Texas Utilities Code, §104.251, which requires gas utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Statutory authority: Texas Utilities Code, §§102.001, 102.151, 104.001, 104.005, and 104.251.

Cross-reference to statute: Texas Utilities Code, Chapters 102 and 104.

Issued in Austin, Texas on April 23, 2004.

§7.45. Quality of Service.

For gas utility service to residential and small commercial customers, the following minimum service standards shall be applicable in unincorporated areas. In addition, each gas distribution utility is ordered to amend its service rules to include said minimum service standards within the utility service rules applicable to residential and small commercial customers within incorporated areas, but only to the extent that said minimum service standards do not conflict with standards lawfully established within a particular municipality for a gas distribution utility. Said gas distribution utility shall file service rules incorporating said minimum service standards with the Railroad Commission and with the municipalities in the manner prescribed by law.

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

(5) Applicant deposit.

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

(C) Amount of deposit and interest for residential service, and exemption from deposit.

(i) Each gas utility shall waive any deposit requirement for residential service for an applicant who has been determined to be a victim of family violence as defined in Texas Family Code, §71.004, by a family violence center, by treating medical personnel, [~~or~~] by law enforcement agency personnel, or by a designee of the Attorney General in the Crime Victim Services Division of the Office of the Attorney General. This determination shall be evidenced by the

applicant's submission of a certification letter developed by the Texas Council on Family Violence and made available on its web site.

(ii) - (iv) (No change.)

(D) - (H) (No change.)

(6) - (8) (No change.)

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

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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16 TAC §§7.70 - 7.74, 7.80 - 7.87

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

The Railroad Commission of Texas proposes the repeal of §§7.70-7.74, and 7.80-7.87, relating to General and Definitions; Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests; Written Procedure for Handling Natural Gas Leak Complaints; Master Metered Systems; School Piping Testing; Definitions; Safety Regulations Adopted; Jurisdiction; Retroactivity; Required Records and Reporting; Intrastate Pipeline Facility Construction; Corrosion Control Requirements; and Enforcement. Collectively, these are the pipeline safety rules in Texas Administrative Code, Title 16, Chapter 7. The Commission proposes the repeals in order to move the pipeline safety rules into Texas Administrative Code, Title 16, Chapter 8, as proposed in a separate, concurrent rulemaking, to join six other pipeline safety rules already in Chapter 8.

One current rule, §7.85, regarding Intrastate Pipeline Facility Construction, will not be retained in Chapter 8 because it duplicates the requirements contained in another rule. Section 7.85 requires pipelines to be constructed of steel; this requirement is already part of the Commission's rules under 49 Code of Federal Regulations Part 195, which the Commission has adopted by reference.

Mary McDaniel, Director, Safety Division, has determined that, for each year of the first five years that the repeals are in effect, there will be no fiscal implications for state or local governments because the virtually identical rule requirements will continue to exist in a different chapter.

Ms. McDaniel has also determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals (and the concurrent new rules in Chapter 8) will be a clearer understanding of the pipeline safety requirements because they will be separated from requirements in Chapter 7 that apply to the economic regulation of gas utilities.

There is no anticipated economic cost to individuals, small businesses, or micro-businesses required to comply with the proposed repeals.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 60 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9255. For more information, call Mary McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The repeals are proposed under Texas Utilities Code, Chapter 121, Subchapter E, which authorizes the Commission to adopt safety standards for the transportation of natural gas and for natural gas pipeline facilities; to require record maintenance and reports; and to inspect records and facilities to determine compliance with adopted safety standards; and Texas Natural Resources Code, Chapter 117, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquids pipeline facilities.

The Texas Utilities Code, Chapter 121, Subchapter E, and the Texas Natural Resources Code, Chapter 117, are affected by the proposed repeals.

Issued in Austin, Texas on April 23, 2004.

§7.70. General and Definitions.
§7.71. Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests.
§7.72. Written Procedure for Handling Natural Gas Leak Complaints.
§7.73. Master Metered Systems.
§7.74. School Piping Testing.
§7.80. Definitions.
§7.81. Safety Regulations Adopted.
§7.82. Jurisdiction.
§7.83. Retroactivity.
§7.84. Required Records and Reporting.
§7.85. Intrastate Pipeline Facility Construction.
§7.86. Corrosion Control Requirements.
§7.87. 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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas proposes new rules and amendments to current rules in Title 16, Chapter 8, Subchapters A through D, specifically, new §§8.1 and 8.5, relating to General Applicability and Standards, and Definitions, in Subchapter A,

General Requirements and Definitions; new §8.51, relating to Organization Report, amendments to §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, and new §§8.105, 8.110, 8.115, 8.125, and 8.130, relating to Records, Operations and Maintenance Procedures, Construction Commencement Report, Waiver Procedure, and Enforcement, in Subchapter B, Requirements for All Pipelines; amendments to §8.201, relating to Pipeline Safety Program Fees, new §§8.203,8.205, 8.210, 8.215, 8.220, 8.225, and 8.230, relating to Supplemental Regulations, Written Procedure for Handling Natural Gas Leak Complaints, Reports, Odorization of Gas, Master Metered Systems, Plastic Pipe Requirements, and School Piping Testing, amendments to §8.235, Natural Gas Pipelines Public Education and Liaison, and new §8.245, relating to Penalty Guidelines for Pipeline Safety Violations, in Subchapter C, Requirements for Natural Gas Pipelines Only; and new §§8.301 and 8.305, relating to Required Records and Reporting, and Corrosion Control Requirements, in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only.

The Commission proposes the new sections to move the pipeline safety rules from Title 16, Chapter 7 of the Texas Administrative Code into new Chapter 8; the repeal of the rules currently found in Chapter 7 is proposed in a separate, concurrent rulemaking. The proposed new rules will join §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, in Subchapter B, Requirements For All Pipelines; §8.201, relating to Pipeline Safety Program Fees, §8.235, relating to Natural Gas Pipelines Public Education and Liaison, and §8.240, relating to Discontinuance of Service, in Subchapter C, Requirements for Natural Gas Pipelines Only; and §8.310, relating to Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison, and §8.315, relating to Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility, in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only.

The Commission proposes two new rules in Chapter 8 that do not have a current counterpart in Chapter 7: §8.125, Waiver Procedure, which implements a process that has been used by the Commission and operators on an informal basis for at least 10 years, and §8.245, Penalty Guidelines for Pipeline Safety Violations, which is required by the provisions of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d), enacted by Senate Bill 310 (Acts 2001, 77th Leg., ch. 1233, §§ 5 and 71, respectively, eff. Sept. 1, 2001).

Proposed new Subchapter A, General Requirements and Definitions.

Proposed new Subchapter A, General Requirements and Definitions, will include proposed new §8.1, relating to General Applicability and Standards, and proposed new §8.5, relating to Definitions.

Proposed new §8.1, General Applicability and Standards, is derived from current §§7.70, 7.81, and 7.82. Proposed new §8.1(a), concerning applicability, is derived from current §§7.70(c), 7.82, and the first sentence in current §7.70(d); it states the scope of the chapter, which applies to all gas pipeline facilities and facilities used in the intrastate transportation of natural gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq*., and Texas Utilities Code, Chapter 121; the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq*., and Texas Natural Resources Code, Chapter 117; and all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well. This subsection specifically provides that the rules in Chapter 8 do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §717, *et seq*., or 49 U.S.C. §60101, *et seq*.

Proposed new §8.1(b), concerning minimum safety standards, derives from current §§7.70(a) and 7.81, and adopts by reference the federal pipeline safety standards found in 49 U.S.C. §60101, *et seq*.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §60101, *et seq*.; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing.

Currently, §§7.70(a) and 7.81 adopt the federal pipeline safety standards as of March 21, 2002. Proposed new §8.1(b) will show this date as April 9, 2004. The federal safety rule amendments that will be captured are summarized in the following 12 paragraphs.

USDOT's Amendment No. 195-76, published at 67 Federal Register (FR) 2136, extended the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. In 49 CFR §195.452(d)(2), the date after which prior assessments may qualify for use was incorrectly published as December 18, 2006. The corrected date is February 15, 1997. The effective date for the correction was February 15, 2002.

USDOT's Amendment 192-77, published at 67 FR 50824, defined areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. The definition includes current class 3 and 4 locations; facilities with persons who are mobility-impaired, confined, or hard to evacuate; and places where people gather for recreational and other purposes. For facilities with mobility-impaired, confined, or hard-to-evacuate persons, and places where people gather, the corridor of protection from the pipeline is 300 feet, 660 feet, or 1,000 feet depending on the pipeline's diameter and operating pressure. The effective date was September 5, 2002.

USDOT's Research and Special Programs Administration (RSPA) published a final rule at 68 FR 11748 modifying or adding the definition of "administrator" in several sections of the Code of Federal Regulations for clarification and consistency between RSPA regulations. The changes were in 49 CFR Parts 107, 190, 191, 192, 193, 195, 198, and 199 -- specifically, §§107.1, 190.3, 191.3, 192.3, 193.2007, 195.2, 198.3, and 199.3. The effective date was March 12, 2003.

USDOT published an interim final rule at 68 FR 31624 to amend a provision of its drug and alcohol testing procedures to change the instructions to medical review officers with respect to reporting specimens as dilute or substituted. The change was based on USDOT's experience since the adoption of the current rule and new scientific information on the subject. The effective date was May 28, 2003.

Amendment No. 40-12, published at 67 FR 43946, revised the Management Information System forms currently used within five USDOT agencies and the United States Coast Guard for submission of annual drug and alcohol program data. The five DOT agencies are the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Research and Special Programs Administration. The single form replaced 21 different data collection forms. The effective date is July 25, 2003. Also, at 68 FR 75455, USDOT published a final rule requiring the use of this single form as adopted in 49 CFR Part 40. Following the July 25, 2003, adoption, USDOT had requested comments and suggestions for changes to the MIS form and process. The final rule responded to those comments and made modifications to the previous DOT agency MIS forms. Use of the new MIS form will be required for employer MIS submissions in 2004, which will document 2003 data. The effective date was December 31, 2003.

Amendments Nos. 191-15, 192-92, and 195-72, published at 68 FR 46109, addressed the safety regulation responsibility for producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the Outer Continental Shelf. The rule specified the procedures by which producer operators can petition for approval to operate under safety regulations governing pipeline design, construction, operation, and maintenance issued by either RSPA or the Department of the Interior, Minerals Management Service. The effective date was September 4, 2003.

Amendment 195-78, published at 68 FR 53526, changed several safety standards for hazardous liquid and carbon dioxide pipelines. The changes, which concern welder qualifications, backfilling, records, training, and signs, were based on recommendations by the National Association of Pipeline Safety Representatives and were made to improve the clarity and effectiveness of the standards. The effective date was October 14, 2003.

Amendment 192-93, published at 68 FR 53895, changed some of RSPA's Office of Pipeline Safety's safety standards for gas pipelines. The changes were based on recommendations from the National Association of Pipeline Safety Representatives and a review of the recommendations by the State Industry Regulatory Review Committee. The changes improved the clarity and effectiveness of the standards. The effective date was October 15, 2003.

Amendment 192-95, published at 68 FR 69778, required operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, such as in high consequence areas. The rule required gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration, and analysis, to repair and remediate the pipeline as necessary, and to implement preventive and mitigative actions. RSPA's Office of Pipeline Safety also modified the definition of high consequence areas in response to a petition for reconsideration from industry associations. The final rule addressed statutory mandates, safety recommendations, and conclusions from accident analyses, all of which indicate that coordinated risk control measures are needed to improve pipeline safety. The effective date was originally published as January 14, 2004, and included the incorporation by reference of certain publications; however, at 69 FR 2307, RSPA published a correction to change the effective date to February 14, 2004, to meet the 60-day requirement for Congressional review of major rules.

Amendment 40-13, published at 69 FR 3021, adds drug and alcohol abuse counselors certified by the National Board for Certified Counselors, Inc. and Affiliates, specifically NBCC's Master Addictions Counselor, to those eligible to be substance abuse professionals under 49 CFR Part 40, subpart O. The effective date was January 22, 2004.

Amendment 195-80, published at 69 FR 537, requires operators of pipeline systems subject to RSPA's hazardous liquid pipeline safety regulations to prepare and file annual reports containing information about those systems. The data will provide the basis for more efficient and meaningful analyses of the safety status of hazardous liquid pipelines. RSPA's Office of Pipeline Safety will use the information to compile a national pipeline inventory, identify and determine the scope of safety problems, and target inspections. The effective date was February 5, 2004.

Amendment 193-18, published at 69 FR 11330, clarifies that the operation, maintenance, and fire protection requirements of RSPA's Office of Pipeline Safety's regulations for liquefied natural gas (LNG) facilities apply to LNG facilities in existence or under construction as of March 31, 2000. An earlier final rule made the applicability of these requirements unclear. Additional changes to the regulations remove incorrect cross- references, clarify fire drill requirements, and require reviews of plans and procedures. The final rule also changes the regulations so that cross-references to the National Fire Protection Association standard NFPA 59A refer to the 2001 edition of the standard rather than the 1996 edition. The effective date was April 9, 2004; however, LNG plants existing on March 31, 2000, need not comply with provisions of 49 CFR §193.2801 on emergency shutdown systems, water delivery systems, detection systems, and personnel qualification and training until September 12, 2005. The final rule also incorporates by reference certain other publications.

Proposed new §8.1(c), derived from the second sentence of current §7.70(d) and §7.70(e), relates to special situations and specifically states the Commission's authority to impose more stringent safety requirements. This subsection also allows pipeline operators to seek waivers under the procedure set out in proposed new §8.125.

Proposed new §8.1(d), concerning concurrent filing, requires a person filing any document or information with the Department of Transportation to file a copy of that document or information with the Safety Division.

Proposed new §8.1(e), concerning penalties, states the statutory source of authority for the Commission to impose penalties for submitting false or misleading information.

Proposed new §8.1(f), concerning retroactivity, states that nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

Proposed new §8.5, Definitions, derives from current §§7.70(b), 7.71(a), and 7.80; in addition, definitions from current §7.74, relating to school piping testing, and current §8.101, relating to pipeline integrity assessment, are included. In addition, the Commission also proposes to adopt by reference the definitions given in 49 CFR Parts 191, 192, 193, 195, and 199 for the purposes of this chapter. This proposed new section includes definitions for many more terms than are defined in the current rules

in Chapter 7, and omits only one current definition, that of "Act," currently found in §7.74(b)(1). By defining more terms, the Commission expects to achieve greater precision and consistency in the rules and, it is hoped, better understanding of the rules, and more uniformity in interpretation and application of the rules.

Proposed new §8.5(1), defines the term "affected person," which applies only to the procedures and requirements of proposed new §8.125, relating to Waiver Procedure. The term includes but is not limited to persons owning or occupying real property within 500 feet of any property line of the site for the facility or operation for which the waiver is sought; the city council, as represented by the city attorney, the city secretary, the city manager, or the mayor, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly within any incorporated municipal boundaries, including the extraterritorial jurisdiction of any incorporated municipality (if the site of the facility or operation for which the waiver is sought is located within more than one incorporated municipality, then the city council of every incorporated municipality within which the site is located is an affected person); the county commission, as represented by the county clerk, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly outside the boundary of any incorporated municipality (if the site of the facility or operation for which the waiver is sought is located within more than one county, then the county commission of every county within which the site is located is an affected person; and any other person who would be adversely impacted by the waiver sought.

Proposed new §8.5(2) defines the term "applicant" as a person who has filed with the Safety Division a complete application for a waiver to a pipeline safety rule or regulation, or a request to use direct assessment or other technology or assessment methodology not specifically listed in §8.101(b)(1). The current rules do not define this term.

Proposed new §8.5(3) defines the term "application for waiver" as the written request, including all reasons and all appropriate documentation, for the waiver of a particular rule or regulation with respect to a specific facility or operation. The current rules do not define this term.

Proposed new §8.5(4) defines "charter school" as an elementary or secondary school operated by an entity created pursuant to Texas Education Code, Chapter 12. This definition is identical to that found in current §7.74(b)(2).

Proposed new §8.5(5) defines "Commission" as the Railroad Commission of Texas, eliminating the identical duplicative definitions found in current §7.70(b)(6) and §7.80(1).

Proposed new §8.5(6) defines "direct assessment" as a structured process that defines locations where a pipeline is physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in subsection (b)(1) of this section. The physical examination may include coating examination and other applicable non-destructive evaluation. This definition is identical to that found in current §8.101(a)(1)(A).

Proposed new §8.5(7) defines "director" as the director of the Commission's Safety Division or the director's delegate. The term is not defined in the current rules.

Proposed new §8.5(8) defines "division" as the Safety Division of the Commission. The current rules do not define this term; rather the current rules refer to the Pipeline Safety Section of the Gas Services Division. The Safety Division was created in the Commission's reorganization in September 2003.

Proposed new §8.5(9) defines "farm tap odorizer" as a wick- type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 CFR Part 192.3 which uses not more than 10 mcf on an average day in any month. This is identical to the current definition of this term in §7.71(a)(2).

Proposed new §8.5(10) defines "gas" as natural gas, flammable gas, or other gas which is toxic or corrosive; this is the same definition as found in current §7.70(b)(2).

Proposed new §8.5(11) defines "gas company" as any person who owns or operates pipeline facilities used for the transportation or distribution of gas, including master metered systems. This combines the definitions currently found in §7.70(b)(5) and §7.71(a)(1), and eliminates the redundant provisions and references to federal regulations found in §7.71(a)(1) which are already incorporated by reference.

Proposed new §8.5(12) defines "hazardous liquid" as petroleum, petroleum products, anhydrous ammonia, or any substance or material which is in liquid state, excluding liquefied natural gas, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities. This is identical to the current definition of this term in §7.80(2).

Proposed new §8.5(13) defines "in-line inspection" as an internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation. This is the same definition found in current §8.101(a)(1)(B).

Proposed new §8.5(14) defines "intrastate pipeline facilities" as pipeline facilities located within the State of Texas which are not used for the transportation of natural gas or hazardous liquids or carbon dioxide in interstate or foreign commerce. This is identical to the current definition of this term in §7.80(3).

Proposed new §8.5(15) defines "lease user" as a consumer who receives free gas in a contractual agreement with a pipeline operator or producer. This is the same definition as in current §7.71(a)(3).

Proposed new §8.5(16) defines "liquids company" as any person who owns or operates a pipeline or pipelines and/or pipeline facilities used for the transportation or distribution of any hazardous liquid, carbon dioxide, or anhydrous ammonia. This term is not defined in the current rules.

Proposed new §8.5(17) defines "master meter operator" as the owner, operator, or manager of a master metered system. This term is not defined in the current rules.

Proposed new §8.5(18) defines "master metered system" as a pipeline system (other than a local distribution company) for distributing gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents. Other than changing the defined term from "master meter system" to "master metered system," this is identical to the provision found in §7.70(b)(8).

Proposed new §8.5(19) defines "natural gas supplier" as the entity selling and delivering the natural gas to a school facility or a master metered system. If more than one entity sells and delivers natural gas to a school facility or master metered system, each entity is a natural gas supplier for purposes of this chapter. This definition is similar to that found in current §7.74(b)(3), but by changing the current rule from "the individual or company selling and delivering the natural gas to a school facility" to "the entity selling and delivering the natural gas to a school facility or a master metered system," the Commission intends to include as "natural gas suppliers" those municipally-owned gas systems that sell and deliver natural gas to master metered systems.

Proposed new §8.5(20) defines "operator" as a person who operates on his or her own behalf or is an agent designated by the owner to operate intrastate pipeline facilities. This definition is identical to the current one found in §7.80(4).

Proposed new §8.5(21) defines "person" as any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trust, or any other business entity, including any trustee, receiver, assignee, or personal representative thereof, a state agency or institution, a county, a municipality, or school district or any other governmental subdivision of this state. As proposed, this definition combines and reconciles the two slightly different definitions of the word "person" found in current §7.70(b)(1) and §7.80(5).

Proposed new §8.5(22) defines "person responsible for a school facility" as, in the case of a public school, the superintendent of the school district as defined in Texas Education Code, §11.201, or the superintendent's designee previously specified in writing to the natural gas supplier. In the case of charter and private schools, person responsible for a school facility is the principal of the school or the principal's designee previously specified in writing to the natural gas supplier. This definition is the same as that found in current §7.74(b)(4).

Proposed new §8.5(23) defines the term "pipeline facilities" as new and existing pipe, right-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or hazardous liquids or their treatment during the course of transportation. This proposed definition combines and reconciles the slightly different definitions of the term found in current §7.70(b)(4) and §7.80(6).

Proposed new §8.5(24) defines "pressure test" as those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR §§192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR §§195.305, 195.306, 195.308, and 195.310. This definition is identical to that found in current §8.101(a)(1)(C).

Proposed new §8.5(25) defines "private school" as an elementary or secondary school operated by an entity accredited by the Texas Private School Accreditation Commission. This definition is the same as that found in current §7.74(b)(5).

Proposed new §8.5(26) defines "public school" as an elementary or secondary school operated by an entity created in accordance with the laws of the State of Texas and accredited by the Texas Education Agency pursuant to Texas Education Code, Chapter 39, Subchapter D. The term does not include programs and facilities under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, the Texas Department of Human Services, the Texas Department of Criminal Justice or any probation agency, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf and Regional Day Schools for the Deaf, the Texas Academy of Mathematics & Science, the Texas Academy of Leadership in the Humanities, and home schools or proprietary schools as defined in Texas Education Code, §132.001. This definition is the same as that found in current §7.74(b)(6).

Proposed new §8.5(27) defines "school facility" as all piping, buildings and structures operated by a public, charter, or private school that are downstream of a meter measuring natural gas service in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, administrative offices, and similar facilities not regularly utilized by students. This is identical to the definition in current §7.74(b)(7).

Proposed new §8.5(28) defines "Secretary" as the Secretary of the United States Department of Transportation. This term is not defined in the current rules.

Proposed new §8.5(29) defines "transportation of gas" as the gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area. This definition is substantially the same as that found in current §7.70(b)(3) but has been reworded for clarity.

Proposed new §8.5(30) defines "transportation of hazardous liquids or carbon dioxide" as the movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that, for purposes of safety regulations, it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities. This proposed definition adds "carbon dioxide" to the definition, but otherwise is identical to that found in current §7.80(8).

Subchapter B. Requirements for All Pipelines.

Proposed new rules in Subchapter B, Requirements for All Pipelines, will include proposed new §8.51, Organization Report; proposed new §8.105, Records; §8.110, Operations and Maintenance Procedures; §8.115, Construction Commencement Report; §8.125, Waiver Procedure, and §8.130, Enforcement, which will join current §8.101, Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, as proposed to be amended.

Proposed new §8.51 states the requirement that all gas companies and all liquids companies not otherwise required to file a Form P-5, organization report, file one in compliance with 16 Tex. Admin. Code §3.1, relating to Organization Report; Retention of Records; Notice Requirements. This requirement is specifically intended to require that master meter operators file a Form P-5, pursuant to Texas Utilities Code, §121.201. While the proposed new rule does not derive specifically from a current rule in Chapter 7, the requirement itself is not new, because the provision in Texas Utilities Code, §121.201, was enacted in 1999.

Proposed amendments to §8.101, Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, will remove the definitions for "direct assessment," "in-line inspection," and "pressure test" that are being proposed in new §8.5. There will be no change to the definitions. In subsection (b), the wording is proposed to be changed to recognize that the deadline by which pipeline operators were to have complied has passed. No other changes are proposed for §8.101.

Proposed new §8.105, Records, combines the requirements found in current §§7.70(h) and 7.84(f) into a single rule applicable to both gas and liquids pipelines. The Commission has modified current wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements. Pipeline operators are required to maintain the most current record or records for at least the longer of either the interval between prescribed tests plus one year or five years if no other time period is specified. For gas pipelines, those records and documents required by 49 CFR Parts 191, 192, 193, and 199, and §8.215, relating to Odorization of Gas, must be retained. For liquids pipelines, those records and documents required by 49 CFR Parts 195 and 199 must be retained. In addition, operators must retain for the specified period records of all design and installation of new and used pipe, including design pressure calculations, pipeline specifications, specified minimum yield strength and wall-thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and above-ground breakout tank; records of all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection; records of all hydrostatic testing performed on all pipeline segments, components, and tie-ins; and records involved in the performance of the procedures outlined in the operations and maintenance procedure manual required by §8.110, relating to Operations and Maintenance Procedures.

Proposed new §8.110, Operations and Maintenance Procedures, derives from current §§7.70(i) and 7.84(d), and combines the current requirements into a single rule. The Commission has modified current wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements. Each pipeline operator is required to prepare a manual or procedural plan, required by 49 CFR Parts 191, 192, 193, 195 or 199, as applicable, and make it available for Commission inspection upon request. If the Commission finds the plan is inadequate to achieve safe operation, the operator must revise the plan. The new rule does not require the filing of the plan 20 days before it becomes effective.

Proposed new §8.115, Construction Commencement Report, combines the current requirements of §§7.70(g)(4) and 7.84(c). The proposed new rule applies to all construction totaling one mile or more. Currently, §7.70(g)(4) applies only to gas pipelines and only to construction of five miles or more; there is no minimum length specified in current §7.84(c). At least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator is required to file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, path, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. By making the report required for commencement of all construction totaling one mile of pipe or more and applicable to both gas and liquids pipelines, the Commission intends to minimize confusion for the pipeline industry, reduce the number of inquiries to the Commission by the industry, and to maintain better control over the agency's inspection schedule.

Proposed new §8.125, Waiver Procedure, formalizes the process for obtaining Commission waiver of compliance with safety rules that the Commission has used for several years on an informal basis. This proposed new rule has no counterpart in the current rules, but, as previously stated, implements a process that has been used by the Commission and pipeline operators on an informal basis for at least 10 years. Proposed new subsection (a) provides the method for filing an application for a waiver of a pipeline safety rule and the procedures the agency will follow in processing such applications. The Commission specifically directs that the Safety Division will not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule.

Proposed new §8.125(b) provides details about the form of the application for waiver, and proposed new subsection (c) specifies the contents of the application. Essential to the application are a description of the facility at which the operation that is the subject of the waiver request is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results; a description of the acreage and/or address upon which the facility and/or operation is located, including a plat drawing, identification of the site, environmental surroundings, placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation, any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks; a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with protection of the health, safety, and welfare of the general public; and a list of the names, addresses, and telephone numbers of all affected persons.

Proposed new §8.125(d) sets out the requirements of the notice that the applicant is required to provide. The applicant must send a copy of the application and a notice of protest form published by the Commission by certified mail, return receipt requested, to all affected persons on the same date the applicant files its application with the Division. The notice must describe the nature of the waiver sought; state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and include the docket number of the application and the mailing address of the Division. The applicant must file all return receipts with the Division as proof of notice. In addition, the applicant is required to publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the requested waiver is located, and must file with the Division a publisher's affidavit from each newspaper in which notice was published as proof of publication of notice. The director may require the applicant to give additional or different types of notice.

Proposed new §8.125(e) provides that affected persons have standing to object to or request a hearing on an application for a waiver, and sets forth the procedure and requirements for doing so.

Proposed new §8.125(f) details the process for the director's review of a waiver application. If the director does not receive any objections or requests for a hearing from any affected person, the

director may recommend in writing that the Commission grant the waiver if granting the waiver will neither imperil nor tend to imperil the health, safety or welfare of the general public and the environment. The director shall forward the file, along with the written recommendation that the waiver be granted, to the Office of General Counsel for the preparation of an order. The rule specifically provides that the director may not recommend that the Commission grant the waiver if the application was filed either to correct an existing violation or to avoid the expense of safety compliance, and requires the director to dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule. If the director declines to recommend that the Commission grant the waiver, the director must notify the applicant in writing of the recommendation and the reason for it, and inform the applicant of any specific deficiencies in the application. If the director declines to recommend that the Commission grant the waiver, and if the application was not filed either to correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either modify the application to correct the deficiencies and resubmit the application or file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director's written decision not to recommend that the Commission grant the application.

Proposed new §8.125(g) sets forth the procedures for hearings on applications for waiver of a pipeline safety rule. Within three days of receiving either a timely-filed objection or a request for a hearing, the director forwards the file to the Office of General Counsel for the setting of a hearing. The Office of General Counsel assigns a presiding examiner to conduct a hearing. The presiding examiner must mail notice of the hearing by certified mail, return receipt requested, not less than 30 calendar days prior to the date of the hearing to the applicant, all persons who filed an objection or a request for a hearing, and all other affected persons. The presiding examiner conducts the hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of Title 16 (the Commission's rules of practice and procedure).

Proposed new §8.125(h) provides that after a hearing, the Commission may grant a waiver of a pipeline safety rule based on a finding or findings that the grant of the waiver will neither imperil nor tend to imperil the health, safety or welfare of the general public and the environment.

Proposed new §8.125(i) sets out the procedure by which notice is given to the United States Department of Transportation. The Commission's grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).

Proposed new §8.130, Enforcement, derives from current §7.70(j) and §7.87, and provides for periodic inspections and company obligations. Proposed subsection (a) states that the Safety Division shall have responsibility for the administration and enforcement of the provisions of this chapter. To this end, the Safety Division shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies and liquids companies operating in Texas on a sampling basis, in order to satisfy the Commission that these companies are in compliance with the provisions of this chapter.

Proposed subsection (b) lists the scope of inspection and provides that, upon reasonable notice, the Safety Division or its authorized representative may, at any reasonable time, inspect the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a gas company or a liquids company to ensure compliance with the provisions of this chapter .

Proposed new subsection (c) lists the company obligations and states that each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall cooperate with the Safety Division and its authorized representatives in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities. Each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall make readily available all company books, files, records, reports, supplemental data, other documents, and information, and shall make readily accessible all company plant, property, and facilities as the Safety Division or its authorized representative may reasonably require in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities.

Subchapter C. Requirements for Natural Gas Pipelines Only.

Proposed rules in Subchapter C will include current §8.201, Pipeline Safety Program Fees, as proposed to be amended; proposed new §8.203, Supplemental Regulations; proposed new §8.205, Written Procedure for Handling Natural Gas Leak Complaints; proposed new §8.210, Reports; proposed new §8.215, Odorization of Gas; proposed new §8.220, Master Metered Systems; proposed new §8.225, Plastic Pipe Requirements; proposed new §8.230, School Piping Testing; current §8.235, Natural Gas Pipelines Public Education and Liaison, as proposed to be amended; current §8.240, Discontinuance of Service; and proposed new §8.245, Penalty Guidelines for Pipeline Safety Violations.

Proposed amendments to §8.201, relating to Pipeline Safety Program Fees, concern the per-service line surcharge that natural gas distribution systems may assess customers to recover the amounts remitted to the Commission, and which customers may be assessed the one-time surcharge. In subsection (b)(3)(D), the surcharge amount is proposed to be changed from the current $0.37 per service line to $0.50 per service line, the statutory maximum under Texas Utilities Code, § 121.211, to minimize potential under-recoveries by the distribution utilities.

In subsection (b)(4) and subsection (c)(4), the Commission makes amendments to recognize that pipeline safety matters are now handled by the Safety Division, created in the agency's September 2003 reorganization. The proposed amendments to these subsections add the Safety Division as an additional recipient of the reports required from operators of natural gas distribution systems and master metered systems.

Proposed new §8.203, Supplemental Regulations, derives from current §7.70(k). The Commission has modified current wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements. These provisions supplement the regulations appearing in 49 CFR Part 192, adopted under proposed new §8.1(b).

Proposed new §8.203(1) provides that Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.

Proposed new §8.203(2) provides that Section 192.455(b) is supplemented by the following language after the first sentence: "Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations."

Proposed new §8.203(3) provides that Section 192.457 is supplemented by the following language in subsection (b)(3): "(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations"; and by the following subsection: "(d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety."

Proposed new §8.203(4) provides that Section 192.465 is supplemented by the following language after the first sentence of subsection (a): "Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings"; by the following language in subsection (e): "(e) After the initial evaluation required by paragraphs (b) and (c) of §192.455 and paragraph (b) of §192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations"; and by the following subsection: "(f) When leak detection surveys are used to determine areas of active corrosion, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use."

Proposed new §8.203(5) provides that Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material."

Proposed new §8.203(6) provides that Section 192.479 is supplemented by the following subsection: "(c) 'atmospheric corrosion' means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material."

Proposed new §8.205, Written Procedures for Handling Natural Gas Leak Complaints, derives from current §7.72. The Commission has modified current wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements. Each gas company must have written procedures which must include, at a minimum, the following: a procedure or method for receiving leak complaints or reports, or both, on a 24-hour, seven day per week basis; a requirement to make and maintain a written record of all calls received and actions taken; a requirement that supervisory personnel review calls received and actions taken to insure no hazardous conditions exist at the close of the work day; standards for training and equipping personnel used in the investigation of leak complaints or reports, or both; procedures for locating the source of a leak and determining the degree of hazard involved; a chain of command for service personnel to follow if assistance is required in determining the degree of hazard; and instructions to be issued by service personnel to customers or the public or both, as necessary, after a leak is located and the degree of hazard determined.

Proposed new §8.210, Reports, derives from current §7.70(g). The Commission has modified current wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Proposed new §8.210(a)(1) requires a gas company, at the earliest practical moment or within two hours following discovery, to notify the Commission by telephone of any event that involves a release of gas from any pipeline which caused a death or any personal injury requiring hospitalization; required taking any segment of a transmission line out of service, with one exception; resulted in unintentional gas ignition requiring emergency response; caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not fall within the other event descriptions of this paragraph.

Proposed new §8.210(a)(2) provides the exception to the requirement that a gas company give notice of any release of gas which required taking a segment of a transmission line out of service. The gas company is not required to make a telephonic report for a leak or incident if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.

Proposed new §8.210(a)(3) provides that the telephonic report must be made to the Commission's 24-hour emergency line at (512) 463-6788 and must include the following information: the operator or gas company's name; the location of the leak or incident; the time of the incident or accident; the fatalities and/or personal injuries; the phone number of the operator; and any other significant facts relevant to the accident or incident.

Proposed new §8.210(a)(4) provides that following the initial telephonic report for accidents, leaks, or incidents that caused a death or any personal injury requiring hospitalization, caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss, or could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., the operator who made the telephonic report must submit to the Commission a written report summarizing the accident or incident. The report must be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report must be made in duplicate on forms supplied by the Department of Transportation. The Division must forward one copy to the Department of Transportation. The written report is not required to be submitted for master metered systems, but the Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

Proposed new §8.210(b) requires that each gas company submit an annual report for its systems in the same manner as required

by 49 CFR Part 191. The report must be submitted to the Division in duplicate on forms supplied by the Department of Transportation not later than March 15 of each year for the preceding calendar year. The Division forwards one copy to the Department of Transportation. The annual report is not required to be submitted for a petroleum gas system, as that term is defined in 49 CFR §192.11, which serves fewer than 100 customers from a single source or a master metered system.

Proposed new §8.210(c) requires each gas company to submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR Part 191.25.

Proposed new §8.210(d) requires that within 60 days of completion of underwater inspection, each operator must file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a).

Proposed new §8.215, Odorization of Gas, derives from current §7.71. The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Proposed new §8.215(a) requires each gas company to continuously odorize gas by the use of a malodorant agent as set forth in the section unless the gas contains a natural malodor or is odorized prior to delivery by a supplier. Unless required by 49 CFR Part 192.625(B) or otherwise by this section, odorization is not required for gas in underground or other storage; gas used or sold primarily for use in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, industrial plants, or irrigation pumps; or gas used in lease and field operation or development or in repressuring wells. Gas must be odorized by the user if the gas is delivered for use primarily in one of the activities or facilities listed in paragraph (2) of subsection (a) and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses; or the gas is used for furnishing heat or air conditioning for office or living quarters. In the case of lease users, the supplier must ensure that the gas will be odorized before being used by the consumer.

Proposed new §8.215(b) requires gas companies to use odorization equipment approved by the Commission as provided in the subsection. Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry must submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division maintains a list of approved commercially available odorization equipment.

Each operator is required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. This list must be available for review during safety evaluations by the Division.

Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of subsection (b), a gas company must submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall recommend in writing to notify the gas company in writing whether the equipment is approved or not approved for the requested use.

Proposed new §8.215(c) provides that the Division will maintain a list of approved malodorants which meet certain criteria. The malodorant when blended with gas in the amount specified for adequate odorization of the gas must not be deleterious to humans or to the materials present in a gas system and shall not be soluble in water to a greater extent than 2 1/2 parts by weight of malodorant to 100 parts by weight of water. The products of combustion from the malodorant must be nontoxic to humans breathing air containing the products of combustion and the products of combustion must not be corrosive or harmful to the materials to which such products of combustion would ordinarily come in contact. The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas must have a distinctive malodor so that when gas is present in air at a concentration of as much as 1.0% or less by volume, the malodor is readily detectable by an individual with a normal sense of smell. Injection of approved malodorant or the natural malodor must be at a rate sufficient to achieve the specified requirements.

Proposed new §8.215(d) requires each gas company to record the volume of odorant and calculate the injection rate as frequently as necessary to maintain adequate odorization, but not less than once each quarter, the following malodorant information for all odorization equipment, except farm tap odorizers. The following information must be recorded and retained in the company's files odorizer location; brand name and model of odorizer; name of malodorant, concentrate, or dilute; quantity of malodorant at beginning of month/quarter; amount added during month/quarter; quantity at end of month/quarter; MMcf of gas purchased during month/quarter; and the injection rate per MMcf.

Operators must check, test, and service farm tap odorizers at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division. Each gas company must maintain records to reflect the date of service and maintenance on file for at least two years.

Proposed new §8.215(e) requires each gas company to conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods. Test points must be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests must be performed at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests must be recorded on the approved odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two years.

For a room test, the test results must include the odorizer name and location; the date the test was performed, test time, location of test, and distance from odorizer, if applicable; the percent gas in air when malodor is readily detectable; and signatures of witnesses to the test and the supervisor of the test.

For a malodorant concentration test meter, the test results must include the odorizer name and location; the malodorant concentration meter make, model, and serial number; the date the test was performed, test time, odorizer tested, and distance from odorizer, if applicable; the test results indicating percent in air when malodor is readily detectable; and signature of person performing the test.

Farm tap odorizers are exempt from the odorization testing requirements. Gas companies that obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves are required to conduct quarterly malodorant concentration tests and retain records for a period of two years.

Proposed new §8.220, Master Metered Systems, derives from current §7.73. The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Proposed new §8.220(a) requires each master meter operator to comply with the minimum safety standards in 49 CFR Part 192.

Proposed new §8.220(b) requires each master meter operator to conduct a leakage survey on the system every two years, using leak detection equipment.

Proposed new §8.220(c) requires natural gas suppliers to be responsible for installation and inspection of overpressure equipment at those master meter locations where 10 or more consumers are served low pressure gas.

Proposed new §8.225, Plastic Pipe Requirements, derives from current §7.70(g)(2)(C); (g)(5); and (g)(6). The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Proposed new §8.225(a) requires each operator to record information relating to each material failure of plastic pipe during each calendar year, and annually to file with the Division, in conjunction with the annual report, a summary of the failures, using Form PS-80, Annual Plastic Pipe Failure Report. The initial Forms PS-80, reporting plastic pipe failure data for calendar year 2001, were due by March 15, 2002.

Proposed new §8.225(b) provides that by March 15, 2003, and March 15, 2004, operators must report on Form PS-82, Annual Report of Plastic Installation and/or Removal, the amount, in miles, of plastic pipe installed and/or removed during the preceding calendar year. The mileage must be further identified by system, nominal pipe size, material designation code, pipe category, and pipe manufacturer. For all new installations of plastic pipe, each operator must record and maintain for the life of the pipeline the following information for each pipeline segment: all specification information printed on the pipe; the total length; a citation to the applicable joining procedures used for the pipe and the fittings; and the location of the installation to distinguish the end points. A pipeline segment is defined as a continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change.

Proposed new §8.225(c) provides that beginning March 15, 2005, and annually thereafter, each operator must report to the Commission the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe must be determined by a review of the records of the operator and reported on Form PS-81, Plastic Pipe Inventory. The report must include the system; miles of pipe; calendar year of installation; nominal pipe size; material designation code; pipe category; and pipe manufacturer.

Proposed new §8.225(d) requires that operators of systems with more than 1,000 customers file the required reports electronically in a format specified by the Commission.

Proposed new §8.225(e) provides that operators complete all required forms in accord with the section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

Proposed new §8.230, School Piping Testing, derives from current §7.74. The Commission has modified the current rule's organization by moving the definitions from current §7.74(a) to proposed new §8.5 and re-lettering the remaining subsections; otherwise, the substance of the current provisions is unchanged from current requirements.

Proposed new §8.230(a) states the purpose of this section as being the implementation of the requirements of Texas Utilities Code, §§121.5005-121.507, relating to the testing of natural gas piping systems in school facilities.

Proposed new §8.230(b) requires natural gas suppliers to develop procedures for receiving written notice from a person responsible for a school facility, specifying the date and result of each test; and terminating natural gas service to a school facility in the event that the natural gas supplier receives notification of a hazardous natural gas leak in the school facility piping system pursuant to this rule, or the natural gas supplier does not receive written notification specifying the date that testing has been completed on a school facility and the results of such testing. A natural gas supplier may rely on a written notification that complies with the rule as proof that a school facility is in compliance with Texas Utilities Code, §§121.5005-121.507, and the rule. A natural gas supplier has no duty to inspect a school facility for compliance with Texas Utilities Code, §§121.5005-121.507.

Proposed new §8.230(c) states that a natural gas piping pressure test performed under a municipal code in compliance with the rule satisfies the testing requirements. A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure must be performed as specified. For systems on which the normal operating pressure is less than 0.5 psig, the test pressure must be 5 psig and the time interval 30 minutes. For systems on which the normal operating pressure is 0.5 psig or more, the test pressure must be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval 30 minutes. A pressure test using normal operating pressure may be utilized only on systems operating at 5 psig or greater, and the time interval must be one hour. The testing must be conducted by a licensed plumber; a qualified employee or agent of the school who is regularly employed as or acting as a maintenance person or maintenance engineer; or a person exempt from the plumbing license law as provided in Texas Civil Statutes, Article 6243-101, §3.

The testing of public school facilities must be completed as follows: for school facilities tested prior to the beginning of the 1997-1998 school year, at least once every two years thereafter before the beginning of the school year; for school facilities not tested prior to the beginning of the 1997-1998 school year, as soon as practicable thereafter but prior to the beginning of the 1998-1999 school year and at least once every two years thereafter before the beginning of the school year; for school facilities operated on a year-round calendar and tested prior to July 1, 1997, at least once every two years thereafter; and for school facilities operated on a year-round calendar and not tested prior to July 1, 1997, once prior to July 1, 1998, and at least once every two years thereafter.

The testing of charter and private school facilities must occur at least once every two years and must be performed before the beginning of the school year, except for school facilities operated on a year-round calendar, which must be tested not later than July 1 of the year in which the test is performed. The initial test of charter and private school facilities must occur prior to the beginning of the 2003-2004 school year or by August 31, 2003, whichever is earlier.

The firm or individual conducting the test must immediately report any hazardous natural gas leak to the board of trustees of the school district and the natural gas supplier; for a public school facility, and to the person responsible for such school facility and the natural gas supplier for a charter or private school facility. The school pipe testing must be recorded on Railroad Commission Form PS-86.

Proposed new §8.230(d) requires natural gas suppliers to maintain for at least two years a listing of the school facilities to which it sells and delivers natural gas as well as copies of the written notification regarding testing, Form PS-86, and hazardous leaks received pursuant to Texas Utilities Code, §§121.5005-121.507, and the rule.

The proposed amendment to §8.235, Natural Gas Pipelines Public Education and Liaison, would substitute "Safety Division" for "Gas Services Division, Pipeline Safety Section," in subsection (e).

Proposed new §8.245, Penalty Guidelines for Pipeline Safety Violations, derives from current §§7.70(j), but is expanded to include the requirements enacted by Senate Bill 310 (Acts 2001, 77th Leg., ch. 1233, §§ 5 and 71, respectively, eff. Sept. 1, 2001) in Texas Natural Resources Code, §81.0531, and Texas Utilities Code, §121.206, both of which require the Commission, by rule, to adopt guidelines to be used in determining the amount of the penalty for violations of pipeline safety rules.

Specifically, Texas Natural Resources Code, §81.0531(d) provides that the rule must set forth the guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code or a rule, order, or permit that relates to pipeline safety. The guidelines must also include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines must take into account the permittee's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the commission considers relevant.

Texas Utilities Code, §121.206, authorizes the Commission to assess an administrative penalty against a person who violates Texas Utilities Code, §121.201, or Subchapter I (Texas Utilities Code, §§121.451-121.454) or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions. Subsection 121.206(d) requires that the Commission's rule must include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines must take into account the permittee's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the commission considers relevant. The proposed rule summarizes and explains the Commission's practice with respect to requesting, recommending, or finally assessing penalties in an enforcement action.

Proposed new §8.245(a) provides that the section offers only guidelines, in compliance with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

Proposed new §8.245(b) states that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

Proposed new §8.245(c) lists the factors to be considered in determining the amount of any penalty requested, recommended, or finally assessed in an enforcement action. The amount will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

Proposed new §8.245(d) sets forth typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions in Table 1.

Proposed new §8.245(e) explains that for violations that involve threatened or actual pollution; result in threatened or actual safety hazards; result from the reckless or intentional conduct of the person charged; or involve a person with a history of prior violations, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.

Proposed new §8.245(f) provides that for violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used

separately. Either guideline may be used where applicable, but not both.

Proposed new §8.245(g) provides that the recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed new §8.245(h) provides that, in determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

Proposed new §8.245(i) explains the penalty calculation worksheet in Table 5. The worksheet lists the typical penalty amounts for certain violations; lists each of the circumstances justifying enhancements of a penalty and the amount of the enhancement; and lists each of the circumstances justifying a reduction in a penalty and the amount of the reduction.

Subchapter D. Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only.

Proposed new rules in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only, will include proposed new §8.301, Required Records and Reporting; and proposed new §8.305, Corrosion Control Requirements; and current §8.310, Community Liaison and Public Education for Hazardous Liquids and Carbon Dioxide Pipelines, and §8.315, Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

Proposed new §8.301, Required Records and Reporting, derives from current §7.84(a), (b), (c) and (e). The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Proposed new §8.301(a) covers accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, then the operator is required to report to the Commission. In the event of an accident involving crude oil, the operator must notify the Division, which in turn must notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at the earliest practicable moment following discovery of the incident (within two hours). The initial telephone report must include the company/operator name; the location of leak or incident; the time and date of accident/incident; any fatalities and/or personal injuries; phone number of operator; and other significant facts relevant to the accident or incident.

Within 30 days of discovery of the incident, the operator must submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator must also file duplicate copies of the required Department of Transportation form with the Division.

For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator must notify the Division by telephone at the earliest practicable moment following discovery (within two hours) and within 30 days of discovery of the incident, file in duplicate with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile.

Proposed new §8.301(b) pertains to annual reports. Each operator is required to file with the Commission an annual report on Form PS-45 listing line sizes and lengths, hazardous liquids or carbon dioxide being transported, and accident/failure data. The report is to be filed with the Commission on or before March 15 of a year for the preceding calendar year reported.

Proposed new §8.301(c) covers the requirement that operators file facility response plans. Simultaneously with filing either an initial or a revised facility response plan with the United States Department of Transportation, each operator is required to submit to the Division a copy of the initial or revised facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast.

Proposed new §8.305, Corrosion Control Requirements, derives from current §7.86. The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Operators are required to comply or ensure compliance with the specified requirements for the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

Proposed new §8.305(1) sets forth the requirements for atmospheric corrosion control. Each aboveground pipeline or portion of pipeline exposed to the atmosphere must be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections must not exceed five years; for offshore pipelines, reevaluations are required at least once each calendar year, with intervals not to exceed 15 months.

Proposed new §8.305(2) deals with pipeline coatings. All coated pipe used for the transport of hazardous liquids or carbon dioxide must be electrically inspected prior to placement using coating deficiency (holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

Proposed new §8.305(3) requires that joint fittings, and tie-ins be coated with materials compatible with the coatings on the pipe.

Proposed new §8.305(4) pertains to cathodic protection test stations. Each cathodically protected pipeline must have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations must include but are not limited to pipe casing installations and all foreign metallic cathodically protected structures. Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection must be selected to give representative pipe-to-soil readings. Readings taken at test stations

(electrode locations) over or near one or more anodes are not, by themselves, considered representative.

In addition, all test lead wire attachments and bared test lead wires must be coated with an electrically insulating material. Where the pipe is coated, the insulation of the test lead wire material must be compatible with the pipe coating and wire insulation. Cathodic protection systems must meet or exceed the minimum criteria set forth in Criteria For Cathodic Protection of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

Proposed new §8.305(5) concerns monitoring and inspection. Each cathodic protection rectifier or impressed current power source must be inspected at least six times each calendar year, with intervals not to exceed 2 1/2 months, to ensure that it is operating properly. Each reverse-current switch, diode, and interference bond whose failure would jeopardize structure protection must be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2 1/2 months. Each remaining interference bond must be checked at least once each calendar year, with intervals not to exceed 15 months. Each operator is required to utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel must be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator must conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

Proposed new §8.305(6) requires that each operator take prompt remedial action to correct any deficiencies observed during monitoring.

Mary McDaniel, Director, Safety Division, has determined that for each year of the first five years that the proposed new rules and amendments will be in effect, there will be no fiscal implications to state or local governments. Municipalities that operate natural gas distribution systems are subject to the Commission's pipeline safety rules; however, the proposed new rules are either substantively the same as current rules in Chapter 7, some of which have been in place since 1976, or they put into a formal rule a procedure that has been used by Commission staff and subject pipelines on an informal basis for several years. Proposed new §8.245, Penalty Guidelines for Pipeline Safety Violations, embodies in rule format a summary and explanation of statutory provisions and Commission practice with respect to requesting, recommending, and determining penalty amounts for pipeline safety violations, as required by Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d), enacted by Senate Bill 310 (Acts 2001, 77th Leg., ch. 1233, §§ 5 and 71, respectively, eff. Sept. 1, 2001), but only those pipeline operators who become subject to Commission enforcement actions for pipeline safety violations would be subject to its terms.

Ms. McDaniel has also determined that, for each year of the first five years that the proposed new rules and amendments are in effect, the public benefit will be that all pipeline safety rules will be located in their own chapter. This should make it easier for operators to locate the rules, thus making compliance easier for pipeline operators to achieve and making pipeline operations safer. Also, combining provisions that apply to all pipelines is efficient. Having all pipeline safety regulations in a single chapter makes them easier for the public to find and understand what is required of pipeline operators.

The Commission anticipates that there will be no additional cost to individuals, small businesses, or micro-businesses of complying with the proposed new rules and amendments. Most of the new rules are substantively the same as current rules in Chapter 7, with which all operators are currently required to comply. One proposed new rule merely formalizes the procedure for obtaining a waiver of a pipeline safety rule that has been observed informally for at least 10 years. Finally, proposed new §8.245 applies to pipeline operators against whom enforcement actions are brought for violations of pipeline safety rules, and is a summary and explanation of current statutory provisions and Commission practice with respect to requesting, recommending, and determining penalty amounts for pipeline safety violations.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 60 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9255. For more information, call Mary McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

The Commission proposes the new sections and the amendments to current rules in Chapter 8, Subchapter A, under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; and Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section; and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code

Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments in Chapter 8, Subchapter A.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on April 23, 2004.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of natural gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq*., and Texas Utilities Code, §§121.001-121.507;

(B) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq*., and Texas Natural Resources Code, §§117.011 and 117.012; and

(C) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §717, *et seq*., or 49 U.S.C. §60101, *et seq*.

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective April 9, 2004.

(1) Natural gas pipelines shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §60101, *et seq*.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §60101, *et seq*.; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing.

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §60101, *et seq*., the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Concurrent filing. A person filing any document or information with the Department of Transportation shall file a copy of that document or information with the Safety Division.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051-117.054, and/or Texas Utilities Code, §§121.206-121.210, and the Commission may dismiss with prejudice to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

§8.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. In addition to the following defined terms, definitions given in 49 CFR Parts 191, 192, 193, 195, and 199 are hereby adopted by reference as definitions for purposes of this chapter.

(1) Affected person--This definition of this term applies only to the procedures and requirements of §8.125 of this title (relating to Waiver Procedure). The term includes but is not limited to:

(A) persons owning or occupying real property within 500 feet of any property line of the site for the facility or operation for which the waiver is sought;

(B) the city council, as represented by the city attorney, the city secretary, the city manager, or the mayor, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly within any incorporated municipal boundaries, including the extraterritorial jurisdiction of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one incorporated municipality, then the city council of every incorporated municipality within which the site is located is an affected person;

(C) the county commission, as represented by the county clerk, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly outside the boundary of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one county, then the county commission of every county within which the site is located is an affected person;

(D) any other person who would be adversely impacted by the waiver sought.

(2) Applicant--A person who has filed with the Safety Division a complete application for a waiver to a pipeline safety rule or regulation, or a request to use direct assessment or other technology or

assessment methodology not specifically listed in §8.101(b)(1), of this title (relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines).

(3) Application for waiver--The written request, including all reasons and all appropriate documentation, for the waiver of a particular rule or regulation with respect to a specific facility or operation.

(4) Charter school--An elementary or secondary school operated by an entity created pursuant to Texas Education Code, Chapter 12.

(5) Commission--The Railroad Commission of Texas.

(6) Direct assessment--A structured process that defines locations where a pipeline is physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in subsection (b)(1) of this section. The physical examination may include coating examination and other applicable non-destructive evaluation.

(7) Director--the director of the Safety Division or the director's delegate.

(8) Division--The Safety Division of the Commission.

(9) Farm tap odorizer--A wick-type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 CFR Part 192.3 which uses not more than 10 mcf on an average day in any month.

(10) Gas--Natural gas, flammable gas, or other gas which is toxic or corrosive.

(11) Gas company--Any person who owns or operates pipeline facilities used for the transportation or distribution of gas, including master metered systems.

(12) Hazardous liquid--Petroleum, petroleum products, anhydrous ammonia, or any substance or material which is in liquid state, excluding liquefied natural gas, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities.

(13) In-line inspection--An internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation.

(14) Intrastate pipeline facilities--Pipeline facilities located within the State of Texas which are not used for the transportation of natural gas or hazardous liquids or carbon dioxide in interstate or foreign commerce.

(15) Lease user--A consumer who receives free gas in a contractual agreement with a pipeline operator or producer.

(16) Liquids company--Any person who owns or operates a pipeline or pipelines and/or pipeline facilities used for the transportation or distribution of any hazardous liquid, or carbon dioxide, or anhydrous ammonia.

(17) Master meter operator--The owner, operator, or manager of a master metered system.

(18) Master metered system--A pipeline system (other than a local distribution company) for distributing gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents.

(19) Natural gas supplier--The entity selling and delivering the natural gas to a school facility or a master metered system. If more than one entity sells and delivers natural gas to a school facility or master metered system, each entity is a natural gas supplier for purposes of this chapter.

(20) Operator--A person who operates on his or her own behalf or as an agent designated by the owner to operate intrastate pipeline facilities.

(21) Person--Any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trust, or any other business entity, including any trustee, receiver, assignee, or personal representative thereof, a state agency or institution, a county, a municipality, or school district or any other governmental subdivision of this state.

(22) Person responsible for a school facility--In the case of a public school, the superintendent of the school district as defined in Texas Education Code, §11.201, or the superintendent's designee previously specified in writing to the natural gas supplier. In the case of charter and private schools, the principal of the school or the principal's designee previously specified in writing to the natural gas supplier.

(23) Pipeline facilities--New and existing pipe, right-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or hazardous liquid or their treatment during the course of transportation.

(24) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR §§192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR §§195.305, 195.306, 195.308, and 195.310.

(25) Private school--An elementary or secondary school operated by an entity accredited by the Texas Private School Accreditation Commission.

(26) Public school--An elementary or secondary school operated by an entity created in accordance with the laws of the State of Texas and accredited by the Texas Education Agency pursuant to Texas Education Code, Chapter 39, Subchapter D. The term does not include programs and facilities under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, the Texas Department of Human Services, the Texas Department of Criminal Justice or any probation agency, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf and Regional Day Schools for the Deaf, the Texas Academy of Mathematics & Science, the Texas Academy of Leadership in the Humanities, and home schools or proprietary schools as defined in Texas Education Code, §132.001.

(27) School facility--All piping, buildings and structures operated by a public, charter, or private school that are downstream of a meter measuring natural gas service in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, administrative offices, and similar facilities not regularly utilized by students.

(28) Secretary--The Secretary of the United States Department of Transportation.

(29) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary of Transportation may define as a nonrural area.

(30) Transportation of hazardous liquids or carbon dioxide--The movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that, for purposes of safety regulations, it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

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 April 23, 2004.

TRD-200402736
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-1295

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SUBCHAPTER B. REQUIREMENTS FOR NATURAL GAS AND HAZARDOUS LIQUIDS PIPELINES

16 TAC §§8.51, 8.101, 8.105, 8.110, 8.115, 8.125, 8.130

The Commission proposes the new sections and the amendments to current rules in Chapter 8, Subchapter B, under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq.*; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq.*; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section, and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq.*, are affected by the proposed new sections and amendments in Chapter 8, Subchapter B.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.51. Organization Report.

Each gas company and each liquids company operating wholly or partially within this state, acting either as principal or as agent for another, and performing operations within the jurisdiction of the Commission, shall have on file with the Commission an approved organization report (Form P-5) and financial security as required by Texas Natural Resources Code, §§91.103-91.1091, and §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements).

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) [~~Definitions and Applicability.~~]

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

[~~(A) Direct assessment--A structured process that defines locations where a pipeline is physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in subsection (b)(1) of this section. The physical examination may include coating examination and other applicable non-destructive evaluation.~~]

[~~(B) In-line inspection--An internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation.~~]

[~~(C) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements are found in 49 Code of Federal Regulations(CFR) Part 192, and specifically include 49 CFR §§192.503(b)(c)(d), 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR §§195.304, 195.305, 195.306, 195.308, and 195.310.~~]

[~~(2) Applicability.~~] This section does not apply to plastic pipelines.

(b) By February 1, 2002, operators of intrastate transmission and gathering lines subject to the requirements of 49 CFR 192 or 49 CFR 195 shall have designated [~~designate~~] to the Commission [~~Commission's Pipeline Safety Section~~] on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection.

Operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection.

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

(c) - (f) (No change.)

§8.105. Records.

Each pipeline operator shall maintain the following most current record or records for at least the longer of either the interval between prescribed tests plus one year or five years if no other time period is specified:

(1) For gas pipelines, those records and documents required by 49 CFR Parts 191, 192, 193, and 199, and §8.215 of this chapter (relating to Odorization of Gas).

(2) For liquids pipelines, those records and documents required by 49 CFR Parts 195 and 199.

(3) Records of all design and installation of new and used pipe, including design pressure calculations, pipeline specifications, specified minimum yield strength and wall-thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and above-ground breakout tank.

(4) Records of all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection.

(5) Records of all hydrostatic testing performed on all pipeline segments, components, and tie-ins.

(6) Records involved in the performance of the procedures outlined in the operations and maintenance procedure manual required by §8.110 of this title (relating to Operations and Maintenance Procedures).

§8.110. Operations and Maintenance Procedures.

Each pipeline operator shall prepare a manual or procedural plan, required by 49 CFR Parts 191, 192, 193, 195 or 199, as applicable, and shall make it available for Commission inspection upon request. If the Commission finds the plan is inadequate to achieve safe operation, the operator shall revise the plan.

§8.115. Construction Commencement Report.

At least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, path, size and type of pipe to be used, type of service, design pressure, and length of the proposed line.

§8.125. Waiver Procedure.

(a) Filing. Any person may apply for a waiver of a pipeline safety rule or regulation by filing an application for waiver with the Division. Upon the filing of an application for waiver of a pipeline safety rule, the Division shall assign a docket number to the application and shall forward it to the director, and thereafter all documents relating to that application shall include the assigned docket number. The Division shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule.

(b) Form. The application shall be typewritten on paper not to exceed 8 1/2 inches by 11 inches and shall have margins of at least one inch. The contents of the application shall appear on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced. Exhibits attached to an application shall be the same size as the application or folded to that size.

(c) Content. The application shall contain the following:

(1) the name, business address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the applicant and of the applicant's authorized representative, if any;

(2) a description of the particular operation for which the waiver is sought;

(3) a statement concerning the regulation from which the waiver is sought and the reason for the exception;

(4) a description of the facility at which the operation is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results;

(5) a description of the acreage and/or address upon which the facility and/or operation that is the subject of the waiver request is located. The description shall:

(A) include a plat drawing;

(B) identify the site sufficiently to permit determination of property boundaries;

(C) identify environmental surroundings;

(D) identify placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation;

(E) state the ownership of the real property of the site; and

(F) state under what legal authority the applicant, if not the owner of the real property, is permitted occupancy;

(6) an identification of any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks;

(7) a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with protection of the health, safety, and welfare of the general public;

(8) an original signature, in ink, by the applicant or the applicant's authorized representative, if any; and

(9) a list of the names, addresses, and telephone numbers of all affected persons, as defined in §8.5 of this title (relating to Definitions).

(d) Notice.

(1) The applicant shall send a copy of the application and a notice of protest form published by the Commission by certified mail, return receipt requested, to all affected persons on the same date of filing the application with the Division. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the docket number of the application and the mailing address of the Division. The applicant shall file all return receipts with the Division as proof of notice.

(2) The applicant shall publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the

requested waiver is located. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the docket number of the application and the mailing address of the Division. Within ten calendar days of the date of last publication, the applicant shall file with the Division a publisher's affidavit from each newspaper in which notice was published as proof of publication of notice. The affidavit shall state the dates on which the notice was published and shall have attached to it the tear sheets from each edition of the newspaper in which the notice was published.

(3) The applicant shall give any other notice of the application which the director may require.

(e) Protest.

(1) Affected persons shall have standing to object to or request a hearing on an application.

(2) A person who objects to or who requests a hearing on the application shall file a written objection or request for a hearing with the Division no later than the 30th calendar day after the date the notice of the application was postmarked or the last date the notice was published in the newspaper in the county in which the person owns or occupies property, whichever is later.

(3) The objection or request for a hearing shall:

(A) state the name, address, and telephone number of the person filing the objection or request for hearing and of every person on whose behalf the objection or request for a hearing is being filed; and

(B) include a statement of the facts on which the person filing the protest relies to conclude that each person on whose behalf the objection or request for a hearing is being filed is an affected person, as defined in §8.5 of this title (relating to Definitions).

(f) Division review.

(1) The director shall complete the review of the application within 60 calendar days after the application is complete. If an application remains incomplete 12 months after the date the application was filed, such application shall expire and the director shall dismiss without prejudice to refiling.

(A) If the director does not receive any objections or requests for a hearing from any affected person, the director may recommend in writing that the Commission grant the waiver if granting the waiver will neither imperil nor tend to imperil the health, safety or welfare of the general public and the environment. The director shall forward the file, along with the written recommendation that the waiver be granted, to the Office of General Counsel for the preparation of an order.

(B) The director shall not recommend that the Commission grant the waiver if the application was filed either to correct an existing violation or to avoid the expense of safety compliance. The director shall dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule.

(C) If the director declines to recommend that the Commission grant the waiver, the director shall notify the applicant in writing of the recommendation and the reason for it, and shall inform the applicant of any specific deficiencies in the application.

(2) If the director declines to recommend that the Commission grant the waiver, and if the application was not filed either to correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either:

(A) modify the application to correct the deficiencies and resubmit the application; or

(B) file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director's written decision not to recommend that the Commission grant the application.

(g) Hearings.

(1) Within three days of receiving either a timely-filed objection or a request for a hearing, the director shall forward the file to the Office of General Counsel for the setting of a hearing.

(2) The Office of General Counsel shall assign a presiding examiner to conduct a hearing.

(3) The presiding examiner shall mail notice of the hearing by certified mail, return receipt requested, not less than 30 calendar days prior to the date of the hearing to:

(A) the applicant;

(B) all persons who filed an objection or a request for a hearing; and

(C) all other affected persons.

(4) The presiding examiner shall conduct the hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to Practice and Procedure).

(h) Finding requirement. After a hearing, the Commission may grant a waiver of a pipeline safety rule based on a finding or findings that the grant of the waiver will neither imperil nor tend to imperil the health, safety or welfare of the general public and the environment.

(i) Notice to United States Department of Transportation. Upon a Commission order granting a waiver of a pipeline safety rule, the director shall give written notice to the Secretary of Transportation pursuant to the provisions of 49 United States Code Annotated, §60118(d). The Commission's grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).

§8.130. Enforcement.

(a) Periodic inspection. The Safety Division shall have responsibility for the administration and enforcement of the provisions of this chapter. To this end, the Safety Division shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies and liquids companies operating in Texas on a sampling basis, in order to satisfy the Commission that these companies are in compliance with the provisions of this chapter.

(b) Scope of inspection. Upon reasonable notice, the Safety Division or its authorized representative may, at any reasonable time, inspect the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a gas company or a liquids company to ensure compliance with the provisions of this chapter.

(c) Company obligations.

(1) Each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall cooperate with the Safety Division and its authorized representatives in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities.

(2) Each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall make readily available all company books, files, records, reports, supplemental data, other documents, and information, and shall make readily accessible all company plant, property, and facilities as the Safety Division or its authorized representative may reasonably require in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities.

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 April 23, 2004.

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

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.201, 8.203, 8.205, 8.210, 8.215, 8.220, 8.225, 8.230, 8.235, 8.245

The Commission proposes the new sections and the amendments to current rules in Chapter 8, Subchapter C, under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission by rule to adopt guidelines to be used in determining the amount of the penalty for a violation of a provision of Texas Natural Resources Code, Title 3, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq.*; Texas Utilities Code, §121.206, which authorizes Commission assessment of an administrative penalty for violations of safety standards or rules relating to the transportation of gas and gas pipeline facilities and requires the Commission to adopt by rule guidelines to be used in determining the amount of such penalty; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section, and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 81.0531; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments in Chapter 8, Subchapter C.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 81.0531; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on April 23, 2004.

§8.201. Pipeline Safety Program Fees.

(a) (No change.)

(b) The Commission hereby assesses each investor-owned natural gas distribution system and each municipally owned natural gas distribution system an annual pipeline safety program fee of $0.37 for each service (service line) reported to be in service at the end of calendar year 2003 by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2004.

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

(3) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

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

(D) shall not exceed $0.50 [~~$0.37~~] per service or service line.

(4) No later than 90 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall file with the Commission's Gas Services Division and the [~~, Pipeline~~] Safety Division [~~Section,~~] a report showing:

(A) - (D) (No change.)

(5) - (6) (No change.)

(c) The Commission hereby assesses each master meter system an annual inspection fee of $100 per master meter system.

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

(4) No later than 90 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each master meter operator shall file with the Commission's Gas Services Division and the [~~, Pipeline~~] Safety Division [~~Section,~~] a report showing:

(A) - (D) (No change.)

(d) (No change.)

§8.203. Supplemental Regulations.

The following provisions supplement the regulations appearing in 49 CFR Part 192, adopted under §8.1(b) of this chapter (relating to General Applicability and Standards).

(1) Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.

(2) Section 192.455(b) is supplemented by the following language after the first sentence: "Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations."

(3) Section 192.457 is supplemented:

(A) by the following language in subsection (b)(3): "(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations";

(B) by the following subsection: "(d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety."

(4) Section 192.465 is supplemented:

(A) by the following language after the first sentence of subsection (a): "Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings";

(B) by the following language in subsection (e): "(e) After the initial evaluation required by paragraphs (b) and (c) of §192.455 and paragraph (b) of §192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations";

(C) by the following subsection: "(f) When leak detection surveys are used to determine areas of active corrosion, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use."

(5) Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material."

(6) Section 192.479 is supplemented by the following subsection: "(c) 'atmospheric corrosion' means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material."

§8.205. Written Procedure for Handling Natural Gas Leak Complaints.

Each gas company shall have written procedures which shall include at a minimum the following provisions:

(1) a procedure or method for receiving leak complaints or reports, or both, on a 24-hour, seven day per week basis;

(2) a requirement to make and maintain a written record of all calls received and actions taken;

(3) a requirement that supervisory personnel review calls received and actions taken to insure no hazardous conditions exist at the close of the work day;

(4) standards for training and equipping personnel used in the investigation of leak complaints or reports, or both;

(5) procedures for locating the source of a leak and determining the degree of hazard involved;

(6) a chain of command for service personnel to follow if assistance is required in determining the degree of hazard;

(7) instructions to be issued by service personnel to customers or the public or both, as necessary, after a leak is located and the degree of hazard determined.

§8.210. Reports.

(a) Accident, leak, or incident report.

(1) Telephonic report. At the earliest practical moment or within two hours following discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from any pipeline which:

(A) caused a death or any personal injury requiring hospitalization;

(B) required taking any segment of a transmission line out of service, except as described in paragraph (2) of this subsection;

(C) resulted in unintentional gas ignition requiring emergency response;

(D) caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or

(E) could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not meet subparagraphs (A), (B), (C), or (D) of this paragraph.

(2) A gas company shall not be required to make a telephonic report for a leak or incident which meets only paragraph (1)(B) of this subsection if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.

(3) The telephonic report shall be made to the Commission's 24- hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the leak or incident;

(C) the time of the incident or accident;

(D) the fatalities and/or personal injuries;

(E) the phone number of the operator; and

(F) any other significant facts relevant to the accident or incident.

(4) Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1)(A), (D), and (E) of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The

written report shall be made in duplicate on forms supplied by the Department of Transportation. The Division shall forward one copy to the Department of Transportation.

(B) The written report is not required to be submitted for master metered systems.

(C) The Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division in duplicate on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding calendar year. The Division shall forward one copy to the Department of Transportation.

(2) The annual report is not required to be submitted for:

(A) a petroleum gas system, as that term is defined in 49 CFR §192.11, which serves fewer than 100 customers from a single source; or

(B) a master metered system.

(c) Safety related condition reports. Each gas company shall submit in writing a safety-related condition report for any condition outlined in 49 CFR Part 191.25. The gas company shall submit a copy to the Division.

(d) Offshore pipeline condition report. Within 60 days of completion of underwater inspection, each operator shall file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a). The report shall include the information required in 49 CFR 191.27.

§8.215. Odorization of Gas.

(a) Odorization of gas.

(1) Each gas company shall continuously odorize gas by the use of a malodorant agent as set forth in this section unless the gas contains a natural malodor or is odorized prior to delivery by a supplier.

(2) Unless required by 49 CFR Part 192.625(B) or by this section, odorization is not required for:

(A) gas in underground or other storage;

(B) gas used or sold primarily for use in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, industrial plants, or irrigation pumps; or

(C) gas used in lease and field operation or development or in repressuring wells.

(3) Gas shall be odorized by the user if:

(A) the gas is delivered for use primarily in one of the activities or facilities listed in paragraph (2) of this subsection and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses; or

(B) the gas is used for furnishing heat or air conditioning for office or living quarters.

(4) In the case of lease users, the supplier shall ensure that the gas will be odorized before being used by the consumer.

(b) Odorization equipment. Gas companies shall use odorization equipment approved by the Commission as follows.

(1) Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry shall submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division shall maintain a list of approved commercially available odorization equipment.

(2) Each operator shall be required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. The list shall be available for review during safety evaluations by the Division.

(3) Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of this subsection, a gas company shall submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall notify the gas company in writing whether the equipment is approved or not approved for the requested use.

(c) Malodorants. The Division shall maintain a list of approved malodorants which shall meet the following criteria.

(1) The malodorant when blended with gas in the amount specified for adequate odorization of the gas shall not be deleterious to humans or to the materials present in a gas system and shall not be soluble in water to a greater extent than 2 1/2 parts by weight of malodorant to 100 parts by weight of water.

(2) The products of combustion from the malodorant shall be nontoxic to humans breathing air containing the products of combustion and the products of combustion shall not be corrosive or harmful to the materials to which such products of combustion would ordinarily come in contact.

(3) The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas shall have a distinctive malodor so that when gas is present in air at a concentration of as much as 1.0% or less by volume, the malodor is readily detectable by an individual with a normal sense of smell.

(4) Injection of approved malodorant or the natural malodor shall be at a rate sufficient to achieve the requirement of paragraph (3) of this subsection.

(d) Malodorant tests and reports.

(1) Malodorant injection report. Each gas company shall record the volume of odorant and shall calculate the injection rate as frequently as necessary to maintain adequate odorization but not less than once each quarter the following malodorant information for all odorization equipment, except farm tap odorizers. The required information shall be recorded and retained in the company's files:

(A) odorizer location;

(B) brand name and model of odorizer;

(C) name of malodorant, concentrate, or dilute;

(D) quantity of malodorant at beginning of month/quarter;

(E) amount added during month/quarter;

(F) quantity at end of month/quarter;

(G) MMcf of gas purchased during month/quarter; and

(H) injection rate per MMcf.

(2) Operators shall check, test, and service farm tap odorizers at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division. Each gas company shall maintain records to reflect the date of service and maintenance on file for at least two years.

(e) Malodorant concentration tests and reports.

(1) Each gas company shall conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods. Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests shall be recorded on the approved odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two years.

(A) Room test--Test results shall include the following:

(i) odorizer name and location;

(ii) date test performed, test time, location of test, and distance from odorizer, if applicable;

(iii) percent gas in air when malodor is readily detectable; and

(iv) signatures of witnesses to the test and the supervisor of the test.

(B) Malodorant concentration test meter--Test results shall include the following:

(i) odorizer name and location;

(ii) malodorant concentration meter make, model, and serial number;

(iii) date test performed, test time, odorizer tested, and distance from odorizer, if applicable;

(iv) test results indicating percent in air when malodor is readily detectable; and

(v) signature of person performing the test.

(2) Farm tap odorizers shall be exempt from the odorization testing requirements of paragraph (1) of this subsection.

(3) Gas companies that obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves shall be required to conduct quarterly malodorant concentration tests and retain records for a period of two years.

§8.220. Master Metered Systems.

(a) Compliance with minimum standards required. Master meter operators shall comply with the minimum safety standards in 49 CFR Part 192.

(b) Leakage survey. Each master meter operator shall conduct a leakage survey on the system every two years, using leak detection equipment.

(c) Overpressure equipment. Natural gas suppliers shall be responsible for installation and inspection of overpressure equipment at those master meter locations where 10 or more consumers are served low pressure gas.

§8.225. Plastic Pipe Requirements.

(a) Plastic pipe failure report. Each operator shall record information relating to each material failure of plastic pipe during each calendar year, and annually shall file with the Division, in conjunction with the annual report required to be filed under §8.210(b) of this chapter (relating to Reports), a summary of the failures on Form PS-80, Annual Plastic Pipe Failure Report. Operators shall file initial Forms PS-80, reporting plastic pipe failure data for calendar year 2001, by March 15, 2002.

(b) Plastic pipe installation and/or removal report.

(1) Each operator shall report to the Commission on March 15, 2003, and March 15, 2004, the amount in miles of plastic pipe installed and/or removed during the preceding calendar year on Form PS-82, Annual Report of Plastic Installation and/or Removal. The mileage shall be identified by:

(A) system;

(B) nominal pipe size;

(C) material designation code;

(D) pipe category; and

(E) pipe manufacturer.

(2) For all new installations of plastic pipe, each operator shall record and maintain for the life of the pipeline the following information for each pipeline segment:

(A) all specification information printed on the pipe;

(B) the total length;

(C) a citation to the applicable joining procedures used for the pipe and the fittings; and

(D) the location of the installation to distinguish the end points. A pipeline segment is defined as a continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change.

(c) Plastic pipe inventory report. Beginning March 15, 2005, and annually thereafter, each operator shall report to the Commission the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe shall be determined by a review of the records of the operator and shall be reported on Form PS-81, Plastic Pipe Inventory. The report shall include the following:

(1) system;

(2) miles of pipe;

(3) calendar year of installation;

(4) nominal pipe size;

(5) material designation code;

(6) pipe category; and

(7) pipe manufacturer.

(d) Electronic format required. Operators of systems with more than 1,000 customers shall file the reports required by this section electronically in a format specified by the Commission.

(e) Report forms; signature required. Operators shall complete all forms required to be filed in accord with this section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

§8.230. School Piping Testing.

(a) Purpose. The purpose of this section is to implement the requirements of Texas Utilities Code, §§121.5005-121.507, relating to the testing of natural gas piping systems in school facilities.

(b) Procedures. Natural gas suppliers shall develop procedures for:

(1) receiving written notice from a person responsible for a school facility specifying the date and result of each test as provided by subsection (c) of this section.

(2) terminating natural gas service to a school facility in the event that:

(A) the natural gas supplier receives notification of a hazardous natural gas leak in the school facility piping system pursuant to this rule; or

(B) the natural gas supplier does not receive written notification specifying the date that testing has been completed on a school facility as provided by subsection (c) of this section, and the results of such testing.

(3) A natural gas supplier may rely on a written notification complying with this rule as proof that a school facility is in compliance with Texas Utilities Code, §§121.5005-121.507, and this rule.

(4) A natural gas supplier shall have no duty to inspect a school facility for compliance with Texas Utilities Code, §§121.5005-121.507.

(c) Testing.

(1) A natural gas piping pressure test performed under a municipal code in compliance with paragraph (4) of this subsection shall satisfy the testing requirements.

(2) A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure shall be performed as follows:

(A) For systems on which the normal operating pressure is less than 0.5 psig, the test pressure shall be 5 psig and the time interval shall be 30 minutes.

(B) For systems on which the normal operating pressure is 0.5 psig or more, the test pressure shall be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval shall be 30 minutes.

(C) A pressure test using normal operating pressure shall be utilized only on systems operating at 5 psig or greater, and the time interval shall be one hour.

(3) The testing shall be conducted by:

(A) a licensed plumber;

(B) a qualified employee or agent of the school who is regularly employed as or acting as a maintenance person or maintenance engineer; or

(C) a person exempt from the plumbing license law as provided in Texas Civil Statutes, Article 6243-101, §3.

(4) The testing of public school facilities shall occur as follows:

(A) for school facilities tested prior to the beginning of the 1997-1998 school year, at least once every two years thereafter before the beginning of the school year;

(B) for school facilities not tested prior to the beginning of the 1997-1998 school year, as soon as practicable thereafter but prior to the beginning of the 1998-1999 school year and at least once every two years thereafter before the beginning of the school year;

(C) for school facilities operated on a year-round calendar and tested prior to July 1, 1997, at least once every two years thereafter; and

(D) for school facilities operated on a year-round calendar and not tested prior to July 1, 1997, once prior to July 1, 1998, and at least once every two years thereafter.

(5) The testing of charter and private school facilities shall occur at least once every two years and shall be performed before the beginning of the school year, except for school facilities operated on a year-round calendar, which shall be tested not later than July 1 of the year in which the test is performed. The initial test of charter and private school facilities shall occur prior to the beginning of the 2003-2004 school year or by August 31, 2003, whichever is earlier.

(6) The firm or individual conducting the test shall immediately report any hazardous natural gas leak as follows:

(A) in a public school facility, to the board of trustees of the school district and the natural gas supplier; and

(B) in a charter or private school facility, to the person responsible for such school facility and the natural gas supplier.

(7) The school pipe testing shall be recorded on Railroad Commission Form PS-86.

(d) Records. Natural gas suppliers shall maintain for at least two years a listing of the school facilities to which it sells and delivers natural gas as well as copies of the written notification regarding testing, Form PS-86, and hazardous leaks received pursuant to Texas Utilities Code, §§121.5005- 121.507, and this rule.

§8.235. Natural Gas Pipelines Public Education and Liaison.

(a) - (d) (No change.)

(e) Proximity to public school. Each owner or operator of a natural gas pipeline or natural gas pipeline facility any part of which is located within 1,000 feet of a public school building or public school recreational area shall notify the Commission by filing with the Safety [~~Gas Services~~] Division [~~, Pipeline Safety Section,~~] the following information:

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

(f) (No change.)

§8.245. Penalty Guidelines for Pipeline Safety Violations.

(a) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

(b) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(c) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(d) Typical penalties. Typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions are set forth in Table 1.
Figure: 16 TAC §8.245(d)

(e) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; result from the reckless or intentional conduct of the person charged; or involve a person with a history of prior violations, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.
Figure: 16 TAC §8.245(e)

(f) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by- case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §8.245(f)
Figure 2: 16 TAC §8.245(f)

(g) Penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(h) Demonstrated good faith. In determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

(i) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §8.245(i)

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

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS PIPELINES ONLY

16 TAC §8.301, §8.305

The Commission proposes the new sections and the amendments to current rules in Chapter 8, Subchapter D, under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; and Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101, and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments in Chapter 8, Subchapter D.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101, and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on April 23, 2004.

§8.301. Required Records and Reporting.

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, the operator shall report to the Commission as follows.

(1) Incidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify the Division, which shall notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following discovery of the incident (within two hours) and include the following information:

(i) company/operator name;

(ii) location of leak or incident;

(iii) time and date of accident/incident;

(iv) fatalities and/or personal injuries;

(v) phone number of operator;

(vi) other significant facts relevant to the accident or incident.

(B) within 30 days of discovery of the incident, submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator shall also file duplicate copies of the required Department of Transportation form with the Division.

(2) Hazardous liquids, other than crude oil, and carbon dioxide. For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) notify the Division of such incident by telephone at the earliest practicable moment following discovery (within two hours); and

(B) within 30 days of discovery of the incident, file in duplicate with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile.

(b) Annual report. Each operator shall file with the Commission an annual report on Form PS-45 listing line sizes and lengths, hazardous liquids or carbon dioxide being transported, and accident/failure data. The report shall be filed with the Commission on or before March 15 of a year for the preceding calendar year reported.

(c) Facility response plans. Simultaneously with filing either an initial or a revised facility response plan with the United States Department of Transportation, each operator shall submit to the Division a copy of the initial or revised facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast.

§8.305. Corrosion Control Requirements.

Operators shall comply or ensure compliance with the following requirements for the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

(1) Atmospheric corrosion control. Each aboveground pipeline or portion of pipeline exposed to the atmosphere shall be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections shall not exceed five years; for offshore pipelines, reevaluations shall be required at least once each calendar year, with intervals not to exceed 15 months.

(2) Coatings. All coated pipe used for the transport of hazardous liquids or carbon dioxide shall be electrically inspected prior to placement using coating deficiency (holiday) detectors to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

(3) Installation. Joints, fittings, and tie-ins shall be coated with materials compatible with the coatings on the pipe.

(4) Cathodic protection test stations. Each cathodically protected pipeline shall have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations shall include but are not limited to pipe casing installations and all foreign metallic cathodically protected structures. Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected to give representative pipe-to-soil readings. Readings taken at test stations (electrode locations) over or near one or more anodes shall not, by themselves, be considered representative.

(A) All test lead wire attachments and bared test lead wires shall be coated with an electrically insulating material. Where the pipe is coated, the insulation of the test lead wire material shall be compatible with the pipe coating and wire insulation.

(B) Cathodic protection systems shall meet or exceed the minimum criteria set forth in Criteria For Cathodic Protection of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

(5) Monitoring and inspection.

(A) Each cathodic protection rectifier or impressed current power source shall be inspected at least six times each calendar year, with intervals not to exceed 2 1/2 months, to ensure that it is operating properly.

(B) Each reverse-current switch, diode, and interference bond whose failure would jeopardize structure protection shall be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2 1/2 months. Each remaining interference bond shall be checked at least once each calendar year, with intervals not to exceed 15 months.

(C) Each operator shall utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel shall be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator shall conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

(6) Remedial action. Each operator shall take prompt remedial action to correct any deficiencies observed during monitoring.

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 April 23, 2004.

TRD-200402739
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-1295

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PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS
SUBCHAPTER C. HORSE RACETRACKS
DIVISION 4. OPERATIONS

16 TAC §309.293

The Texas Racing Commission proposes an amendment to §309.293, relating to the head numbers on a racehorse during a thoroughbred meet. The proposed amendment allows the association the option to use or not use head numbers on a race horse during a thoroughbred meet. The proposal was presented to the Commission as a petition for rulemaking by Lone Star Park at Grand Prairie.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the proposed amendment is in effect the anticipated public benefit will be to enhance the economic benefits of pari-mutuel racing to racetracks, by reducing costs of operation. There is no economic cost to an individual required to comply with the proposal. The proposal has a no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06 which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel ractracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.293. Saddle Cloth.

(a) An association shall provide a saddle cloth and head number to each horse scheduled in a race except in a thoroughbred race where the head number may optionally be provided. The saddle cloth must have a number printed on the side that is large enough to be read clearly from the stewards' stand and the photofinish tower.

(b) (No change.)

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

Filed with the Office of the Secretary of State on April 19, 2004.

TRD-200402592
Nicole Galwardi
General Counsel
Texas Racing Commission
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 490-4009

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TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1035

The Texas Education Agency (TEA) proposes an amendment to §61.1035, concerning assistance with payment of existing debt. This proposed amendment replaces an earlier version that was filed as proposed in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11462), which has been withdrawn.

Like the earlier version, the proposed amendment modifies eligibility for the Existing Debt Allotment (EDA) based on changes to statutory language, in accordance with House Bill 3459, 78th Texas Legislature, 2003. Several of the proposed changes are intended to clarify which bond payments are eligible for state assistance and the limitations on that assistance in the EDA program and to specify the required supporting documentation. Another proposed change clarifies the requirements related to local tax effort.

Through 19 TAC §61.1035, adopted to be effective December 12, 1999, the commissioner exercised rulemaking authority relating to assistance with payment of existing debt. The current provisions include the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt. House Bill 3459 modified Texas Education Code (TEC), Chapter 46, changing the eligibility criteria for the Existing Debt Allotment. The proposed amendment to 19 TAC §61.1035 modifies language describing the eligibility criteria needed to reflect the legislative change as well as providing several additional clarifications. This proposed amendment provides more specifications related to eligible bond payments, limitations on adjustments, and required supporting documentation than the previous withdrawn version. These additional changes are the result of the process to update the information the agency maintains about school district bonds.

Language is added in subsection (a)(1) to specify that payment on bonds must have been made on or before August 31, 2003, in order to meet eligibility criteria. Language is also added to this subsection to specify the required supporting documentation needed to demonstrate EDA eligibility. A new subsection (a)(3) is added to clarify that state assistance applies to bond payments made between September 1 and August 31 of each year. Existing subsection (a)(3) is renumbered accordingly.

Language in subsection (b)(1)(D) is modified to clarify the application of excess tax collections in order to simplify the process and eliminate a report that has been required of school districts. Language is also added in subsection (b)(3) to clarify the application of excess tax collections as well as Interest and Sinking (I&S) fund taxes.

Language is added to subsection (c)(1)(A) and (B) to clarify the calculation of the existing debt tax rate (EDTR) during the last fiscal year of a biennium.

New language is added as subsection (d)(2)(C) to limit adjustments to prior year allotments.

Language is added to subsection (f)(1) to clarify which documents are necessary to verify the debt service attributed to eligible refunded bonds. Language is added to subsection (f)(4) to clarify the limitation on the total debt service eligible for state assistance.

Joe Wisnoski, deputy associate commissioner for school finance and fiscal analysis, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. The statutory changes will increase the state aid to local school districts for the EDA.

Mr. Wisnoski has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the clarification of which debt is eligible for state assistance through EDA and the calculation of the limits on that assistance. The proposed amendment also clarifies the application of local school district taxes for the purpose of meeting local share requirements. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §46.031 and §46.061, which authorize the commissioner of education to adopt rules for the administration of TEC, Chapter 46, Subchapter B, Assistance with Payment of Existing Debt, and to by rule provide for the payment of state assistance under TEC, Chapter 46, to refinance school district debt.

The amendment implements the Texas Education Code, §§46.031, 46.032, 46.033, 46.034, 46.035, 46.036, and 46.061.

§61.1035. Assistance with Payment of Existing Debt.

(a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).

(1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC), Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. The district must have made a payment on the bonds on or before August 31, 2003. Lease-purchase arrangements authorized by Local Government Code, §271.004, are not eligible. Payments demonstrating eligibility for the EDA must appear on the debt service schedule contained in the final official statement or bond order.

(2) Eligible debt does not include any portion of an existing obligation that has been approved for financial assistance with the Instructional Facilities Allotment (IFA) as defined in §61.1032 of this title (relating to Instructional Facilities Allotment), in accordance with TEC, Chapter 46.

(3) Eligible bond payments include regularly scheduled principal and interest payments that are made between September 1 and August 31 each year.

(4) [~~(3)~~] Certain other refinanced debt may be eligible for funding under this subsection.

(A) A lease purchase refunded with a general obligation bond shall be eligible for consideration for the EDA in future years based on the date of payment on the new bond and the limits on tax rates that apply.

(B) Any portion of a bond issue that refinances a portion of an original lease-purchase arrangement that was eligible for IFA consideration but exceeded the IFA limit shall be eligible for consideration in future years pursuant to this subsection based on the date of first payment on the new bond and the limits on tax rates that apply.

(C) If a lease purchase that is not funded in the IFA program is refinanced with a general obligation bonded debt, the bonded debt shall gain eligibility for the EDA by the terms of the EDA program. Any Interest and Sinking (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the EDA. Qualification pursuant to this subsection shall be according to the terms of the program, including the date of first payment on the bond and the relevant tax rate limitation.

(D) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of funding consideration pursuant to the EDA.

(b) Qualifying debt service. Certain district revenues may qualify to meet the local share requirement of the EDA when computing state assistance amounts.

(1) I&S fund taxes collected in the current school year may qualify toward meeting the local share requirement of the EDA. In addition, other district funds budgeted for the payment of bonds may qualify to meet the EDA local share requirements.

(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.

(B) Funds budgeted by a district for payment of eligible bonds may include Maintenance and Operations (M&O) taxes collected in the current or previous school year that are in excess of amounts used to generate other state aid.

(C) The commissioner of education will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.

(D) The [~~Districts must inform the~~] commissioner of education will determine the amount of excess collections, [~~amounts,~~] if any, to be applied to the EDA local share requirement [~~, if such contributions are derived from current or preceding year tax collections not equalized by state assistance~~].

(2) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the final statement stipulates the requirements of the I&S fund and the bond covenant.

(3) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible

for EDA state aid for that school year [~~debts~~], second to satisfy the local share requirements of any IFA debts for that school year, and lastly to excess taxes that may raise the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.

(4) Computation of state aid in the EDA program for a variable rate bond shall be based on the minimum payment requirement. A district may receive such state aid for payment on a variable rate bond in excess of the minimum payment requirement as long as the additional amount meets certain conditions.

(A) The payment is necessary to meet the computed interest costs for the year.

(B) The amount shall not exceed the applicable limit for debt established pursuant to TEC, §46.034(b).

(C) The district shall notify the commissioner of education of its intent prior to the adoption of the district's tax rate for debt service for the applicable year.

(5) A district may exercise its ability to make payments in excess of the minimum payment required but the excess amount shall not be used in determining the limit on the existing debt tax rate (EDTR) or in the calculation of state assistance in that year.

(6) Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the official statement. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

(c) Limits on assistance. The amount of state assistance is limited by the lesser of a calculated EDTR for eligible debt or an appropriated debt tax limit.

(1) The calculated EDTR is a rate determined with the debt limit resulting from the lesser of calculations specified in subparagraphs (A) or (B) of this paragraph.

(A) EDTR may be calculated as the I&S fund taxes collected for eligible bonds for the last fiscal year of the preceding state fiscal biennium divided by the property value used for state funding purposes in that year, then multiplied by 100.

(B) EDTR may be calculated as the current year debt service payment on eligible bonds divided by the product of the current year average daily attendance (ADA) multiplied by $35, then divided by $100.

(2) The EDTR used in the funding formula cannot exceed the appropriated limit ($.29).

(3) For purposes of computing EDTR, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.

(d) Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner of education.

(1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the Comptroller of Public Accounts for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds. Districts will supply information about budgeted taxes in July on a data collection survey.

(2) A final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and collection amounts for eligible debt are available. This determination will also take into account, if applicable, a reduced property value that reflects either a rapid decline pursuant to TEC, §42.2521, or a grade level adjustment pursuant to TEC, §42.106.

(A) Any additional amounts owed will be paid as soon as practicable after the final determination is made.

(B) Any overpayment will be subtracted from the EDA in the subsequent year. If no such assistance is due in the subsequent school year, the Foundation School Fund will be reduced accordingly. If no payments are due from the Foundation School Fund, the district will be notified about the overpayment and must remit that amount to the Texas Education Agency (TEA) no later than three weeks after notification.

(C) Adjustments to state assistance based on changes in the final counts of ADA or changes to a district's property value must be requested no later than three years following the close of the school year for which the adjustment is sought.

(e) Deposit and uses of funds.

(1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.

(2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.

(f) Refinancing of eligible debt.

(1) A district that refinances eligible debt in part or in full must inform the TEA's division responsible for state funding in writing and must provide appropriate documentation related to the refinancing , including payment schedules for the refunded debt that clearly identify the bonds being refunded and the debt service attributable to the refunded bonds, if available. State aid payments for EDA will not be processed until these documents have been received by the TEA division responsible for state funding.

(2) The portion of the debt eligible for state assistance on refunded bonds is subject to the same limits as eligible debt that has not been refinanced.

(3) If a refunding pricing of a district decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.

(4) If a refunding pricing of a district increases the bond payment requirement, the amount of increase shall not be used to determine state aid unless the pricing took place prior to January 1 of the last fiscal year of the preceding state fiscal biennium. The total debt service eligible for state assistance will be limited to the district's total debt service prior to January 1 of the last fiscal year of the preceding state fiscal biennium.

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 April 26, 2004.

TRD-200402752

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 104, §104.1, concerning continuing education requirements for dentists and dental hygienists. The amendments are proposed to require that dentists and dental hygienists take an additional 3 hours of continuing education in the area of jurisprudence, to be completed every three years. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

There are no other substantive changes to the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The public benefit anticipated as a result of enforcing or administering the section will be an increased awareness on the part of licensees of the laws and regulations governing the practice of dentistry.

The impact on large, small or micro-businesses will be negligible, limited to the costs associated with taking the course.

The anticipated economic cost to persons as a result of enforcing or administering the section is negligible, and is limited to the costs associated with taking the course.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and §257.005 of the Occupations Code, which requires that the Board develop a continuing education program for dentists and dental hygienists.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101-125.

§104.1. Requirement.

As a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

~~[(1) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.]~~

(1) [~~(2)~~] Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Continuing Education Providers). A licensee who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Continuing Education Committee.

(A) Such requests must be in writing and submitted to and approved by the Continuing Education Committee prior to the expiration of the annual period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in [~~paragraph (5) of~~] this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include residence outside the United States, unanticipated financial or medical hardships, or other extraordinary circumstances that are documented.

(D) Should the request be denied, the licensee must complete the requirements [~~as cited in paragraph (5)~~] of this section.

(2) Aside from courses taken to satisfy the jurisprudence requirement of §104.1(3) of this title, all coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(3) Effective January 1, 2005, each licensee shall complete three (3) hours of approved coursework in jurisprudence every three (3) years, in addition to the general 12 hour requirement.

(A) For the purposes of this section, "jurisprudence" refers to the body of statutes and regulations pertaining to and governing the licensee's practice, including relevant portions of the Texas Occupations Code, and the rules enacted by the Board.

(B) Coursework in jurisprudence may be through self-study or interactive computer courses, either of which must be verifiable and provided by those entities cited in §104.2 of this title.

(4) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

~~[(3) Examiners for the Western Regional Examining Board (WREB) will be allowed credit for no more than 6 hours annually, obtained from WREB's calibration and standardization exercise. This provision shall not apply to active board members.]~~

[(4) All 12 hours must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.]

(5) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) or in cardiopulmonary resuscitation (CPR) may not be considered in the 12-hour requirement.

(6) No more than 4 hours in any [12-hour] accumulation of coursework submitted for renewal purposes may be in self-study. These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

[(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.]

(7) [(8)] No more than 4 hours in any [a 12-hour] accumulation of coursework submitted for renewal purposes may be interactive computerized courses. These interactive computerized courses must be provided by those entities cited in §104.2 of this title. Examples of interactive computer courses include those that involve interactive dialogue through electronic linkage with an instructor in which manipulation of text or data by the licensee occurs.

(8) Examiners for the Western Regional Examining Board (WREB) will be allowed credit for no more than 6 hours annually, obtained from WREB's calibration and standardization exercise. This provision shall not apply to active board members.

(9) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(10) [(9)] Providers cited in §104.2 of this title will approve individual courses and/or instructors.

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 April 20, 2004.

TRD-200402633
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0972

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CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER B. SANITATION AND INFECTION CONTROL

22 TAC §108.25

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.25, concerning dental health care workers.

The amendment adds subsection (e), which recommends that all dental health care workers receive a tuberculin skin test annually or on discovery of exposure, and encourages compliance with guidelines for tuberculosis testing and control recommended by the Centers For Disease Control and the Texas Department of Health.

There are no other substantive changes to the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be to increase awareness and participation among dental health care workers in testing as a means for controlling the spread of tuberculosis, which is a persistent problem in certain areas of Texas.

The impact on large, small or micro-businesses will be negligible, since the additional language is suggestive and not mandatory. Those businesses that choose to adopt the recommended precautions may incur marginal costs for testing, and those employing individuals that discover they test positively may incur costs associated with accommodating the condition of those individuals, as may be required.

The anticipated economic cost to persons as a result of enforcing or administering the section also depends on the level of compliance with the rule's suggestions. Those individuals that choose to adopt the recommended precautions may incur marginal costs for testing, and those individuals that discover they test positively may incur costs for further testing and treatment.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 108.

§108.25. Dental Health Care Workers.

(a) All dental health care workers shall comply with the universal precautions, as recommended for dentistry by the Centers for Disease Control and required by THSC, §85.202, et seq, 1991, as amended, in the care, handling, and treatment of patients in the dental office or other setting where dental procedures of any type may be performed.

(b) All dental health care workers who have exudative lesions or weeping dermatitis shall refrain from contact with equipment, devices, and appliances that may be used for or during patient care, where such contact holds potential for blood or body fluid contamination, and shall refrain from all patient care and contact until condition(s) resolves unless barrier techniques would prevent patient contact with the dental health care worker's blood or body fluid.

(c) A dental health care worker(s) who knows he/she is infected with HIV or HBV and who knows he/she is HbeAg positive shall report his/her health status to an expert review panel, pursuant to provisions of THSC, §85.204, et seq, 1991, as amended.

(d) A dental health care worker who is infected with HIV or HBV and is HbeAg positive shall notify a prospective patient of the dental health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure performed by the notifying dental health care worker.

(e) All dental care workers should receive a tuberculin skin test at least annually, or if it is discovered they have been exposed. The Board encourages compliance with the guidelines for tuberculosis testing and control recommended by the Centers For Disease Control and the Texas Department of Health.

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 April 21, 2004.

TRD-200402654
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0972

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.11

The Texas State Board of Dental Examiners (Board) proposes new §114.11, concerning exemption from dental assistant registration. The new section is proposed to clarify the enactment of certain requirements imposed by Senate Bill 263, §25, 78th Legislature, requiring that dental assistants that make x-rays be registered to do so.

Specifically, the proposed language would exempt from the registration requirement individuals who are only performing radiological procedures for training or educational purposes, under proper supervision. The exemption under the proposed section for an individual performing radiological procedures as part of on-the-job training is limited to 180 days in duration. This allowance is consistent with that allowed in the current dental assistant registration rules.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there is little to no public benefit anticipated as a result of enforcing or administering the section.

The impact on large, small or micro-businesses will be significant. The measure will allow a substantial time period for new or currently non-certified dental assistants to receive on-the-job training prior to taking the examinations required to receive a certificate of registration, improving the chances of examination success. The extra time will also allow potential registrants and their employers sufficient time to plan for any work time to be lost to take the examinations, and will prevent employers from being immediately without assistance in taking radiographs.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §25, 78th Legislature, requiring that dental assistants that make x-rays be registered to do so.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§114.11. Exemption.

(a) A dental assistant will not be considered to be positioning, exposing, or otherwise making dental x-rays if the dental assistant only performs radiological procedures:

(1) In the course of training or for other educational purposes; and,

(2) Is at all times under the direct supervision of the employer dentist.

(b) A dental assistant performing radiological procedures under this section in the course of on-the-job training may only do so for a period of 180 days.

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 April 21, 2004.

TRD-200402657
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 475-0972

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.9, Applications. The proposed amendments are necessary to implement provisions of SB-1013, 78th Legislature, Regular Session, which amended the Texas Appraiser Licensing and Certification Act (Chapter 1103, Occupations Code). The proposed amendment adopts by reference forms used by a licensee to submit the $200 fee for an extension of time to complete continuing education, to submit the $50 fee to be placed on inactive status, and a $50 fee for returning to active status.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Thorburn also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of these changes will be to permit licensees to submit forms enabling licensees to extend the time for completing continuing education, to become "inactive" and to regain active status again. There will be no effect on small businesses. The cost to individuals will be $200 with an Extension Request Form; $50 with a Request for Inactive Status Form (For Currently Certified or State Licenses Appraiser); $50 with a Request for Inactive Status Form (For an Expired Licensee - Not for Provisional Licensee); and $50 with a Request for Active Status Form.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

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

§153.9. Applications.

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) - (8) (No change.)

(9) Supplement to Application for Appraiser Certification or Licensing by Reciprocity; [~~and~~]

(10) Extension of Non-Resident Temporary Practice Registration; [~~.~~]

(11) Extension Request Form (For Residential/General Certified and State Licensed Appraisers);

(12) Extension Request Form (For an Provisional Licensee);

(13) Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers);

(14) Request for Inactive Status Form (For an Expired Licensee - Not for Provisional Licensee); and

(15) Request for Active Status Form.

(c) - (h) (No change.)

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402759
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 465-3950

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2821

The Texas Department of Insurance proposes amendments to §21.2821 concerning reporting requirements for pharmacy claims. The proposed amendments are necessary to implement the provisions of Senate Bill (SB) 418, 78th Regular Legislative Session, by ensuring that the department receives complete and accurate information concerning all types of health care claims subject to prompt pay. In addition to all other penalties or remedies authorized by the Insurance Code, SB 418 also allows for administrative penalties against carriers that are noncompliant in processing more than two percent of clean claims, including electronically submitted, affirmatively adjudicated pharmacy claims. The department originally adopted reporting rules on September 9, 2003, and subsequently informed carriers by bulletin that rules specific to reporting of pharmacy claims would be proposed at a later date. Section 21.2821 generally imposes reporting requirements on carriers subject to prompt pay rules, and the proposed amendments are necessary to address how those reporting rules apply to electronically submitted, affirmatively adjudicated pharmacy claims.

Kimberly Stokes, Senior Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed amendments will be the department's receipt of all information required to be evaluated by SB 418 in order to accurately assess carriers' compliance with the statute and associated rules. The probable economic cost to persons required to comply with the proposed amendment is the result of SB 418 and not the result of the adoption, administration or enforcement of this section. The reporting requirements that relate to payment of pharmacy claims are required by SB 418,

which states that a carrier that violates the claims payment provisions in processing more than two percent of clean claims is subject to an administrative penalty, and requires the department to compute a compliance percentage for clean claims. Because §21.2821 was originally adopted in 2003, the proposed amendments may involve data gathering and reporting practices or procedures that are currently in use and would allow an HMO or preferred provider carrier to make use of existing procedures. The same cost considerations apply regardless of the size of the carrier. It is neither legal nor feasible to waive the requirements of the section for small or micro-businesses as the statute requires the department to assess a compliance percentage for each HMO or preferred provider carrier in the state.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 7, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code Article 3.70-3C §3I(k), and §§843.342(k) and 36.001. Article 3.70-3C §3I(k) and §843.342(k) require the department to assess an insurer's or health maintenance organization's prompt pay compliance in processing submitted clean claims and grants the department the authority to subject such entities to an administrative penalty if violations involve the processing of more than two percent of submitted clean claims. 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 provisions are affected by this proposal: Insurance Code Article 3.70-3C, §3I(k) and §843.342(k)

§21.2821. Reporting Requirements.

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

(d) The report required by subsection (a) of this section shall include, at a minimum, the following information:

(1) - (16) (No change.)

(17) number of certifications of catastrophic events sent to the department; [~~and~~]

(18) number of calendar days business was interrupted for each corresponding catastrophic event;[~~.~~]

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the HMO or preferred provider carrier from non-institutional providers;

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the HMO or preferred provider carrier from institutional providers;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims from non-institutional providers paid within the 21-day statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims from institutional providers paid within the 21-day statutory claims payment period;

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims from non-institutional providers paid on or before the 45th day after the end of the 21-day statutory claims payment period;

(24) number of electronically submitted, affirmatively adjudicated pharmacy claims from institutional providers paid on or before the 45th day after the end of the 21-day statutory claims payment period;

(25) number of electronically submitted, affirmatively adjudicated pharmacy claims from non-institutional providers paid on or after the 46th day and before the 91st day after the end of the 21-day statutory claims payment period;

(26) number of electronically submitted, affirmatively adjudicated pharmacy claims from institutional providers paid on or after the 46th day and before the 91st day after the end of the 21-day statutory claims payment period;

(27) number of electronically submitted, affirmatively adjudicated pharmacy claims from non-institutional providers paid on or after the 91st day after the end of the 21-day statutory claims payment period; and

(28) number of electronically submitted, affirmatively adjudicated pharmacy claims from institutional providers paid on or after the 91st day after the end of the 21-day statutory claims payment period.

(e) (No change.)

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402756
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 463-6327

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SUBCHAPTER CC. ELECTRONIC HEALTH CARE TRANSACTIONS

28 TAC §21.3701

The Texas Department of Insurance proposes new Subchapter CC, §21.3701, concerning waiver of electronic filing requirements. The new section is necessary to implement the provisions of Senate Bill (SB) 418, 78th Regular Legislative Session. Specifically, SB 418 added Insurance Code Article 21.52Z, which ensures that carriers that wish to implement an electronic filing requirement for contracted physicians and providers include a process by which a physician or provider may seek a waiver of the requirement. Proposed §21.3701 identifies the criteria that must be used by a carrier in considering a physician's or provider's request for a waiver of a carrier's electronic filing requirements. The proposed section addresses the statutory opportunity for appellate review by the Commissioner by providing a procedure for appeal to the Deputy Commissioner of the HMO Division and ultimately to the Senior Associate Commissioner of Life, Health and Licensing in the event that a carrier does not

grant a waiver or imposes restrictions, conditions or limitations on a waiver.

Kimberly Stokes, Senior Associate Commissioner of Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be a set of standards by which a physician's or provider's request for waiver of electronic filing requirements may be fairly assessed and determined, along with a procedure by which appeals from waiver determinations will be rendered.

The probable economic costs to persons required to comply with the proposed section are primarily a result of SB 418. The statute specifically allows carriers to require health care providers to submit a claim electronically. It also requires the Commissioner to establish certain named circumstances under which waiver is required, and allows physicians or providers that have been denied waivers or issued waivers with restrictions, conditions or limitations the opportunity to appeal to the Commissioner. Detailed requirements contained in the proposed section alleviate any potential costs associated with requesting an appeal that are in addition to those required by statute. A physician, provider or carrier that decides to request an appeal to the Deputy Commissioner of the HMO Division or request reconsideration of that appeal determination to the Senior Associate Commissioner of Life, Health and Licensing may choose to attend a hearing at the department or participate in a hearing via telephone. The same cost considerations apply regardless of the size of the carrier. It is neither legal nor feasible to waive the requirements of the section for small or otherwise disadvantaged health care professionals or facilities as the Legislature specifically designed the statute to support small or otherwise disadvantaged businesses by granting them access to the electronic waiver process. It is also neither legal nor feasible to waive the requirements of the section for carriers that might be small or micro-businesses because the statute applies to all carriers who choose to require electronic filing.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 7, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code Article 21.52Z, and §§31.041 and 36.001. Article 21.52Z requires that a contract between the issuer of a health benefit plan and a health care professional or health care facility provide for a waiver of any electronic submission requirement established under the article, and it allows the Commissioner to adopt necessary implementation rules. Also, the article specifies that any health care professional or health care facility that is denied a waiver by a health benefit plan may appeal the denial to the Commissioner, and the Commissioner shall determine whether a waiver must be granted. The role of the Deputy Commissioner of the HMO Division and the Senior Associate Commissioner of Life, Health and Licensing in the new section's appeal process stems from the Commissioner's authority, granted by Section 31.041, to delegate powers and duties to other personnel. 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 article is affected by this proposal: Insurance Code Article 21.52Z

§21.3701. Electronic Claims Filing Requirements.

(a) The purpose of this section is to implement Article 21.52Z of the Insurance Code. This section applies to a contract between an issuer of a health benefit plan and a health care professional or health care facility (hereinafter referred to as "physicians or providers").

(b) Consistent with Insurance Code Article 21.52Z and this section, the issuer of a health benefit plan may, by contract, require physicians and providers to electronically submit the following:

(1) health care claims or equivalent encounter information;

(2) referral certifications; and/or

(3) any authorization or eligibility transactions.

(c) An issuer of a health benefit plan must give 90 calendar days written notice prior to requiring electronic filing of any information described in subsection (b) of this section.

(d) A contract between the issuer of a health benefit plan and a physician or provider that requires electronic submission of any information described in subsection (b) of this section shall include a provision stating that in the event of a systems failure, or a catastrophic event as defined in §21.2803 of this title (relating to Definitions), that substantially interferes with the business operations of the physician, provider or issuer of the health benefit plan, the physician or provider may submit non-electronic claims in accordance with the requirements in this subchapter. A physician or provider shall provide written notice of the physician's or provider's intent to submit non-electronic claims to the issuer of the health benefit plan within five calendar days of the catastrophic event or systems failure.

(e) A contract between the issuer of a health benefit plan and a physician or provider that requires electronic submission of the information described in subsection (b) of this section shall include a provision allowing for a waiver of the electronic submission requirements in the following circumstances:

(1) No method available for the submission of claims in electronic form. This exception applies to situations in which the federal standards for electronic submissions (45 C.F.R., Parts 160 and 162) do not support all of the information necessary to process the claim.

(2) The operation of small physician and provider practices. This exception applies to those physicians and providers with fewer than ten full-time-equivalent employees, consistent with 42 C.F.R. §424.32(d)(1)(viii).

(3) Demonstrable undue hardship, including fiscal or operational hardship.

(4) Any other special circumstances that would justify a waiver.

(f) The physician's or provider's request for waiver must be in writing and must include documentation supporting the issuance of a waiver.

(g) Upon receipt of a request for a waiver from a physician or provider, the issuer of a health benefit plan shall, within 14 calendar days, issue or deny a waiver.

(h) A waiver or denial of a waiver must be issued in writing to the requesting physician or provider. A written waiver shall contain any restrictions, conditions or limitations related to the waiver. A written denial of a request for a waiver or the issuance of a qualified or conditional waiver shall include the reason for the denial or any restrictions, conditions or limitations, and notice of the physician's or provider's right to appeal the determination to the Texas Department of Insurance.

(i) A physician or provider that is denied a waiver of the electronic submission requirements, or granted a waiver with restrictions, conditions or limitations, may, within 14 calendar days of receipt, appeal the waiver determination. The request for appeal and accompanying documentation shall be sent to the Deputy Commissioner of the HMO Division at P.O. Box 149104, Austin, Texas 78714-9104 and to the issuer of the health benefit plan. The information shall include:

(1) the physician's or provider's initial request for a waiver sent to the issuer of the health benefit plan, including the documentation required by subsection (f) of this section;

(2) the waiver determination received from the issuer of the health benefit plan;

(3) any additional documentation supporting issuance of a waiver or removal of restrictions, conditions or limitations of a granted waiver; and

(4) any additional information necessary for the determination of the appeal.

(j) Upon receipt of notice of a request for appeal under this section, an issuer of a health benefit plan shall, within 14 calendar days, submit to the Deputy Commissioner of the HMO Division and to the physician or provider:

(1) documentation supporting the waiver determination to the physician or provider; and

(2) any additional information necessary for the determination of the appeal.

(k) The Deputy Commissioner of the HMO Division may request additional information from either party and may request the parties to appear at a hearing. Either party may choose to attend a hearing conducted at the department or participate in a hearing via telephone.

(l) Upon receipt of all information required by subsections (i) and (j) of this section, the Deputy Commissioner of the HMO Division shall issue a determination within 14 calendar days of the later of the receipt of all necessary information or the conclusion of the hearing.

(m) Either party may request a hearing before the Senior Associate Commissioner of the Life, Health and Licensing Program for reconsideration of the Deputy Commissioner of the HMO Division's determination. Either party may choose to attend a hearing conducted at the department or participate in a hearing via telephone. A request for reconsideration must be received by the Senior Associate Commissioner at P.O. Box 149104, Austin, Texas 78714-9104 within 14 calendar days of receiving notice of the appeal determination.

(n) The issuer of a health benefit plan may not refuse to contract or to renew a contract with a physician or provider based in whole or in part on the physician or provider requesting or receiving a waiver, appealing a waiver determination, or requesting reconsideration of an appeal determination under this section.

(o) This section applies to:

(1) a contract between a physician or provider and an issuer of a health benefit plan that requires electronic submission of the information described in subsection (b) of this section and entered into or renewed on or after July 1, 2004; and

(2) existing contracts to the extent that any contract provisions related to electronic submission of the information described in subsection (b) of this section are made applicable to a physician or provider on or after July 1, 2004.

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 April 26, 2004.

TRD-200402755
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 463-6327

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CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS
SUBCHAPTER D. HEALTH GROUP COOPERATIVES

28 TAC §§26.401 - 26.413

The Texas Department of Insurance proposes new Subchapter D, §§26.401 - 26.413 concerning the establishment of, and provision of health insurance coverage to, health group cooperatives pursuant to Senate Bill (SB) 10, 78th Regular Legislative Session. That legislation added special provisions to Chapter 26, Texas Insurance Code, allowing the formation of such cooperatives and establishing the standards by which carriers provide group health insurance coverage to health group cooperatives comprised of small employers or, at the option of the cooperative, both small and large employers. SB 10 is designed to address small employers' need for access to healthcare by allowing them to join with other employers on a cooperative basis to obtain health coverage for the cooperative as a single entity. To further achieve this purpose, it also allows for greater flexibility in the plans that may be written through cooperatives by making those plans not subject to state mandated benefits relating to a particular illness, disease, or treatment, or to a state law that regulates the differences in rates applicable to services provided within or outside a health benefit plan network. These new sections are necessary to facilitate these purposes by establishing requirements governing the formation and operation of health group cooperatives, and the obligations of insurance companies and health maintenance organizations (HMOs)--hereinafter collectively "carriers"--that issue health insurance coverage for these entities. This proposal replaces a proposal that was published on January 9, 2003. That proposal has been withdrawn. This proposal includes a new §26.407, that clarifies that a carrier must provide evidence to the department of its intent to participate in the health group cooperative market and identify any limitations on its participation. The proposal also includes a new §26.412 concerning a carrier's refusal to renew coverage to health group cooperatives.

Proposed §26.401 prescribes the requirements for establishing a health group cooperative, including organization as a nonprofit corporation under applicable law and filing certain information with the department. Proposed §26.402 contains cooperative membership requirements, including a minimum membership of 10 participating employers, and a contractual commitment by each employer to purchase coverage for two years, except where the employer can demonstrate financial hardship. The proposal states that the contract between the employer and the cooperative may define financial hardship, but in the absence of a contractual definition, financial hardship occurs when the employer demonstrates that its premium costs, as a percentage of the employer's gross receipts, have increased by a factor of at least .50. Proposed §26.403 allows a cooperative, and its sponsoring entity, to engage in certain marketing activities related to membership and to provide information concerning the general availability of health coverage through the cooperative; however, all coverage issued through the cooperative must be issued through a licensed insurance agent. In arranging for coverage, a cooperative or its board of directors, employees or agents are not liable for failure to arrange for coverage of any particular illness, disease, or health condition.

Proposed §26.404 provides that a health group cooperative is considered a single employer for the purposes of benefit elections and other administrative functions, and a cooperative that is composed of only small employers is considered a small employer for all purposes of Insurance Code Chapter 26 and associated rules. A cooperative that is composed of both small and large employers may elect to extend to all of the large employer members the protections of Chapter 26 and its rules, although this election does not entitle the large employer members to guaranteed issuance of coverage through the cooperative.

Proposed §26.405 states that a carrier providing coverage through a health group cooperative is not subject to a premium or retaliatory tax for two years for previously uninsured employees or dependents, and defines "previously uninsured" to include individuals that lacked creditable coverage for 63 days preceding the effective date of the coverage purchased through the cooperative. A carrier must maintain documentation demonstrating an insured's qualification for the exemption. Proposed §26.406 requires a carrier offering coverage through a cooperative to use a standard presentation form for employer members that includes certain listed information about the cooperative and, if the health plan does not contain all state-mandated benefits, a written statement that lists the benefits not included, describes the nature and benefits of the plan, and provides notice that purchase of the plan may limit future coverage options. Proposed §26.407 requires carriers to make a filing with the commissioner indicating whether they choose to become health group cooperative carriers. Carriers that do choose to enter the health group cooperative market must include in their filings the information identified in §26.407(c).

Proposed §26.408 says that, subject to the provisions of §26.407, a carrier shall provide coverage to a cooperative in the carrier's geographic service area that requests coverage. However, a carrier may decline to offer coverage to a cooperative if the carrier is actively engaged in assisting an entity with the formation of a cooperative, as evidenced by a signed letter of agreement. Subject to the provisions of §26.407, a cooperative must provide for coverage to all employees that elect to be covered under any benefit plan offered through the cooperative, including all employees of a large employer that is a member of the cooperative. A carrier may not impose any other restrictions relating to this requirement.

Proposed §26.409 provides that a health benefit plan issued by an insurance carrier or an HMO through a cooperative is not subject to the state-mandated benefits listed in the proposed section. A plan issued by an HMO must include all basic health care services otherwise required by applicable law. Proposed §26.409 also states that a health plan offered by an insurer is not subject to §3.3704(a)(6) which requires that the basic level of coverage in a preferred provider plan may not be more than 30% less than the higher level of coverage. Proposed §26.410 provides for expedited approval of plans offered through health group cooperatives, allowing a carrier to file and use a plan pursuant to Art. 3.42(c) and associated rules, or to submit a filing for approval under Art. 3.42(d); the department shall approve or disapprove the latter filing within 40 days of receipt. An HMO evidence of coverage must be filed pursuant to the requirements of Subchapter F, Chapter 11, of this title and shall be approved or disapproved within 20 days of receipt.

Proposed §26.411 states that a carrier may provide coverage to only one cooperative in any county, unless the carrier is providing coverage in an expanded service area. A carrier may, by notice and certification to the department, provide health group cooperative coverage to an expanded service area that includes the entire state, and may apply for approval of an expanded service area that includes less than the entire state. The department has 60 days to approve or disapprove such filing. The ability to have expanded service areas will allow a carrier to provide service to more than one cooperative in a given county. Proposed §26.412 establishes the requirements that a carrier issuing coverage to a health group cooperative must satisfy prior to refusing to renew coverage to health cooperatives.

Proposed §26.413 requires a carrier that provides coverage to a cooperative to submit to the department, by March 1 of each year, certain information relating to coverage provided by the carrier for the previous calendar year. Such information includes number of plans issued or renewed to cooperatives during the year; number of Texas lives covered under those plans; number of small employer plans cancelled or voluntarily not renewed and the number of Texas lives covered under those plans and gross premiums received for coverage under those plans; the gross premiums received for newly issued and renewed health group cooperative health benefit plans covering Texas lives; number of cooperative plans that provided coverage to previously uninsured individuals and the number of previously uninsured persons that are covered under those plans; and the number of health benefit plans and lives covered under those plans, broken down by the first three digits of the five-digit ZIP Code of the employer's principal place of business.

Kimberly Stokes, Senior Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed sections will be in effect there will be no fiscal impact to local governments as a result of the enforcement or administration of the rule. There will be a fiscal impact to state government as the result of the two-year exemption from state retaliatory and premium tax for the premiums attributable to previously uninsured individuals who are covered by a health group cooperative plan; however, the decrease in revenue is dependent upon the number of insureds or enrollees who were previously uninsured, and therefore cannot be estimated. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be facilitating the creation of health group cooperatives and expediting the approval of health plans designed for such cooperatives, so as to make group insurance more advantageous for small employers, as well as for some large employers, than it might otherwise be if the employers were not purchasing the insurance collectively. This will optimally induce employers to continue to provide health insurance for their employees, and may also result in coverage for previously uninsured employees. Except as described in this cost note, any costs to persons required to comply with these sections for each year of the first five years the proposed sections will be in effect is the result of the enactment of SB 10 and not as a result of the adoption, enforcement, or administration of these sections. SB 10 requires the commissioner by rule to prescribe the standard presentation form that must be used by carriers offering coverage through a health group cooperative, and the proposed rule sets forth eight basic elements of information that must be included on the form. Adding other information is discretionary on the part of the carrier. The proposed rule requires the reporting of certain information that was not previously required to be reported. Because the required information for the standard presentation form and the information to be reported is easily accessible to, or developed by, the carrier, these requirements can be satisfied by using a carrier's existing resources. The department estimates the cost of a form to be between $.01-.04 per page, exclusive of postage or facsimile or electronic transmission. There may be variations in cost from carrier to carrier based on the number of counties or cooperatives they serve. But these costs would not vary between carriers that are large businesses and those that are small or micro-businesses. It would be neither legal nor feasible to exempt small or micro-businesses from this part of the rule, as to do so would deprive those carriers' insureds or enrollees of important consumer information concerning health insurance provided through health group cooperatives. The proposed rule also establishes a standard, to be used in the absence of a standard agreed upon in the contract between the parties, for determining a circumstance of financial hardship that would allow an employer to terminate coverage within the initial two-year period. While a particular standard for termination could conceivably have a financial impact on either a cooperative or a carrier, the provision in the proposal that allows parties to agree to their own standard by contract obviates the cost potential. Whether and to what extent the rule's proposed definition of financial hardship would have a cost impact would depend upon a number of variables, including size of the cooperative and premium costs and gross revenues of individual employers. Because the rule is designed primarily to address the needs of small employers (those with 2-50 employees)-a great number of which may meet the definition of small or micro-businesses under Government Code Chapter 2006-it would be neither legal or feasible to waive or modify the rule's requirements for the very groups the statute and the rule are designed to assist. Finally, the proposed reporting requirements may result in additional administrative expenses to carriers that write business through health group cooperatives. Costs will vary based upon the particular carrier's current computer system, existing method for capturing data, and types of plans offered. Despite these variances, all carriers will have to incur some initial costs to make certain changes to computer systems consistent with the reporting requirements. According to 2002 data from the U.S. Bureau of Labor Statistics Occupational Employment Statistics Survey, as reported by the Texas Workforce Commission, the mean hourly rate for a computer programmer in the insurance industry is $31.27. The amount of time necessary to implement system changes could vary from five to twenty hours based on such things as the size of the plans written by the carrier and the carrier's current data collection processes. However, as these reporting requirements are similar to those already required of employer carriers by Insurance Code Articles 26.71 and 26.91, and related rules at Texas Administrative Code §26.20, the actual cost of compliance may be lower. The same cost considerations would apply regardless of the size of the carriers; however, because of the importance of this legislation and the need for the department to collect data representing the experience of all carriers writing health plans through health group cooperatives, it is not feasible for the department to waive or establish separate reporting requirements for carriers that are small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 7, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed under the Insurance Code Chapter 26, Articles 26.14A, 26.15 and 26.16, and §36.001. Articles 26.14A and 26.15 contain special provisions relating to health group cooperatives, and allow the commissioner to adopt rules. Chapter 26, among other things, contains provisions regarding health plans for small employers and authorizes the commissioner of insurance to adopt rules as necessary to implement this chapter. Article 26.16 also contains provisions concerning health group cooperatives and requires the department to develop an expedited approval process for health coverage arranged by a cooperative. 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 provisions are affected by this proposal: Chapter 26, Articles 26.14A, 26.15 and 26.16

§26.401. Establishment of Health Group Cooperatives.

(a) Subject to the requirements of the Insurance Code and this subchapter, a person may form a health group cooperative for the purchase of employer health benefit plans.

(b) A health carrier may not form, or be a member of, a health group cooperative. A health carrier may associate with a sponsoring entity of a health group cooperative, such as a business association, chamber of commerce, or other organization representing employers or serving an analogous function, to assist the sponsoring entity in forming a health group cooperative.

(c) A health group cooperative must be organized as a non-profit corporation and has the rights and duties provided by the Texas Non-profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01, et seq.

(d) On receipt of a certificate of incorporation or certificate of authority from the secretary of state, the health group cooperative shall comply with Insurance Code Article 26.14(b) by filing notification of the receipt of the certificate and a copy of the health group cooperative's organizational documents with the Life/Health Division, Mail Code

106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The organizational documents shall demonstrate the health group cooperative's compliance with Insurance Code Article 26.15.

(e) The board of directors shall file annually with the department a statement of all amounts collected and expenses incurred for each of the preceding years. The annual filing shall be made on Form Number 1212 CERT COOP provided at Figure 49 of §26.27(b)(49) of this title (relating to Forms) and shall be filed with the Life/Health Division, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(f) The provisions of this subchapter shall not be construed to limit or restrict an employer's access to health benefit plans under this chapter or Insurance Code Chapter 26.

§26.402. Membership of Health Group Cooperatives.

(a) The membership of a health group cooperative may consist only of small employers or may, at the option of the health group cooperative, consist of both small and large employers.

(b) To be eligible to arrange for coverage pursuant to Insurance Code Article 26.15(a)(1) a health group cooperative must, during the initial open enrollment period, have at least 10 participating employers. Thereafter, if the health group cooperative does not, at any time, have at least 10 participating employers, to maintain eligibility for coverage the health group cooperative must add additional members by the next open enrollment period to maintain at least 10 participating employers.

(c) Subject to the requirements of Insurance Code Article 26.22 and the limitations identified pursuant to §26.407 of this chapter (relating to Health Carrier Designation As Health Group Cooperative Carrier), a health group cooperative:

(1) shall allow any small employer to join the health group cooperative and, during the initial and annual open enrollment periods, enroll in health benefit plan coverage; and

(2) may allow a large employer to join the health group cooperative and, during the initial enrollment and annual open enrollment periods, enroll in health benefit plan coverage.

(d) A health group cooperative may not use risk characteristics of an employer or employee to restrict or qualify membership in the health group cooperative.

(e) An employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative must, through a contract with the health group cooperative, commit to purchasing coverage through the health group cooperative for two years, except as provided for in subsection (f) of this section.

(f) A contract between an employer and a health group cooperative must allow an employer to terminate without penalty its health benefit plan coverage with a health group cooperative before the end of the two year minimum contractual period required by subsection (e) of this section if it can demonstrate to the health group cooperative that continuing to purchase coverage through the cooperative would be a financial hardship in accordance with subsection (g) of this section.

(g) The contract between an employer and a health group cooperative may define what constitutes a financial hardship for the purposes of subsection (f) of this section. If the contract does not define the term, an employer may demonstrate financial hardship if it can show that at the end of the immediately preceding fiscal quarter, or upon receipt of notice of a rate increase, the premium cost to the employer, as a percentage of the employer's gross receipts, increased by a factor of .50.

§26.403. Marketing Activities of Health Group Cooperatives.

(a) A health group cooperative may engage in marketing activities related and restricted to membership in the cooperative, including general availability of health coverage and is not required to maintain an agent's license for soliciting membership in the cooperative. All health coverage issued through the cooperative must be issued through a licensed agent that is employed by or contracted with the cooperative.

(b) A sponsoring entity of a health group cooperative may inform its members regarding the health group cooperative and the general availability of coverage through the health group cooperative. All coverage issued through the cooperative must be issued through a licensed agent.

(c) A licensed agent that is used and compensated by a health group cooperative is not required to be appointed by a health carrier offering coverage through the health group cooperative. This exemption does not allow an agent to market other products and services not offered through the health group cooperative without an appointment from the health carrier.

(d) A health group cooperative or a member of the board of directors, the executive director, or an employee or agent of a health group cooperative is not liable for failure to arrange for coverage of any particular illness, disease, or health condition in arranging for coverage through the cooperative.

§26.404. Health Group Cooperative's Status as Employer.

(a) A health group cooperative is considered a single employer for the purposes of benefit elections and other administrative functions.

(b) A health group cooperative that is composed of only small employers is considered a small employer for all purposes of Chapter 26 of the Insurance Code and Chapter 26 of this title.

(c) A health group cooperative that is composed of small and large employers is considered a small employer in relation to the small employer members for all purposes of the Insurance Code and Chapter 26 of this title. A health group cooperative may elect to extend to all of the large employer members of the health group cooperative the protections of Chapter 26 of the Insurance Code and Chapter 26 of this title. However, this election does not entitle the large employer members to guaranteed issuance of coverage as set forth in Article 26.21(a) of the Insurance Code or §26.8 of this title (relating to Guaranteed Issue; Contribution and Participation Requirements).

§26.405. Premium Tax Exemption for Previously Uninsured.

(a) In accordance with Article 26.14A of the Insurance Code, a health carrier providing coverage through a health group cooperative is exempt from premium tax and retaliatory tax for two years for premiums received for a previously uninsured employee or dependent. The two year period for the exemption begins upon the first date of coverage for the previously uninsured employee or dependent.

(b) For the purposes of this section and Article 26.14A of the Insurance Code, a previously uninsured employee or dependent is an employee or the dependent of an employee of an employer member of a health group cooperative and did not have creditable coverage for the 63 days preceding the effective date of coverage purchased through the health group cooperative.

(c) A health carrier shall maintain for four years documentation for each insured that demonstrates that coverage of the insured or enrollee qualifies the carrier for a tax exemption pursuant to subsection (b) of this section. The documentation shall comply with any applicable rules or procedures adopted by the Comptroller of Public Accounts related to the tax exemption.

§26.406. Standard Presentation Form.

(a) A health carrier offering coverage through a health group cooperative shall use a standard presentation form for employer members of the health group cooperative that includes the information listed in subsection (b) of this section. A standard presentation form may include additional information.

(b) A standard presentation form shall include, at a minimum:

(1) an explanation that the coverage is being offered through a health group cooperative;

(2) the name of the health group cooperative;

(3) an explanation of the employer's eligibility to join the health group cooperative and purchase coverage without regard for membership in any other organization or the health status or claims experience of the employer and employees;

(4) an explanation of any fees or charges associated with membership in the health group cooperative;

(5) a statement that coverage is available to a small employer on a guaranteed issue basis from any health carrier offering coverage in the small employer market with no requirement of joining a health group cooperative;

(6) if multiple plans are offered through the health group cooperative, an explanation that the employer and employees may select any of the plans without limitation due to health status or claims experience;

(7) a description of the plans offered through the health group cooperative by the health carrier;

(8) if the employer or employee is considering or purchasing a health benefit plan that does not contain all state-mandated health benefits, a written disclosure statement that:

(A) explains that the health benefit plan being offered or purchased does not provide some or all state-mandated health benefits;

(B) lists those state-mandated health benefits not included under the health benefit plan;

(C) contains a general description of the benefits offered by the health benefit plan;

(D) provides a notice that purchase of the plan may limit future coverage options in the event the policyholder's or certificate holder's health changes and needed benefits are not covered under the health benefit plan.

§26.407. Health Carrier Designation As Health Group Cooperative Carrier.

(a) On or before August 1, 2004, each health carrier that has designated itself as a small employer carrier pursuant to §26.6 of this title (relating to Status of Health Carriers as Small Employer Carriers and Geographic Service Area) shall file with the commissioner, in accordance with subsection (c) of this section, information indicating whether the carrier is available to offer or issue small employer health benefit plans to health group cooperatives. The health carrier shall submit this filing to the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701.

(b) After August, 1, 2004 whenever a health carrier designates itself as a small employer carrier pursuant to §26.6 of this title, the health carrier shall file with the commissioner, in accordance with subsection (c) of this section, information indicating that it is available to offer or issue small employer health benefit plans to health group cooperatives. The health carrier shall submit this filing to the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701.

(c) The filings required by subsections (a) and (b) of this section shall include:

(1) the name of the health carrier;

(2) a designation of whether or not the health carrier is currently available to offer or issue small employer health benefit plans to health group cooperatives;

(3) a description, by county, of the health group cooperative basic service area, which is the area in which the carrier is offering or issuing small employer health benefit plans to health group cooperatives;

(4) if applicable, the extended service areas in which the health carrier is currently available to offer or issue small employer heath benefit plans to health group cooperatives;

(5) if applicable, information identifying, by county, the health group cooperative(s) that are currently doing business with the health carrier in each geographic service area or expanded service area;

(6) any limitations concerning the number of participating employers or employees in a health group cooperative that the health carrier is capable of administering; and

(7) any other information requested by the department.

(d) A carrier shall update the filings required by subsections (a) and (b) of this section as necessary to include new counties or extended service areas in which the carrier wishes to offer or issue coverage to health group cooperatives. If the carrier has agreed to provide coverage to a particular health group cooperative at the time of updating the certification, the carrier shall identify the health group cooperative consistent with subsection (c) of this section.

§26.408. Guaranteed Issuance of Coverage to Health Group Cooperatives.

(a) Subject to the limitations identified in §26.407(c)(6) of this chapter (relating to Health Carrier Designation As Health Group Cooperative Carrier), a health carrier that has made a filing with the commissioner indicating that it is offering or issuing small employer health benefit plans to health group cooperatives shall provide coverage to a health group cooperative that requests coverage in the health carrier's basic geographic service area for health group cooperative business, as filed pursuant to §26.407 of this title.

(b) A health carrier may decline to offer coverage to a health group cooperative if the carrier is:

(1) already providing coverage to a health group cooperative in the same county; or

(2) actively engaged in assisting an entity with the formation of a health group cooperative. A health carrier is actively engaged in assisting an entity with the formation of a health group cooperative if the health carrier has associated with the entity for the purpose of forming a health group cooperative and the parties have signed a letter of agreement that evidences that the entity intends to form a health group cooperative with the assistance of the carrier and intends to purchase coverage from the health carrier. This exception is available for no more than 60 days from the date of the letter. This exception period cannot be extended, nor can additional letters of agreement between the parties have the effect of extending this exception period.

(c) Subject to the limitations identified in §26.407(c)(6) of this chapter, a health carrier that is providing coverage to an employer

through a health group cooperative must provide coverage to any employee that elects to be covered under a health benefit plan that is offered through the health group cooperative.

§26.409. Health Benefit Plans Offered Through Health Group Cooperatives.

(a) A health benefit plan issued by a health carrier through a health group cooperative is not subject to the following state mandates:

(1) the offer of in vitro fertilization coverage as required by Insurance Code Article 3.51-6, §3A;

(2) coverage of HIV, AIDS, or HIV-related illnesses as required by Insurance Code Article 3.51-6, §3C;

(3) coverage of chemical dependency and stays in a chemical dependency treatment facility as required by Insurance Code Article 3.51-9;

(4) coverage or offer of coverage of serious mental illness as required by Insurance Code Article 3.51-14;

(5) the offer of mental or emotional illness coverage as required by Insurance Code Article 3.70-2(F);

(6) coverage of inpatient mental health and stays in a psychiatric day treatment facility as required by Insurance Code Article 3.70-2(F);

(7) the offer of speech and hearing coverage as required by Insurance Code Article 3.70-2(G);

(8) coverage of mammography screening for the presence of occult breast cancer as required by Insurance Code Article 3.70-2(H);

(9) the offer of home health care coverage as required by Insurance Code Article 3.70-3B;

(10) coverage of stays in a crisis stabilization unit and/or residential treatment center for children and adolescents as required by Insurance Code Article 3.72;

(11) standards for proof of Alzheimer's disease as required by Insurance Code Article 3.78;

(12) coverage for formulas necessary for the treatment of phenylketonuria as required by Insurance Code Article 3.79;

(13) continuation of coverage of certain drugs under a drug formulary as required by Insurance Code Article 21.52J;

(14) coverage of contraceptive drugs and devices as required by Insurance Code Article 21.52L and §21.404(3) of this title (relating to Underwriting);

(15) coverage of diagnosis and treatment affecting temporomandibular joint and treatment for a person unable to undergo dental treatment in an office setting or under local anesthesia as required by Insurance Code Article 21.53A;

(16) coverage of bone mass measurement for osteoporosis as required by Insurance Code Article 21.53C;

(17) coverage of diabetes care as required by Insurance Code Article 21.53D;

(18) coverage of childhood immunizations as required by Insurance Code Articles 21.53F and 20A.09F;

(19) coverage for screening tests for hearing loss in children and related diagnostic follow-up care as required by Insurance Code Article 21.53F;

(20) offer of coverage for therapies for children with developmental delays as required by Insurance Code Article 21.53F;

(21) coverage of certain tests for detection of prostate cancer as required by Insurance Code Article 21.53F;

(22) coverage of off-label drugs as required by Insurance Code Article 21.53M;

(23) coverage of acquired brain injury treatment/services as required by Insurance Code Article 21.53Q;

(24) coverage of certain tests for detection of colorectal cancer as required by Insurance Code Article 21.53S;

(25) coverage for reconstructive surgery for craniofacial abnormalities in a child as required by Insurance Code Article 21.53W;

(26) limitations on the treatment of complications in pregnancy established by §21.405 of this title (relating to Policy Terms and Conditions);

(27) coverage for services related to immunizations and vaccinations under managed care plans as required by Insurance Code Article 21.53K;

(28) coverage of rehabilitation therapies as required by Insurance Code Article 20A.09(a)(4);

(29) limitations on differences between levels of coverage in preferred provider benefit plans as described in §3.3704(a)(6) of this title (relating to Freedom of Choice: Availability of Preferred Providers);

(30) limitations or restrictions on copayments and deductibles imposed by §11.506(2)(A) and (B) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate);

(31) limitations or restrictions on coinsurance imposed by §3.3704(a)(6) of this title (relating to Freedom of Choice: Availability of Preferred Providers);

(32) coverage of a minimum stay for maternity as required by Insurance Code Article 21.53F;

(33) coverage of reconstructive surgery incident to mastectomy as required by Insurance Code Article 21.53I; and

(34) coverage of a minimum stay for mastectomy treatment/services as required by Insurance Code Article 21.52G.

(b) A health benefit plan issued by an HMO through a health group cooperative must provide for the basic health care services as provided in §11.508 or §11.509 of this title (relating to Mandatory Benefit Standards: Group, Individual and Conversion Agreements and Additional Mandatory Benefit Standards, Group Agreement Only):

(c) A health benefit plan offered by an insurer through a health group cooperative is not subject to §3.3704(a)(6) of this title.

§26.410. Expedited Approval for Plans Offered Through a Health Group Cooperative.

(a) A health carrier must file for approval a health benefit plan that will be offered solely to a health group cooperative and shall indicate in the filing that the health benefit plan is to be offered to a health group cooperative and is subject to review under this section.

(b) A health benefit plan subject to review under this section and filed with the department by an insurer may be filed as a file and use form consistent with Insurance Code Article 3.42(c) and §3.5(a)(2) of this title (relating to Filing Authorities and Categories).

(c) An insurer that does not elect to file for approval under subsection (b) of this section shall file the form for approval consistent with Insurance Code Article 3.42(d) and §3.5(a)(1) of this title. The department shall approve or disapprove the filing within 40 calendar days of receipt of the complete filing.

(d) An HMO must file for approval an HMO evidence of coverage that is to be offered solely to a health group cooperative and shall indicate that review of the evidence of coverage is subject to the expedited process available under this section. The evidence of coverage shall be filed consistent with the requirements of Subchapter F of Chapter 11 of this title (relating to Evidence of Coverage) and shall be approved or disapproved by the department within 20 calendar days of receipt of a complete filing.

§26.411. Service Areas for Carriers Offering Coverage Through a Health Group Cooperative.

(a) A health carrier may provide coverage to only one health group cooperative in any county, except that a health carrier may provide coverage to additional health group cooperatives if it is providing coverage in an expanded service area.

(b) A health carrier may provide health group cooperative coverage to an expanded service area that includes the entire state upon providing notice to the department. A health carrier properly provides notice to the department by sending a certification that the health carrier intends to provide health group cooperative coverage to an expanded service area that includes the entire state. The certification should be signed by an officer of the health carrier and sent to Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701.

(c) A health carrier may apply for an expanded service area that includes less than the entire state by submitting an application for approval to Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701. The health carrier may begin using the expanded service area upon approval or 60 days after the day the application is received by the department unless the application is disapproved by the department within that time. The application must include:

(1) the geographic service areas, defined in terms of counties or zip codes, to the extent possible;

(2) if the service area cannot be defined by counties or zip code, a map which clearly shows the geographic service areas must be submitted in conjunction with the application;

(3) service areas by zip code shall be defined in a non-discriminatory manner and in compliance with the Insurance Code Articles 21.21-6 and 21.21-8; and

(4) any other information requested by the department.

(d) HMO service areas are not affected by a filing under this section and shall be established in accordance with Chapter 843 of the Insurance Code.

§26.412. Refusal to Renew and Application to Reenter Health Group Cooperative Market.

(a) A health carrier may elect to refuse to renew all employer health benefit plans delivered or issued for delivery by the health carrier to a health group cooperative in this state or in a health group cooperative basic or extended service area approved under the Insurance Code, Article 26.14A(l). The health carrier shall notify the commissioner of the election not later than the 180th day before the date coverage under the first health group cooperative health benefit plan terminates under the Insurance Code Article 26.24(a).

(b) The health carrier must notify each affected covered health group cooperative not later than the 180th day before the date on which coverage terminates for the health group cooperative.

(c) An health carrier that elects under the Insurance Code Article 26.24(a) to refuse to renew all health group cooperative employer health benefit plans in this state or in an approved geographic service area may not write a new health group cooperative employer health benefit plan in this state or in the geographic service area, as applicable, before the fifth anniversary of the date of notice to the commissioner under the Insurance Code Article 26.24(a).

(d) A health carrier that elects not to renew under the Insurance Code Article 26.24, and this section may not resume offering health benefit plans to health group cooperatives in this state or in the geographic area for which the election was made until it has filed a petition with the commissioner to be reinstated as a health group cooperative carrier and the petition has been approved by the commissioner or the commissioner's designee. In reviewing the petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

§26.413. Health Carrier Reporting Requirements.

(a) Health carriers offering a health benefit plan through a health group cooperative shall file information with the department, not later than March 1 of each year, in the manner prescribed and on the form provided by the department for that purpose. The form can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at www.tdi.state.tx.us. The information shall include data for the previous calendar year and shall include the following:

(1) the total number of health benefit plans newly issued and renewed to health group cooperatives and covering Texas lives, by type of plan;

(2) the total number of Texas lives (including members/employees, spouses, and dependents) covered under newly issued and renewed health benefit plans issued through a health group cooperative;

(3) the total number of health group cooperative health benefit plans covering Texas lives that were cancelled or non-renewed during the previous calendar year, including the reasons for cancellation or non-renewal (and that were not in effect after December 31), as well as the total number of Texas lives covered under those plans, and gross premiums paid for coverage of Texas lives under those plans;

(4) the gross premiums received for newly issued and renewed health group cooperative health benefit plans covering Texas lives;

(5) the number of health group cooperative health benefit plans covering individuals in Texas that were previously uninsured in accordance with §26.406(b) of this title (relating to Standard Presentation Form), and the number of Texas lives covered under those plans; and

(6) the number of health group cooperative health benefit plans in force in Texas on December 31, and the number of Texas lives covered under those plans, based on the first three digits of the five-digit ZIP Code of the employer's principal place of business in Texas.

(b) For purposes of this section, gross premiums shall be the total amount of monies collected by the health carrier for health benefit plans during the applicable calendar year.

(c) The information required to be filed by this section shall be filed with Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, TX, 78714-9104.

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 April 26, 2004.

TRD-200402757
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 367. AGRICULTURAL WATER CONSERVATION PROGRAM

31 TAC §§367.1 - 367.3, 367.12, 367.15 - 367.20

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 367, Agricultural Water Conservation Program (AWCP). The board proposes to amend §§367.1 - 367.3, and §367.12 and propose new §§367.15 - 367.20 relating to the creation of the Agricultural Water Conservation Linked Deposit Program. The proposed amendments and new sections reflect changes to the Texas Water Code enacted by the 78th Legislature that authorized the creation of the Agricultural Water Conservation Linked Deposit Program (AWCLDP).

The board proposes to amend §367.1, Policy Statement, to include linked deposits as part of its financial assistance that it will be the policy of the board to provide in order to conserve and protect the state's water resources and provide resulting benefits to all of the state's citizens.

The board proposes to amend §367.2, Definitions of Terms, to provide definitions for eligible lending institution, linked deposit, and linked deposit agreement in order to implement the AWCLDP. The board proposes a definition of eligible lending institution that refers to a commercial lending institution that is either designated a depository of state funds by the Texas comptroller of public accounts or an institution of the Farm Credit System headquartered in this state, that agrees to participate in a linked deposit program established under Water Code §17.905, and that is willing to agree to provide collateral equal to the amount of linked deposits placed with it. This definition follows the language of the new legislation in order to maximize the number of institutions that are eligible to participate. The board proposes a definition for linked deposit to be a deposit governed by a linked deposit agreement which requires that: 1) the lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement; 2) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this chapter; and 3) the institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent. This definition follows the language of the new legislation in order to implement the program to maximize extent possible under the legislation. The board proposes a definition for linked deposit agreement as a written agreement between the board and an eligible lending institution that provides for the deposit of money from the agricultural water conservation fund (fund) with the lending institution according to the conditions of this chapter. By defining linked deposit agreement in this manner, the rules have a ready reference to the contract while leaving the details of the terms of the contract to be more fully explained in this chapter related to the AWCLDP.

The board proposes to amend §367.3, Eligible Uses of the Fund, to include a new subsection (3) that specifically authorizes the fund to be used to provide a linked deposit to an eligible lending institution that agrees to provide a loan to a person for a conservation project.

The board proposes to amend §367.12, Construction Requirements, to include the phrase "financed by the board through a grant or loan and" so that the requirements of the section are explicitly limited to the grant and loan programs and not the linked deposit program.

The board proposes new §367.15, Authorization to Execute Agreements, to provide the specific authorization to the executive administrator to execute linked deposit agreements with eligible lending institutions for the purpose of providing money from the fund to be used for the purposes set forth in these amendments. Pursuant to new Water Code §17.907, the board is authorized to approve or disapprove an application for a linked deposit agreement submitted by an eligible lending institution. Water Code §15.907 specifically authorizes the board to delegate to the executive administrator the authority to approve or disapprove such applications. Water Code §17.908 provides that upon approval of the application by the board, the board and the eligible lending institution shall enter into a linked deposit agreement. Execution of an agreement of any sort only requires that one person actually sign, or execute, the agreement. As a six-member board, only one individual need take the action necessary to execute agreement. The term "execute", in the broader sense of ensuring performance, is a matter that requires more time and attention than the board members can perform. Therefore, as a matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator, both in the narrow and broad sense. As a matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator. Proposed new §367.15, in conjunction with new proposed §375.16(b), is proposed to delegate to the executive administrator the function of reviewing applications for linked deposit agreements and, if approved, executing such agreements. In addition to the contract provisions required pursuant to the other sections in this chapter, proposed new §367.15 provides the executive administrator with the discretion to include any additional provisions in such agreements, as the executive administrator may deem necessary to fulfill the purposes and intent of the program.

The board proposes new §367.16, Conditions Prior to Execution, to set forth the minimum requirements that the board has determined must be met prior to the eligible lending institution and the executive administrator executing a linked deposit agreement. Proposed new §367.16(a) identifies the minimum requirements that the board has determined must be met by an eligible lending institution when submitting a request to the executive administrator for a linked deposit agreement. These requirements are prescribed by the statute or are considered prudent application requirements. Proposed new §367.16(a)(1) requires the submission of the loan application from the person who will be constructing the conservation project. This proposed subsection requires the lending institution determine that the submitted loan application to be creditworthy according to the criteria of the lending institution prior to its submission to the executive administrator. Proposed new §367.16(a)(2) requires submission of a draft loan agreement between the lending institution and its borrower that identifies the amount of the loan, identifies the interest rate applied to the loan, sets forth the repayment schedule, limits the use of the loan proceeds to an eligible project, and contains all such other terms as determined in the sole discretion of the lending institution to be appropriate for its loan agreement. Proposed new §367.16(a)(1)(A) limits the total amount of the loan to $250,000 as required by statute. Proposed new §367.16(a)(1)(B) limits the interest rate under the agreement to no more than four percentage points above the interest rate charged by the board to the lending institution as required by statute. Proposed new §367.16(a)(3) requires two certifications. Proposed new §367.16(a)(3)(A) requires a certification by the lending institution setting the interest rate that will be charged to its borrower for the proposed project. Proposed new §367.16(a)(3)(B) requires that the lending institution provide a certification from a director of the soil and water conservation district for the district in which the project is located as to two facts: 1) that the loan recipient has a soil and water conservation approved by the district, and 2) that the project furthers or implements such plan. This certification is required by statute to insure that the project will implement agricultural water conservation project. Proposed new §367.16(a)(4) requires the lending institution to submit such other documentation that the executive administrator determines is necessary in order to insure that the linked deposit, if approved, will fulfill the objectives of the program. This provision is proposed because the board believes that the executive administrator should have the discretion to request additional information that may only be able to be identified as the program develops or after the initial review of the documents submitted by a lending institution. This provision allows the executive administrator the discretion to adapt the application requirements in order to fulfill the objectives of the program. Proposed new §367.16(b) identifies the minimum requirements that the board has determined to be appropriate before the executive administrator is authorized to execute a linked deposit agreement. This proposed subsection requires the executive administrator to review the documentation submitted by the lending institution and determine that the institution is eligible to participate in the program, that the documents submitted comply with the requirements of this section, and that executing the agreement will effectuate the purposes of the program.

The board proposes new §367.17, Board Obligations in Linked Deposit Agreements, to identify the minimum responsibilities that the board will assume if the executive administrator executes a linked deposit agreement. The responsibilities of the board proposed in new §367.17(a) are to provide money in the amount identified in the linked deposit agreement to the eligible lending institution from the fund and to otherwise fulfill the obligations set forth in the linked deposit agreement. It is proposed to include these requirements by rule because these are the minimum requirements that the board is expected to fulfill and which may be enforceable pursuant to a rule of the board. By this proposed section, eligible lending institutions are informed of the minimum obligations undertaken by the board with the execution of such an agreement and receive assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies available to the lending institution in event of default. Proposed new §367.17(b) also authorizes the board or the executive administrator to withdraw money deposited with a lending institution either according to the terms of the linked deposit agreement or in the event that the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state. This rule is proposed to implement the requirement set forth in Water Code §17.911.

The board proposes new §367.18, Lending Institution Obligations in Linked Deposit Agreements, to identify the minimum requirements that an eligible lending institution will assume upon its execution of a linked deposit agreement authorized by this section. Proposed new §367.18(a) provides that upon execution of the agreement, the lending institution shall provide collateral equal to the amount of the money from the fund placed on deposit with it, provide the loan for the project substantially according to the draft loan agreement provided with the application, pay interest on the deposit to the board at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity, submit compliance reports on a yearly basis to the executive administrator, return the funds to the board according to the terms of the linked deposit agreement, and otherwise comply with the linked deposit agreement, these rules, and applicable federal and state law. These requirements are generally set forth in the new Water Code provisions as requirements for the linked deposit agreement. By this proposed section, eligible lending institutions are informed of the minimum obligations undertaken in executing such an agreement and the board receives assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies that may be available to the board in event of default. Proposed new §367.18(b) specifies that payment delays or defaults by the recipient of the loan do not affect the liability of the lending institution to the board under the linked deposit agreement. This rule is proposed to implement the requirement set forth in Water Code §17.908.

The board proposes new §367.19, Requirements after Execution, to identify the reporting requirements of the executive administrator to the board. Having delegated the authority to approve and execute linked deposit agreements, by proposed new §367.19(1) the executive administrator is required to report monthly to the board the linked deposit agreements that have been executed and the status of each loans made by the lending institutions. This provision will allow the board to routinely review the administration and performance of the program. By proposed new §367.19(2) the executive administrator is required to report any instances of noncompliance by a participating lending institution to the board as well as to the Texas comptroller of public accounts. The comptroller is included in the reporting requirement for instances of noncompliance because the board has deemed the lending institution eligible in part due to the comptroller using the lending institution as a state depository. By reporting the instance of noncompliance to the comptroller, the board potentially will be assisting the comptroller in the

protection of other funds of the state. This rule is proposed to implement the requirement set forth in Water Code §17.909.

The board proposes new §367.20, State Liability, to establish as clearly as possible that the state does not assume any liability to the lending institutions for any payments that may be due by a borrower of the lending institution and that the linked deposit is not an extension of credit within the meaning of the state constitution. This rule is proposed to implement the requirement set forth in Water Code §17.910.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the amendments and new sections. Since the revisions create a new program that uses money currently available in the fund for eligible participants on a voluntary basis, there will be no impact on state or local governments.

Ms. Callahan has also determined that for the first five years the amendments and new sections, as proposed, are in effect the public benefit as a result of enforcing the amendments and new sections will be to provide needed capital at reduced rates for agricultural water conservation projects thereby assisting in the protection of the state's water resources. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the amendments and new sections as proposed since the program is voluntary.

It is estimated that the amendments and new sections will not adversely affect local economies because the rule pertains to a voluntary program that provides needed capital at reduced rates for agricultural water conservation projects. Indeed, by the state financially contributing to these projects, the local economies should be positively affected.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments and new sections are proposed under the authority of the Texas Water Code §6.101 and §17.912 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code, other laws of the State, and the agricultural water conservation program.

The statutory provisions affected by the proposed amendments and new sections are Texas Water Code Chapter 17, Subchapter J.

§367.1. Policy Statement.

It is the policy of the board to provide grants, linked deposits, and loans to conserve and protect the state's water resources and provide resulting benefits to all of the state's citizens. This chapter implements the Texas Water Code, Chapter 17, Subchapter J.

§367.2. Definitions.

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

(1) - (5) (No change.)

(6) Eligible lending institution--a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in a linked deposit program established under Water Code §17.905 and is willing to agree to provide collateral equal to the amount of linked deposits placed with it.

(7) [~~(6)~~] Executive administrator--The executive administrator of the Texas Water Development Board, or an authorized representative of the executive administrator.

(8) [~~(7)~~] Fund--The agricultural water conservation fund authorized by Section 50-d, Article III, of the Texas Constitution.

(9) Linked Deposit--a deposit governed by a linked deposit agreement between the board and an eligible lending institution that requires that:

(A) the eligible lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(B) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this division; and

(C) the eligible lending institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent;

(10) Linked Deposit Agreement--a written agreement between the board, acting through the executive administrator, and an eligible lending institution providing for the deposit by the board of an amount of money from the fund with the eligible lending institution executed pursuant to the authority and according to the conditions of this chapter.

(11) [~~(8)~~] Person--An individual, corporation, partnership, association, or other legal entity that is not a political subdivision.

(12) [~~(9)~~] Political subdivision--Includes a municipality, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 59, an institution of higher education as defined by §61.003, Education Code, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

§367.3. Eligible Uses of the Fund.

To the extent authorized by Water Code §17.899, the board may use money in the fund to:

(1) provide a grant to a state agency to pay the eligible costs for a conservation program or conservation project, including a conservation program that provides funding to a political subdivision or person for a conservation project; [~~and~~]

(2) provide a grant or loan to a political subdivision to pay the eligible costs for a conservation program or conservation project; and

(3) provide a linked deposit to an eligible lending institution for a loan to a person for a conservation project pursuant to the terms of §§367.15 - 367.20 of this chapter.

§367.12. Construction Requirements.

(a) This section applies to conservation projects financed by the board through a grant or loan and which include construction.

(b) Prior to the release of funds for construction of a conservation project, an approved applicant shall:

(1) submit to the executive administrator engineering plans and specifications, which shall be as detailed as would be required for submission to contractors bidding on the work and which shall be consistent with the engineering feasibility information submitted with the application;

(2) obtain written approval from the executive administrator of the submitted engineering plans and specifications; and

(3) for projects which the approved applicant will execute construction contracts, prior to receiving bids and awarding the contract, obtain executive administrator approval of the contract documents, such documents to include:

(A) provisions assuring compliance with the board's rules and all relevant statutes;

(B) provisions providing for the district to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until construction is substantially complete and reduction in the retainage is authorized by the executive administrator;

(C) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board; and

(D) any additional conditions that may be requested by the executive administrator.

(c) If money from the fund will be used to purchase bonds, and proceeds of the bonds are required for planning, designing or preparation of plans and specifications or other activities not related to construction, the political subdivision may close the loan, receive funds for the money allocated for planning, designing or preparation of plans and specifications or other activities not related to construction if the funds for construction are deposited to an escrow account the agreement for which is acceptable to the executive administrator in form and substance.

(d) After the construction contract is awarded, the approved applicant shall:

(1) insure adequate inspection of the project by a registered professional engineer;

(2) obtain assurance from the engineer that the work is performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and in accordance with sound engineering principles and construction practices;

(3) allow the executive administrator to inspect the construction and materials of any project at any time; and

(4) take corrective action as necessary to complete the project in accordance with approved plans and specifications or contract documents.

(e) Upon notice from the approved applicant or its project engineer that the project has been completed in accordance with approved plans and specifications, the executive administrator shall take such reasonable actions necessary to confirm that the project has been completed according to the approved plans and specifications. Upon the determination of the executive administrator that the conservation project approved by the board has been constructed in accordance with the approved plans and specifications, the executive administrator shall issue a certificate of approval to the approved applicant. After issuance of a certificate of approval, the approved applicant shall release all remaining retainage under the contract documents.

(f) Approval of plans and specifications, contract documents, and project inspection shall not subject the State of Texas to any liability related to the construction of the project.

§367.15. Authorization to Execute Agreements.

The board authorizes the executive administrator to execute a linked deposit agreement with an eligible lending institution to provide money from the fund according to and in compliance with §§367.15 - 367.20 of this chapter. The linked deposit agreement shall include the obligations set forth in §§367.15 - 367.20 of this chapter and such other terms and conditions determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this chapter.

§367.16. Conditions Prior to Execution.

(a) Before the executive administrator may execute a linked deposit agreement, a lending institution shall submit to the executive administrator:

(1) the application of a person determined by the eligible lending institution to be eligible and creditworthy to receive a loan according the criteria of the institution;

(2) a draft loan agreement with such person that:

(A) identifies the principal amount of the loan which shall not exceed $250,000;

(B) identifies the interest rate to be paid by the borrower which shall not exceed the interest rate paid by the eligible lending institution to the board plus four percent;

(C) includes a repayment schedule which identifies the dates on which payments are due from the loan recipient to the lending institution;

(D) limits the use of the funds to a conservation project certified pursuant to subsection (a)(3) of this section; and

(E) contains such other terms and conditions determined by the eligible lending institution in its sole discretion to be reasonable for the purposes of a private loan agreement;

(3) a certification from:

(A) the eligible lending institution of the interest rate applicable to the proposed loan;

(B) a director of a soil and water conservation district for the district in which the project is located certifying that:

(i) the loan recipient has a soil and water conservation plan approved by the district; and

(ii) the project furthers or implements such plan; and

(4) such other information or documentation as determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this chapter.

(b) Before the executive administrator executes a linked deposit agreement, the executive administrator shall review the information submitted in this section and determine that:

(1) the lending institution is an eligible lending institution as defined in §367.2 of this chapter;

(2) the documents submitted by the lending institution comply with the requirements of this chapter; and

(3) execution of the linked deposit agreement fulfills the purposes and intent of this chapter and the public interest.

§367.17. Board Obligations in Linked Deposit Agreements.

(a) Upon execution of a linked deposit agreement by the executive administrator and an eligible lending institution, the board, acting through its executive administrator, shall:

(1) deposit with the lending institution the amount of money identified in the linked deposit agreement from the fund; and

(2) perform such other terms and conditions as specified in the linked deposit agreement.

(b) The board or the executive administrator may withdraw linked deposits from the lending institution according to the terms of the linked deposit agreement or if the institution ceases to be either a state depository as designated by the Texas comptroller of public accounts or a Farm Credit System institution headquartered in Texas.

§367.18. Lending Institution Obligations in Linked Deposit Agreements.

(a) Upon execution of a linked deposit agreement and receipt of money from the board, the lending institution shall:

(1) provide collateral equal to the amount of the money from the fund placed on deposit with it;

(2) lend the value of the deposit being provided by the board substantially according to the terms and conditions of the draft loan agreement submitted by the lending institution to the executive administrator;

(3) pay to the board interest on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(4) submit compliance reports to the executive administrator annually providing information on the performance of the terms of the loan by the person receiving the loan from the lending institution and such other information or documents as specified in the linked deposit agreement;

(5) return the amount of funds provided as a linked deposit as specified in the linked deposit agreement; and

(6) perform such other terms and conditions as specified in the linked deposit agreement, this chapter, the rules of the board, and applicable federal and state law.

(b) A delay in payment or a default on a loan by the recipient of the loan from the lending institution does not affect the validity of the deposit agreement or the repayment of the deposit in accordance with the terms of the deposit agreement.

§367.19. Requirements after Execution.

After the executive administrator has executed a linked deposit agreement, the executive administrator shall:

(1) at the next available board meeting and each month thereafter, provide a report to the board that:

(A) identifies all linked deposit agreements; and

(B) the status of the loans made by lending institutions; and

(2) in the event of noncompliance on the part of an eligible lending institution, inform the Texas comptroller of public accounts of the noncompliance and include information regarding the noncompliance in the monthly report to the board.

§367.20. State Liability.

The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

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 April 21, 2004.

TRD-200402667
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 16, 2004
For further information, please call: (512) 475-2052

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) proposes the repeal of 31 TAC Chapter 375, Subchapter C, §§375.301 - 375.306, concerning the Nonpoint Source Pollution Loan and Estuary Program from the Clean Water State Revolving Fund. The board also proposes new Subchapter C, Division 1, §§375.301 - 375.302, Division 2, §§375.325 - 375.329, and Division 3, §§375.350 - 375.357, concerning Nonpoint Source Pollution Control Project Financial Assistance Programs from the Clean Water State Revolving Fund. The proposed repeal and new sections reflect changes to the Texas Water Code enacted by the 78th Legislature that authorized the creation of the Nonpoint Source Pollution Control Linked Deposit Program (NPSLDP).

The current Subchapter C, Nonpoint Source Pollution Loan and Estuary Management Program, §§375.301 - 375.306 sets out the provisions of the Nonpoint Source Loan Program (NPSLP) and the Estuary Management Program (EMP). The NPSLP is currently the only program of the board which provides financial assistance to individuals and others for nonpoint source pollution control projects. In the current NPSLP, the board provides loans directly to individuals and other private or public entities for nonpoint source pollution control projects using funds from the Clean Water State Revolving Fund, defined in §375.2 as the CWSRF Program Account. Under the proposed repeal and new sections, the NPSLP and EMP will continue as currently written. The new NPSLDP will provide financial assistance for nonpoint source pollution control projects in the form of depositing funds from the CWSRF Program Account into local lending institutions conditioned on, or linked to, the institution making a loan to an individual for a nonpoint source pollution control project. The NPSLP and the NPSLDP share common elements and similar scopes in that both programs provide financial assistance for nonpoint source pollution control projects.

Therefore, the board proposes new Division 1 for the purpose of identifying the common scope of the subchapter, which is providing financial assistance for nonpoint source pollution control projects and estuary management projects, and to define common terminology. The board proposes new Division 2 to contain the provisions appropriate for the NPSLP and EMP. The board proposes new Division 3 to contain the provisions appropriate for the NPSLDP.

The board proposes new §375.301, Scope of Subchapter, for the purpose of identifying the programs covered by the subchapter,

which are the NPSLP, EMP, and the NPSLDP using funds from the CWSRF Program Account. Since all these programs will be using funds in the CWSRF program account, this proposed section also states that the other provisions in Subchapter A may apply unless a provision in this subchapter specifically applies.

The board proposes new §375.302, Definitions of Terms, to provide definitions of common terminology used in the subchapter. The board proposes a definition of Best Management Practices, BMP, to refer to those measures that are the most efficient, practical, and cost effective means to guide a particular activity or address a particular problem. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board proposes a definition of eligible lending institution that refers to a commercial lending institution that is either designated a depository of state funds by the Texas comptroller of public accounts or an institution of the Farm Credit System headquartered in this state, that agrees to participate in a linked deposit program established under Water Code §15.611, and that is willing to agree to provide collateral equal to the amount of linked deposits placed with it. This definition follows the language of the new legislation in order to maximize the number of institutions that are eligible to participate. The board proposes to define individual water quality management plan as a land management plan that is developed and approved to conserve or improve water resources of a particular site after having considered characteristics such as soil types, slope, climate, vegetation and land usage. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board proposes a definition for linked deposit to be a deposit governed by a linked deposit agreement which requires that: 1) the lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement; 2) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this chapter; and 3) the institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent. This definition follows the language of the new legislation in order to implement the program to maximize extent possible under the legislation. The board proposes a definition for linked deposit agreement as a written agreement between the board and an eligible lending institution that provides for the deposit of funds from the CWSRF program account with the lending institution according to the conditions of this subchapter. By defining linked deposit agreement in this manner, the rules have a ready reference to the contract while leaving the details of the terms of the contract to be more fully explained in the division of this subchapter related to the NPSLDP. The board proposes a definition of the national estuary program to refer to the program created by the Water Quality Act of 1987. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board proposes a definition of NPS Loan Program to refer to the Nonpoint Source Pollution Loan Program which is set forth in Division 2 of this subchapter. The definition is currently used for the NPSLP but is amended here for the purpose of reflecting that provisions of the program are proposed to be set forth in Division 2 of this subchapter. The board proposes to define NPS management report as the most recent Texas Nonpoint Source Pollution Assessment Report and Management Program adopted by the commission. This term is currently defined for the NPSLP but is amended here for the purpose of referring to the most recent version of the commission's report because the report is amended from time to time by the commission. This definition as amended will therefore clarify which report is being referred to. The board proposes a definition of person to include an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, and that explicitly coincides with the definition of the Clean Water Act. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed.

The board proposes new Division 2, Nonpoint Source Pollution Loan and Estuary Management Program, to contain the provisions previously used for the NPSLP and EMP. The board proposes new §375.325, Purpose, to clearly state that the purpose of this division is to set forth the terms of the program by which the board will make a loan from funds in the CWSRF program account to a person for the purposes set forth in this division.

The board proposes new §375.326, Eligible Projects; §375.327, Application for Assistance; §375.328, Promissory Notes and Loan Agreements; and §375.329, Lending Rates, to contain the exact same provisions as the former §375.303, Eligible Projects; §375.304, Application for Assistance; §375.305, Promissory Notes and Loan Agreements; and §375.306, Lending Rates, respectively.

The board proposes new Division 3, Nonpoint Source Pollution Link Deposit Program, to implement the newly enacted provisions of Water Code §15.601 et seq. The board proposes new §375.350, Purpose, to identify the purpose as providing linked deposits from the CWSRF program account to eligible lending institution so that those institutions will provide loans to persons for the purpose of nonpoint source pollution control projects.

The board proposes new §375.351, Authorization to Execute Agreements, to provide the specific authorization to the executive administrator to execute linked deposit agreements with eligible lending institutions for the purpose of providing funds from the CWSRF program account to be used for the purposes set forth in this division. Pursuant to new Water Code §15.614, the board is authorized to approve or disapprove an application for a linked deposit agreement submitted by an eligible lending institution. Water Code §15.614 specifically authorizes the board to delegate to the executive administrator the authority to approve or disapprove such applications. Water Code §15.615 provides that upon approval of the application by the board, the board and the eligible lending institution shall enter into a linked deposit agreement. Execution of an agreement of any sort only requires that one person actually sign, or execute, the agreement. As a six-member board, only one individual need take the action necessary to execute agreement. The term "execute", in the broader sense of ensuring performance, is a matter that requires more time and attention than the board members can perform. Therefore, as a matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator, both in the narrow and broad sense. Proposed new §375.351, in conjunction with new proposed §375.352(b), is proposed to delegate to the executive administrator the function of reviewing applications for linked deposit agreements and, if approved, executing such agreements. In addition to the contract provisions required pursuant to the other sections in this division, proposed new §375.351 provides the executive administrator with the discretion to include any additional provisions in such agreements, as the executive administrator may deem necessary to fulfill the purposes and intent of the program.

The board proposes new §375.352, Conditions Prior to Execution, to set forth the minimum requirements that the board has determined must be met prior to the eligible lending institution and the executive administrator executing a linked deposit agreement. Proposed new §375.352(a) identifies the minimum requirements that the board has determined must be met for an eligible lending institution to submit a request to the executive administrator for a linked deposit agreement. These requirements are prescribed by the statute or are considered prudent application requirements. Proposed new §375.352(a)(1) requires that submission of the loan application from the person who will be constructing the nonpoint source pollution control project. This proposed paragraph requires that the lending institution determine that the submitted loan application is creditworthy according to the criteria of the lending institution. Proposed new §375.352(a)(2) requires submission of a draft loan agreement between the lending institution and its borrower that identifies the amount of the loan, identifies the interest rate applied to the loan, sets forth the repayment schedule, limits the use of the loan proceeds to an eligible project, and contains all such other terms as determined in the sole discretion of the lending institution to be appropriate for its loan agreement. Proposed new §375.352(a)(1)(A) limits the total amount of the loan to $250,000 as required by statute. Proposed new §375.352(a)(1)(B) limits the interest rate under the agreement to no more than four percentage points above the interest rate charged by the board to the lending institution as required by statute. Proposed new §375.352(a)(3) requires two certifications. Proposed new §375.352(a)(3)(A) requires a certification by the lending institution setting the interest rate that will be charged to its borrower for the proposed project. Proposed new §375.352(a)(3)(B) requires that the lending institution provide a certification as identified in proposed new §375.353(a) or (b). These certifications are required by statute to accurately identify the interest charged to the borrower and to insure that the project will implement nonpoint source pollution control projects. Proposed new §375.352(a)(4) requires the lending institution to submit such other documentation that the executive administrator determines is necessary in order to insure that the linked deposit, if approved, will fulfill the objectives of the program. This provision is proposed because the board believes that the executive administrator should have the discretion to request additional information that may only be able to be identified as the program develops or after the initial review of the documents submitted by a lending institution. This provision allows the executive administrator the discretion to adapt the application requirements in order to fulfill the objectives of the program. Proposed new §375.352(b) identifies the minimum requirements that the board has determined to be appropriate before the executive administrator is authorized to execute a linked deposit agreement. This proposed subsection requires the executive administrator to review the documentation submitted by the lending institution and determine that institution is eligible to participate in the program, that the documents submitted comply with the requirements of this section, and that executing the agreement will effectuate the purposes of the program.

The board proposes new §375.353, Project Certifications, for the purpose of insuring the proposed project receiving a loan backed by a linked deposit will be constructing a nonpoint source pollution control project. Proposed new §375.353(a) applies to projects that are proposed for agricultural or silvicultural projects. For these projects, proposed new §375.353(a) requires that a director of the soil and water conservation district for the district in which the project is located must certify to two facts: 1) that the loan recipient has a water quality management plan that has been certified by the State Soil and Water Conservation Board, and 2) that the project furthers or implements such plan. Proposed new §375.353(b) applies to proposed projects that are not agricultural or silvicultural projects. In this instance, the executive director must certify that the loan recipient's proposed project implements or furthers the most recent nonpoint source pollution management plan. Both of these subsections are proposed to implement the requirement set forth in Water Code §15.613.

The board proposes new §375.354, Board Obligations in Linked Deposit Agreements, to identify the minimum responsibilities that the board will assume if the executive administrator executes a linked deposit agreement. The responsibilities of the board proposed in new §375.354(a) are to provide funds in the amount identified in the linked deposit agreement to the eligible lending institution from the CWSRF program account and to otherwise fulfill the obligations set forth in the linked deposit agreement. It is proposed to include these requirements by rule because there are the minimum requirements that the board is expected to fulfill and which may be enforceable pursuant to a rule of the board. By this proposed section, eligible lending institutions are informed of the minimum obligations undertaken by the board with the execution of such an agreement and receive assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies available to the lending institution in event of default. Proposed new §375.354(b) also authorizes the board or the executive administrator to withdraw funds deposited with a lending institution either according to the terms of the linked deposit agreement or in the event that the institution ceases to be either designated a state depository by the Texas comptroller of public accounts or a Farm Credit System institution headquartered in this state. This rule is proposed to implement the requirement set forth in Water Code §15.618.

The board proposes new §375.355, Lending Institution Obligations in Linked Deposit Agreements, to identify the minimum requirements that an eligible lending institution will assume upon its execution of a linked deposit agreement authorized by this division. Proposed new §375.355(a) provides that upon execution of the agreement, the lending institution shall provide collateral equal to the amount of the funds from the CWSRF program account placed on deposit with it, provide the loan for the project substantially according to the draft loan agreement provided with the application, pay interest on the deposit to the board at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity, submit compliance reports on a yearly basis to the executive administrator, return the funds to the board according to the terms of the linked deposit agreement, and otherwise comply with the linked deposit agreement, these rules, and applicable federal and state law. These requirements are generally set forth in the new Water Code provisions as requirements for the linked deposit agreement. By this proposed section, eligible lending institutions are informed of the minimum obligations undertaken in executing such an agreement and the board receives assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies that may be available to the board in event of default. Proposed new §375.355(b) specifies that payment delays or defaults by the recipient of the loan do not affect the liability of the lending institution to the board under the linked deposit agreement. This rule is proposed to implement the requirement set forth in Water Code §15.617.

The board proposes new §375.356, Requirements after Execution, to identify the reporting requirements of the executive administrator to the board. Having delegated the authority to approve and execute linked deposit agreements, by proposed new §375.356(1) the executive administrator is required to report monthly to the board the linked deposit agreements that have been executed and the status of each loans made by the lending institutions. This provision will allow the board to routinely review the administration and performance of the program. By proposed new §375.356(2) the executive administrator is required to report any instances of noncompliance by a participating lending institution to the board as well as to the Texas comptroller of public accounts. The comptroller is included in the reporting requirement for instances of noncompliance because the board has deemed the lending institution eligible in part due to the comptroller using the lending institution as a state depository. By reporting the instance of noncompliance to the comptroller, the board potentially will be assisting the comptroller in the protection of other funds of the state. This rule is proposed also to implement the requirement set forth in Water Code §15.616(b).

The board proposes new §375.357, State Liability, to establish as clearly as possible that the state does not assume any liability to the lending institutions for any payments that may be due by a borrower of the lending institution and that the linked deposit is not an extension of credit within the meaning of the state constitution. This rule is proposed also to implement the requirement set forth in Water Code §15.617.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the repeal and new sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the repeal and new sections. Since the revisions continue an existing program and create a new program that use funds currently available in the CWSRF program account for eligible participants on a voluntary basis, there will be no impact on state or local governments.

Ms. Callahan has also determined that for the first five years the repeal and new sections, as proposed, are in effect the public benefit as a result of enforcing the repeal and new sections will be to provide needed capital at reduced rates for nonpoint source pollution control projects thereby assisting in improving water quality in the state in furtherance of the objectives of the Clean Water Act. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the repeal and new sections as proposed.

It is estimated that the repeal and new sections will not adversely affect local economies because the proposed changes relate to a voluntary program that provides needed capital at reduced rates for nonpoint source pollution control projects. Indeed, by the state financially contributing to these projects, the local economies should be positively affected.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

SUBCHAPTER C. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.301 - 375.306

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

The repeal is proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and of the state revolving loan funds.

The statutory provisions affected by the repeal are Texas Water Code Chapter 15, Subchapter J.

§375.301. Scope of Subchapter.

§375.302. Definitions of Terms.

§375.303. Eligible Projects.

§375.304. Application for Assistance.

§375.305. Promissory Notes and Loan Agreements.

§375.306. Lending Rates.

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

Filed with the Office of the Secretary of State on April 21, 2004.

TRD-200402668
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 16, 2004
For further information, please call: (512) 475-2052

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SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.301, §375.302

These new sections are proposed under the authority of Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board, Texas Water Code, §15.605 which requires the board to adopt rules for Subchapter J, Chapter 15, Water Code including the nonpoint source loan program and estuary management program, and rules to establish the nonpoint source linked deposit program.

§375.301. Scope of Subchapter.

The provisions of this Subchapter C shall apply to administration of the nonpoint source loan program and the nonpoint source linked deposit program under the Clean Water Pollution Control Revolving Fund established by the Water Code, Chapter 15, Subchapter J. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A (relating to General Provisions) shall apply to this subchapter.

§375.302. Definitions of Terms.

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

(1) BMP--Best management practices are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or address a particular problem.

(2) Eligible lending institution--A financial institution that makes commercial loans, is either a designated as a depository of state funds by the Texas comptroller of public accounts, herein referred to as a state depository, or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Water Code §15.611, and is willing to agree to provide collateral equal to the amount of linked deposits placed with it.

(3) Individual Water Quality Management Plan--An approved land management plan which considers site-specific characteristics (such as soil types, slope, climate, vegetation and land usage) to improve or conserve water resources.

(4) Linked Deposit--A deposit governed by a linked deposit agreement between the board and an eligible lending institution that requires that:

(A) the eligible lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(B) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this division; and

(C) the eligible lending institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent;

(5) Linked Deposit Agreement--A written agreement between the board, acting through the executive administrator, and an eligible lending institution providing for the deposit by the board of an amount of funds from the CWSRF program account with the eligible lending institution executed pursuant to the authority and according to the conditions of this subchapter.

(6) National Estuary Program--Program created by the Water Quality Act of 1987 and administered according to Section 320 of the Act.

(7) NPS Loan Program--Nonpoint Source Pollution Loan Program, the loan program established in Division 2 of this subchapter to provide low interest loans to persons for the implementation of approved nonpoint source pollution control and abatement projects and estuary management projects.

(8) NPS Management Report--The most recent Texas Nonpoint Source Pollution Assessment Report and Management Program adopted by the commission.

(9) Person--An individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the Act, including a political subdivision as defined by Water Code §15.602(9), if the person is eligible for financial assistance under federal law establishing the revolving fund.

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 April 21, 2004.

TRD-200402669
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 16, 2004
For further information, please call: (512) 475-2052

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DIVISION 2. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.325 - 375.329

These new sections are proposed under the authority of Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board and Water Code, §15.605 which requires the board to adopt rules establishing the nonpoint source loan program and estuary management program.

§375.325. Purpose.

This division implements the Texas Water Code, Chapter 15, Subchapter J related to providing financial assistance to persons for nonpoint source pollution control and abatement projects and estuary management projects.

§375.326. Eligible Projects.

Projects eligible for funding from the NPS Loan Program must be:

(1) an identified practice within a Water Quality Management Plan; or

(2) a nonpoint source management activity that has been identified in the Texas Comprehensive Groundwater Protection Program; or

(3) a BMP listed in the NPS Management Report; and

(4) must be consistent with the EPA approved Nonpoint Source Management Plan or the National Estuary Program efforts.

§375.327. Application for Assistance.

An applicant for financial assistance for a nonpoint source or estuary protection project pursuant to this subchapter shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete application.

§375.328. Promissory Notes and Loan Agreements.

(a) The board may provide financial assistance to applicants by either purchasing bonds issued by such applicant or by receiving a promissory note and entering into a loan agreement with such applicant. If, however, an applicant is a governmental entity that is fully authorized to issue bonds, the applicant may not enter into a loan agreement as provided in this section.

(b) If an applicant executes a promissory note and loan agreement with the board, the executive administrator may waive the hiring or employment of a financial advisor required pursuant to these rules.

§375.329. Lending Rates.

The interest rate for applicants receiving funding pursuant to this subchapter will be the 140% of the rate pursuant to §375.52 of this title (relating to Lending Rates).

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

Filed with the Office of the Secretary of State on April 21, 2004.

TRD-200402670
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 16, 2004
For further information, please call: (512) 475-2052

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DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM

31 TAC §§375.350 - 375.357

These new sections are proposed under the authority of Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board, and Texas Water Code, §15.605 which authorizes the board to adopt rules relating to the nonpoint source linked deposit program.

§375.350. Purpose.

This division implements Texas Water Code, Chapter 15, Subchapter J related to the use of the CWSRF for the purpose of providing linked deposits to eligible lending institutions for loans to persons for nonpoint source pollution control projects.

§375.351. Authorization to Execute Agreements.

The board authorizes the executive administrator to execute a linked deposit agreement with an eligible lending institution to provide funds from the CWSRF program account according to and in compliance with this division. The linked deposit agreement shall include the obligations set forth in this division and such other terms and conditions determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this subchapter.

§375.352. Conditions Prior to Execution.

(a) Before the executive administrator may execute a linked deposit agreement, a lending institution shall submit to the executive administrator:

(1) the application of a person determined by the eligible lending institution to be eligible and creditworthy to receive a loan according the criteria of the institution;

(2) a draft loan agreement with such person that:

(A) identifies the principal amount of the loan which shall not exceed $250,000;

(B) identifies the interest rate to be paid by the borrower which shall not exceed the interest rate paid by the eligible lending institution to the board plus four percent;

(C) includes a repayment schedule which identifies the dates on which payments are due from the loan recipient to the lending institution;

(D) limits the use of the loan funds to the project which is certified pursuant to either §375.353(a) or (b) of this division; and

(E) contains all such other terms and conditions determined by the eligible lending institution in its sole discretion to be reasonable for the purposes of a private loan agreement;

(3) a certification:

(A) from the eligible lending institution of the interest rate applicable to the proposed loan;

(B) for proposed project as identified by either §375.353(a) or (b) of this division; and

(4) such other information or documentation as determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this division.

(b) Before the executive administrator executes a linked deposit agreement, the executive administrator shall review the information submitted in this section and determine that:

(1) the lending institution is an eligible lending institution as defined §375.302 of this subchapter;

(2) the documents submitted by the lending institution comply with the requirements of this division; and

(3) execution of the linked deposit agreement fulfills the purposes and intent of this subchapter, the Clean Water Act, and the public interest.

§375.353. Project Certifications.

(a) If the proposed project is an agricultural or silvicultural nonpoint source pollution control project, in order to be eligible to receive a linked deposit a director of a soil and water conservation district for the district in which the project is located must certify that:

(1) the loan recipient has a water quality management plan certified by the State Soil and Water Conservation Board; and

(2) the project furthers or implements such plan.

(b) For all projects that are not an agricultural or silvicultural nonpoint source pollution control project, in order to be eligible to receive a linked deposit the executive director must certify that the loan recipient's proposed project implements the NPS Management Report.

§375.354. Board Obligations in Linked Deposit Agreements.

(a) Upon execution of a linked deposit agreement by the executive administrator and an eligible lending institution, the board, acting through its executive administrator, shall:

(1) deposit with the lending institution the amount of funds identified in the linked deposit agreement from the CWSRF program account; and

(2) perform such other terms and conditions as specified in the linked deposit agreement.

(b) The board or the executive administrator may withdraw linked deposits from the lending institution according to the terms of the linked deposit agreement or if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in Texas.

§375.355. Lending Institution Obligations in Linked Deposit Agreements.

(a) Upon execution of a linked deposit agreement and receipt of funds from the board, the lending institution shall:

(1) provide collateral equal to the amount of the funds from the CWSRF program account placed on deposit with it;

(2) lend the value of the deposit being provided by the board substantially according to the terms and conditions of the draft loan agreement submitted by the lending institution to the executive administrator;

(3) pay to the board interest on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(4) submit compliance reports to the executive administrator annually providing information on loans made, the performance of the terms of the loan by the person receiving the loan from the lending institution and such other information or documents as specified in the linked deposit agreement;

(5) return the amount of funds provided as a linked deposit as specified in the linked deposit agreement; and

(6) perform such other terms and conditions as specified in the linked deposit agreement, this subchapter, the rules of the board, and applicable federal and state law.

(b) A delay in payment or a default on a loan by the recipient of the loan from the lending institution does not affect the validity of the deposit agreement or the repayment of the deposit in accordance with the terms of the deposit agreement.

§375.356. Requirements after Execution.

After the executive administrator has executed a linked deposit agreement, the executive administrator shall:

(1) at the next available board meeting and each month thereafter, provide a report to the board that:

(A) identifies all linked deposit agreements; and

(B) the status of the loans made by lending institutions; and

(2) in the event of noncompliance on the part of an eligible lending institution, inform the Texas comptroller of public accounts of the noncompliance and include information regarding the noncompliance in the monthly report to the board.

§375.357. State Liability.

The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

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 April 21, 2004.

TRD-200402671
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 16, 2004
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 79. SOCIAL SECURITY

34 TAC §§79.1, 79.3 - 79.5, 79.9, 79.11, 79.13, 79.15, 79.23

The Employees Retirement System of Texas (ERS) proposes amendments to §§79.1, 79.3 - 79.5, 79.9, 79.11, and 79.13. The amended sections concern Administrative Costs, Reporting Procedures, Reporting Periods, Examination of Records, Reporting Official, State Holidays, and Sick Pay Adjustments to Covered Wages. ERS also proposes new §79.15 and §79.23. Section 79.15 concerns Reporting Errors. Section 79.23 concerns Expenses Incurred Establishing Social Security Coverage. The sections are added or amended to comply with and conform to the Texas Government Code, Chapter 606.

Section 79.1 is amended to include "of Texas," which is the legal name of the Employees Retirement System of Texas and is amended to define the abbreviated name, "ERS."

Section 79.3 amended to clarify reporting procedures for collection of Social Security taxes prior to January 1, 1987 by ERS and payment and reporting responsibility for Social Security taxes beginning January 1, 1987 to the IRS.

Section 79.4 and §79.13 are amended by replacing "The Employees Retirement System of Texas" with the abbreviated name "ERS."

Section 79.5 and §79.11 are amended to correctly cite the applicable law.

Section 79.9 is amended by providing the appropriate entity responsible for receiving reports and clarifying the guidelines for reporting.

Section 79.15 is added to establish guidelines to resolve reporting errors.

Section 79.23 is added to indemnify ERS from all costs associated with entering into a social security coverage agreement.

Paula A. Jones, General Counsel, has determined that for the first five-year period the amendments and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new sections, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections will be simplified and clarified administration of the Texas Social Security Program in accordance with Texas Government Code, Chapter 606. There are no known anticipated economic costs to persons who are required to comply with the amendments and new sections as proposed.

Comments on the proposal may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is June 7, 2004 at 12:00 p.m.

The amendments and new sections are proposed under Texas Government Code, §606.023, which provide authorization for the Board of Trustees to adopt rules necessary to govern the application for and the eligibility of employees of a political subdivision to obtain social security coverage.

No other statutes are affected by these proposed amendments and new sections.

§79.1. Administrative Costs.

The costs to the Employees Retirement System of Texas (ERS) for administering the program for state employees shall be paid by state

appropriation. The costs of administering the program for participating counties, municipalities, and other political subdivisions shall be payable by the covered entities. The amount of the fee is to be determined by the board based upon available funds and projected expenses.

§79.3. Reporting Procedures.

Each reporting entity shall make reports and payment in such manner and form as the executive director may require for periods prior to January 1, 1987, regular reports to ERS are required. On and after January 1, 1987, only such reports to ERS as may be requested by the executive director or designee are required. On and after January 1, 1987, including retroactive periods, all employing entities also have payment and reporting responsibilities directly to the Internal Revenue Service (IRS).

§79.4. Reporting Periods.

Social Security covered wages actually paid during a reporting period and the contributions due from those payments are to be reported as follows.

(1) For reporting periods beginning the first day of the month and ending the 15th day of the month, reports and contributions shall be received by ERS [~~the Employees Retirement System of Texas~~] by 5 p.m. on the sixth working day following the 15th of the month.

(2) For reporting periods beginning the 16th day of the month and ending the last day of the month, reports and contributions shall be received by ERS [~~the Employees Retirement System of Texas~~] by 5 p.m. on the sixth working day of the following month.

§79.5. Examination of Records.

The executive director or his or her representative is authorized to physically examine all records of a governmental unit which has entered into an agreement under the terms of Texas Government Code, Chapter 606 [~~Texas Civil Statutes, Article 695g~~], as amended.

§79.9. Reporting Official.

The official title and address of the person who will be charged with the duty to make assessments, collections, and reports shall be specified in the application for coverage. Any change in this information prior to completion of the referendum process is to be reported to the State Social Security Administrator, ERS, [~~Social Security Division of the Employees Retirement System~~] within 30 days.

§79.11. State Holidays.

When determining the date reports are due to ERS [~~the Social Security Division~~], a "state holiday" is one defined in Texas Government Code, Chapter 606 [~~Texas Civil Statutes, Article 4591~~], as it is amended from time to time.

§79.13. Sick Pay Adjustments to Covered Wages.

(a) (No change.)

(b) To receive adjustments to exclude payments on account of sickness from covered wages, a governmental entity must:

(1) obtain approval of the ERS [~~Social Security Division of the Employees Retirement System of Texas~~] of all aspects of the governmental entity's sick pay plan. Submissions received at ERS' [~~the Employees Retirement System of Texas~~] office after 5 p.m. on February 1, 1985, will not be considered.

(2) file a report of adjustments (Form SSA 3964 or its successor) with ERS [~~the Social Security Division of the Employees Retirement System of Texas~~]. All reports must be submitted in accordance with the federal Social Security Administration's requirements as to form and content. Reports of adjustments will not be considered if they are received at ERS' [~~the Employees Retirement System~~] office after the later of:

(A) (No change.)

(B) 5 p.m. on the 10th working day after approval of the sick pay plan was issued by ERS [~~the Employees Retirement System of Texas~~].

(3) (No change.)

(c) (No change.)

(d) If the executive director of ERS [~~the Employees Retirement System of Texas~~] determines that the Social Security Administration has relaxed or repealed any of the requirements contained in this rule, the executive director may make a corresponding change in the retirement system's requirements.

§79.15. Reporting Errors.

If a reporting error is discovered, the employing entity must comply with all State and Federal requirements to resolve the discrepancy, and must provide all relevant information to ERS regarding such error.

§79.23. Expenses Incurred Establishing Social Security Coverage.

ERS assumes no obligation and is not liable for the cost of any legal services, actuarial studies, professional consultation fees or administrative costs incurred by a political subdivision or a public retirement system coverage group related to entering into a social security coverage agreement.

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 April 26, 2004.

TRD-200402747
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 867-7125

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CHAPTER 81. INSURANCE

34 TAC §§81.1, 81.5, 81.7

The Employees Retirement System of Texas ("ERS") proposes amendments to Chapter 81, §§81.1, 81.5, and 81.7, concerning eligibility and the administration of the group benefits program.

Section 81.1 changes the definition of a Retiree to include an eligible annuitant of a Community Supervision and Corrections Department as determined by ERS and as described by §1551.102 and §1551.114, Texas Insurance Code, added by Acts of the 78th Legislature, Regular Session.

Section 81.5 adds eligibility for continuing coverage of surviving dependents of a deceased employee of a Community Supervision and Corrections Department as described by §1551.114, Texas Insurance Code, added by Acts of the 78th Legislature, Regular Session. Section 81.5(f)(3) is also amended to clarify continuing coverage of dependents, when the deceased does not have a spouse covered by the plan.

Section 81.7 changes the term "GBP coverage" to "GBP health coverage." This is a conforming change to comport with a previous amendment to this section adopted by the Board on June 11, 2003, that allows participation in additional coverage and plans without concurrent enrollment in health coverage. The use of the term GBP health coverage has a specific meaning as used

in this section regarding the 90-day waiting period for health coverage as it relates to a new employee with existing, current, and continuous GBP health coverage.

Paula A. Jones, General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to maintain uniform GBP coverage for program participants and to provide updated information on the eligibility of Community Supervision and Corrections Department employees and annuitants and their surviving dependents, as determined by ERS, and clarification of the rules regarding references to GBP health coverage. There are no known or anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed 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 e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is June 7, 2004, at 12:00 p.m.

The amendments are proposed in accordance with Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to implement Chapter 1551 and its purposes, including rules that provide standards for determining eligibility for participation in the GBP.

No other statutes are affected by this proposed amendments.

§81.1. Definitions.

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

(1) - (25) (No change.)

(26) Retiree--An employee who retires or is retired and who:

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

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the program as an annuitant; and

(i) on August 31, 2001, was an eligible employee with a department whose employees are authorized to participate in the program and, on the date of retirement has three years of service with such a department; [~~or~~]

(ii) on August 31, 2001, had three years of service as an eligible employee with a department whose employees are authorized to participate in the program; or [.]

(iii) is determined by ERS to be eligible as described by §1551.102 and §1551.114 of the Act.

(27) - (29) (No change.)

§81.5. Eligibility.

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

(f) Surviving dependents.

(1) The surviving spouse of a retiree or the surviving spouse of an active employee is eligible to continue coverage in the health and dental benefits plans in which the surviving spouse was enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, at the time of death. A deceased active employee described by §1551.114 of the Act must have had at least 10 years of eligible service credit, as determined by ERS, before his or her surviving spouse is eligible to continue coverage. A surviving spouse who is also a state retiree or state employee shall not be eligible for surviving spouse benefits as long as he or she is eligible for coverage as an employee or retiree. Participants continuing coverage as surviving spouses are not eligible for life insurance coverages.

(2) Dependent children of a deceased active employee or retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had, at the time of death, at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, as long as the surviving spouse is eligible and continues to participate in the program. A deceased active employee described by §1551.114 of the Act must have had at least 10 years of eligible service credit, as determined by ERS, before his or her dependent children are eligible to continue coverage. Dependent children of deceased employees or retirees will be considered as dependents of the deceased employee's or retiree's surviving spouse for purposes of the program. Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(3) If an active employee/retiree does not have a spouse covered in the program at the time of his or her death, dependent [~~Dependent~~] children of the [~~a~~] deceased active employee/retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, at the time of death. A deceased active employee described by §1551.114 of the Act must have had at least 10 years of eligible service credit, before his or her dependent children are eligible to continue coverage. A surviving dependent child may continue such coverage until the dependent child becomes ineligible as defined in §81.1 of this title (relating to Definitions). Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(4) - (5) (No change.)

(g) - (l) (No change.)

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) (No change.)

(2) A new employee with existing, current, and continuous GBP health coverage as of the date the employee begins active duty is not subject to the health insurance waiting period established in Section 1551.1055 of the Act, and is eligible to enroll as a new employee in health insurance and additional coverages and plans which include optional and voluntary coverages by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverages selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(3) - (11) (No change.)

(b) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application/enrollment form provided by the Employees Retirement System of Texas, authorizing necessary deductions for premium payments for elected coverage. All other rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to such employee:

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

(3) If the employee has existing, current, and continuous GBP health coverage as of the date the employee begins active duty, the employee is not subject to the health insurance waiting period established in Section 1551.1055 of the Act, and is eligible to enroll as a new employee in health insurance and additional coverages and plans which include optional and voluntary coverages by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverages selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(c) - (l) (No change.)

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402748
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 867-7125

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.12, concerning parole considerations. The amendments are proposed to incorporate new language and restore old language under Chapter 145, Parole. The purpose of the amendments is to establish a voting option for placement of offenders into the Serious and Violent Offender Reentry Initiative (SVORI) program, and to restore language about subsequent reviews of parole after denial.

Rissie Owens, Chair of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of selection of certain offenders to undergo a TDCJ rehabilitation program prior to release. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this amendment.

The amendments are proposed under §508.036, Government Code, which provides the board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

No other statutes, articles or codes are affected by these amendments.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in §508.149(a), Government Code, may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial. The next review date for an offender serving a sentence not listed in §508.149(a), Government Code, shall be as soon as practicable after the first anniversary of the denial.

(3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in §508.149(a), Government Code or greater than one year for offenders not serving sentences listed in §508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed;

(A) FI-1--Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three months from specified date. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRSAP);

(D) FI-4 (Month/Year)--Transfer to Pre-Parole Transfer facility prior to presumptive parole date set by a board panel and release to parole supervision on presumptive parole date;

(E) FI-5--Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC);

(G) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(H) [~~(G)~~] FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than nine months from specified date. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC);

(I) [~~(H)~~] FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP);

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program.

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402760
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 406-5388

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37 TAC §145.17

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.17, concerning parole considerations. The amendments are proposed to incorporate new language under Chapter 145, Parole. The purpose of the amendments is to establish an additional circumstance in which a request for special review can be considered, and to conform the language of the rules to that of current board practice.

Rissie Owens, Chair of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a procedure for special review when both panel members who voted with the majority are no longer with the Board and to clarify voting procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this amendment.

The amendments are proposed under §508.036, Government Code, which provides the board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

No other statutes, articles or codes are affected by these amendments.

§145.17. Action upon Special Review of Information Not Previously Available--Release Denied.

(a) This rule provides a forum for receipt and consideration of information not previously available to the parole panel where the decision of the panel was to deny release to parole or mandatory supervision. While affording a remedy for consideration of such information, the Board also intends by this rule to reduce frivolous and duplicate requests for special consideration.

(b) Requests for special review shall apply only to cases reviewed for release to parole or mandatory supervision where the decision of the parole panel was to deny release to parole or mandatory supervision.

(c) All requests for special review shall be in writing.

(d) Requests for special review shall be considered in the following circumstances:

(1) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review date; or

(2) a petition on behalf of an offender cites information not previously available to the parole panel.

(3) If both parole panel members who voted with the majority are no longer active board members or parole commissioners, the presiding officer (chair) or designated board member may place the decision in the special review process to be reconsidered prior to the next review date.

(e) Information not previously available shall mean only:

(1) responses from trial officials and victims;

(2) a change in an offender's sentence and judgment; or

(3) an allegation that the parole panel commits an error of law or board rule.

(f) All requests for special review shall be filed with The Texas Board of Pardons and Paroles, Board Administrator, P.O. Box 13401, Austin, Texas 78711.

(g) The board administrator shall refer to the special review parole panel only those requests for special review which meet the criteria set forth herein.

(h) A special review parole panel, other than the current voting panel, shall decide and exercise final action on such requests for special review.

(i) Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) deny special review; or

(3) grant special review and revote the case in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402761
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 406-5388

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PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 273. HEALTH SERVICES

37 TAC §273.4

The Commission on Jail Standards proposes amendments to §273.4, concerning Health Records to ensure inmate health records are properly transferred.

Terry Julian, Executive Director, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Julian has also determined that for each year of the first five years the amendments as proposed are in effect the public benefits anticipated as a result of enforcing the amendments as proposed will be to ensure that inmate health records are transferred to the entity receiving the inmate. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by the amendments are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.4. Health Records.

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

(c) The Texas Uniform Health Status Update form, in the format prescribed by the Commission, shall be completed and forwarded to the receiving criminal justice entity [~~facility~~] at the time an inmate is transferred or released from custody.

(d) (No change.)

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

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402758
Terry Julian
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 463-8236

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES

The Texas Department of Human Services (DHS) proposes to repeal §42.12, concerning changes in Deaf-Blind services, and proposes new §42.12, concerning changes in Deaf-Blind with Multiple Disabilities services, in its Medicaid Waiver Program for People who are Deaf-Blind with Multiple Disabilities chapter. The purpose of the repeal and new section is to replace the current rule with a new rule that incorporates the addition of a cost ceiling to Deaf-Blind with Multiple Disabilities (DB-MD) services, as required by a budget rider (Rider 7b(2)) that was attached to DHS's funding levels authorized for the 2004 - 2005 biennium.

The current rule states that if the estimated cost of DB-MD services necessary for the client to live in the most integrated setting in the community exceeds the cost ceiling, DHS may not disallow or jeopardize community services for that person. Under the new rule, the estimated costs for needed services, excluding minor home modifications and adaptive aids, may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month individual service plan (ISP) period. If the estimated cost exceeds either of these limits, then the client is no longer eligible for services, unless the client was already receiving services under DHS's budget rider (Rider 7) from the 77th legislative session. The proposed rule establishes DHS's criteria for considering changes in the client's service plan and authorizes the Texas Board of Human Services or the DHS commissioner to grant exemptions if warranted in individual cases.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section. Although the proposed new rule should result in a slight reduction in the average cost per client, which may enable DHS to serve a few additional clients, there is no net fiscal impact to the agency's budget.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that the terms of Rider 7b(2) will be detailed in the Texas Administrative Code and that DHS will be in compliance with provisions of the 2004 - 2005 Legislative Appropriations Act. There may be a minimal adverse economic impact on some home and community support services provider agencies that deliver services to DB-MD clients, because the rule will cut back services for some clients. The number of clients affected by

the change is very small, however, and there would not be a disproportionate effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Gerardo Cantú at (512) 438-3693 in DHS's Community Care Provider Services section. Written comments on the proposal may be submitted to Supervisor, Rules Unit-123, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

These rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003). At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

40 TAC §42.12

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

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§42.12. Changes in Deaf-Blind Services.

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402712
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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40 TAC §42.12

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§42.12. Changes in Deaf-Blind with Multiple Disabilities Services.

(a) The Texas Department of Human Services (DHS) may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers, if:

(1) those services are required for that individual to live in the most integrated setting appropriate to his or her needs;

(2) the estimated cost for needed services, excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling per month for six months during the individual service plan (ISP) year. The six months may be continuous or intermittent during the ISP year; and

(3) DHS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an ongoing client has a change in needs that would cause the estimated cost for needed services to exceed 100% of the cost ceiling, the Deaf-Blind Program consultant may consider the client's request to exceed the cost ceiling. The estimated costs for the needed services (excluding minor home modifications and adaptive aids) may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month ISP period. The Deaf-Blind Program consultant will make the determination to approve or deny each request. A request for a change in the ISP will be considered if there is a change in:

(1) the client's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the client; or

(3) the need for a service or support to adequately support the client living in the most integrated setting appropriate to his or her needs.

(c) The estimated cost of the ISP can never exceed 133.3% of the cost ceiling. If the client's needs cannot be met within the estimated cost of 133.3% of the cost ceiling, then the client is no longer eligible for services, unless the client meets the criteria in subsection (e) of this section. All available non-waiver support systems and resources must be accessed in the development of the ISP.

(d) The estimated cost of the client's needed services can be between 100% and 133.3% of the cost ceiling for six months during the ISP year, if approved in accordance with subsection (b) of this section. If the client has received six months of service with an estimated cost of 100% to 133.3% of the cost ceiling, the client is not eligible for services if the estimated cost of services exceeds 100% for any one of the remaining six months in the ISP year.

(e) DHS will continue services to those individuals receiving services in a waiver program, under authority granted in Rider 7 of the Appropriations Act, 77th Texas Legislature, when continuation of the services is necessary for the individual to live in the most integrated setting appropriate to his or her needs and DHS continues to comply with CMS cost-effectiveness requirements.

(f) The Texas Board of Human Services or the DHS commissioner has the authority to grant an exemption to this rule in individual cases. A written request for an exemption to the board or commissioner will be considered in situations in which the client's needs cannot be met within the estimated cost ceiling and cannot be provided through any other setting or programs.

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 April 23, 2004.

TRD-200402713
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Department of Human Services (DHS) proposes to repeal §48.2123, concerning changes in Community Living Assistance and Support Services (CLASS) services, and §48.6099, concerning changes in Community Based Alternatives (CBA) services; and proposes new §48.2123, concerning changes in Community Living Assistance and Support Services, and §48.6099, concerning changes in Community Based Alternatives services, in its Community Care for Aged and Disabled chapter. The purpose of the repeals and new sections is to replace the current rules with new rules that incorporate the addition of a cost ceiling to CLASS and CBA services, as required by a budget rider (Rider 7b(2)) that was attached to DHS's funding levels authorized for the 2004 - 2005 biennium.

The current rules state that if the estimated cost of CLASS and CBA services necessary for the client to live in the most integrated setting in the community exceeds the cost ceiling, DHS may not disallow or jeopardize community services for that person. Under the new rules, the estimated costs for the needed services, excluding minor home modifications and adaptive aids, may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month individual service plan (ISP) period. If the estimated cost exceeds either of these limits, then the client is no longer eligible for services, unless the client was already receiving services under DHS's budget rider (Rider 7) from the 77th legislative session. The proposed rules establish DHS's criteria for considering changes in the client's service plan and authorize the Texas Board of Human Services or the DHS commissioner to grant exemptions if warranted in individual cases.

New §48.6099 also stipulates that clients receiving waiver services through the Medically Dependent Children Program fall under the provisions of the new rule when they apply for transition to the CBA Program at age 21.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections. Although the proposed new rules should result in a slight reduction in the average cost per client, which may enable DHS to serve a few additional clients, there is no net fiscal impact to the agency's budget.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that the terms of Rider 7b(2) will be detailed in the Texas Administrative Code and that DHS will be in compliance with provisions of the 2004 - 2005 Legislative Appropriations Act. There may be a minimal adverse economic impact on some home and community support services provider agencies that deliver services to CLASS and CBA clients, because the rules will cut back services for some clients. The number of clients affected by the change is very small, however, and there would not be a disproportionate effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of the proposal concerning §48.2123 may be directed to Gerardo Cantú at (512) 438-3693 in DHS's Community Care Provider Services section. Questions about the content of the proposal concerning §48.6099 may be directed to Duanne Harris at (512) 438-5464 in DHS's Long-term Care Client Eligibility section. Written comments on either proposal may be submitted to Supervisor, Rules Unit-119, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

These rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003). At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

SUBCHAPTER C. MEDICAID WAIVER PROGRAM FOR PERSONS WITH RELATED CONDITIONS

40 TAC §48.2123

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

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human

Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§48.2123. Changes in Community Living Assistance and Support Services (CLASS) Services.

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402714
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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40 TAC §48.2123

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§48.2123. Changes in Community Living Assistance and Support Services.

(a) The Texas Department of Human Services (DHS) may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers, if:

(1) those services are required for that individual to live in the most integrated setting appropriate to his or her needs;

(2) the estimated cost for needed services, excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling per month for six months during the individual service plan (ISP) year. The six months may be continuous or intermittent during the ISP year; and

(3) DHS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an ongoing client has a change in needs that would cause the estimated cost for needed services to exceed 100% of the cost ceiling, the interdisciplinary team will make the determination to approve or deny the request. The estimated costs for the needed services (excluding minor home modifications and adaptive aids) may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month ISP period. A request for a change in the ISP will be considered if there is a change in:

(1) the client's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the client; or

(3) the need for a service or support to adequately support the client living in the most integrated setting appropriate to his or her needs.

(c) The estimated cost of the ISP can never exceed 133.3% of the cost ceiling. If the client's needs cannot be met within the estimated cost of 133.3% of the cost ceiling, then the client is no longer eligible for services, unless the client meets the criteria in subsection (e) of this section. All available non-waiver support systems and resources must be accessed in the development of the ISP.

(d) The estimated cost of the client's needed services can be between 100% and 133.3% of the cost ceiling for six months during the ISP year, if approved in accordance with subsection (b) of this section. If the client has received six months of service with an estimated cost of 100% to 133.3% of the cost ceiling, the client is not eligible for services if the estimated cost of services exceeds 100% for any one of the remaining six months in the ISP year.

(e) DHS will continue services to those individuals receiving services in a waiver program, under authority granted in Rider 7 of the Appropriations Act, 77th Texas Legislature, when continuation of the services is necessary for the individual to live in the most integrated setting appropriate to his or her needs and DHS continues to comply with CMS cost-effectiveness requirements.

(f) The Texas Board of Human Services or the DHS commissioner has the authority to grant an exemption to this rule in individual cases. A written request for an exemption to the board or commissioner will be considered in situations in which the client's needs cannot be met within the estimated cost ceiling and cannot be provided through any other setting or programs.

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 April 23, 2004.

TRD-200402715
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6099

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

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human

Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§48.6099. Changes in CBA Services.

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402716
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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40 TAC §48.6099

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§48.6099. Changes in Community Based Alternatives Services.

(a) The Texas Department of Human Services (DHS) may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers, if:

(1) those services are required for that individual to live in the most integrated setting appropriate to his or her needs;

(2) the estimated cost for needed services, excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling per month for six months during the individual service plan (ISP) year. The six months may be continuous or intermittent during the ISP year; and

(3) DHS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an ongoing client has a change in needs that would cause the estimated cost for needed services to exceed 100% of the cost ceiling, the DHS case manager may consider the client's request to exceed the cost ceiling. The estimated costs for the needed services (excluding minor home modifications and adaptive aids) may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month ISP period. The DHS case manager will make the determination to approve or deny the request in consultation with the DHS registered nurse, as needed. A request for a change in the ISP will be considered if there is a change in:

(1) the client's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the client; or

(3) the need for a service or support to adequately support the client living in the most integrated setting appropriate to his or her needs.

(c) The estimated cost of the ISP can never exceed 133.3% of the cost ceiling. If the client's needs cannot be met within the estimated cost of 133.3% of the cost ceiling, then the client is no longer eligible for services, unless the client meets the criteria in subsection (e) of this section. All available non-waiver support systems and resources must be accessed in the development of the ISP.

(d) The estimated cost of the client's needed services can be between 100% and 133.3% of the cost ceiling for six months during the ISP year, if approved in accordance with subsection (b) of this section. If the client has received six months of service with an estimated cost of 100% to 133.3% of the cost ceiling, the client is not eligible for services if the estimated cost of services exceeds 100% for any one of the remaining six months in the ISP year.

(e) DHS will continue services to those individuals receiving services in a waiver program, under authority granted in Rider 7 of the Appropriations Act, 77th Texas Legislature, when continuation of the services is necessary for the individual to live in the most integrated setting appropriate to his or her needs and DHS continues to comply with CMS cost-effectiveness requirements.

(f) The Texas Board of Human Services or the DHS commissioner has the authority to grant an exemption to this rule in individual cases. A written request for an exemption to the board or commissioner will be considered in situations in which the client's needs cannot be met within the estimated cost ceiling and cannot be provided through any other setting or programs.

(g) Individuals receiving waiver services through the Medically Dependent Children Program are covered by the provisions in this section when they apply for transition to the Community Based Alternatives Program at age 21.

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402717
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

The Texas Department of Human Services (DHS) proposes to repeal §50.50 and proposes new §50.50, concerning changes in Consolidated Waiver Program (CWP) services, in its §1915(c) Consolidated Waiver Program chapter. The purpose of the repeal and new section is to replace the current rule with a new rule that incorporates the addition of a cost ceiling to CWP services, as required by a budget rider (Rider 7b(2)) that was attached to DHS's funding levels authorized for the 2004 - 2005 biennium.

The current rule states that if the estimated cost of CWP services necessary for the client to live in the most integrated setting

in the community exceeds the cost ceiling, DHS may not disallow or jeopardize community services for that person. Under the new rule, the estimated costs for the needed services, excluding minor home modifications and adaptive aids, may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month individual service plan (ISP) period. If the estimated cost exceeds either of these limits, then the client is no longer eligible for services, unless the client was already receiving services under DHS's budget rider (Rider 7) from the 77th legislative session. The proposed rule establishes DHS's criteria for considering changes in the client's service plan and authorizes the Texas Board of Human Services or the DHS commissioner to grant exemptions if warranted in individual cases.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section. Although the proposed new rule should result in a slight reduction in the average cost per client, which may enable DHS to serve a few additional clients, there is no net fiscal impact to the agency's budget.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that the terms of Rider 7b(2) will be detailed in the Texas Administrative Code and that DHS will be in compliance with provisions of the 2004 - 2005 Legislative Appropriations Act. There may be a minimal adverse economic impact on some home and community support services provider agencies that deliver services to CWP clients, because the rule will cut back services for some clients. The number of clients affected by the change is very small, however, and there would not be a disproportionate effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Gerardo Cantú at (512) 438-3693 in DHS's Community Care Provider Services section. Written comments on the proposal may be submitted to Supervisor, Rules Unit-122, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

These rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003). At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

40 TAC §50.50

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

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§50.50. Changes in Consolidated Waiver Program (CWP) Services.

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

Filed with the Office of the Secretary of State on April 23, 2004.

TRD-200402718
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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40 TAC §50.50

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§50.50. Changes in Consolidated Wavier Program Services.

(a) The Texas Department of Human Services (DHS) may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers, if:

(1) those services are required for that individual to live in the most integrated setting appropriate to his or her needs;

(2) the estimated cost for needed services, excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling per month for six months during the individual service plan (ISP) year. The six months may be continuous or intermittent during the ISP year; and

(3) DHS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an ongoing client has a change in needs that would cause the estimated cost for needed services to exceed 100% of the cost ceiling, the DHS case manager may consider the client's request to exceed the cost ceiling. The estimated costs for the needed services (excluding minor home modifications and adaptive aids) may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month ISP period.

This consideration will be made in consultation with DHS's registered nurse, as needed, and will refer to §50.48 of this title (relating to Utilization Review), if appropriate. A request for a change in the ISP will be considered if there is a change in:

(1) the client's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the client; or

(3) the need for a service or support to adequately support the client living in the most integrated setting appropriate to his or her needs.

(c) The estimated cost of the ISP can never exceed 133.3% of the cost ceiling. If the client's needs cannot be met within the estimated cost of 133.3% of the cost ceiling, then the client is no longer eligible for services, unless the client meets the criteria in subsection (e) of this section. All available non-waiver support systems and resources must be accessed in the development of the ISP.

(d) The estimated cost of the client's needed services can be between 100% and 133.3% of the cost ceiling for six months during the ISP year, if approved in accordance with subsection (b) of this section. If the client has received six months of service with an estimated cost of 100% to 133.3% of the cost ceiling, the client is not eligible for services if the estimated cost of services exceeds 100% for any one of the remaining six months in the ISP year.

(e) DHS will continue services to those individuals receiving services in a waiver program, under authority granted in Rider 7 of the Appropriations Act, 77th Texas Legislature, when continuation of the services is necessary for the individual to live in the most integrated setting appropriate to his or her needs and DHS continues to comply with CMS cost-effectiveness requirements.

(f) The Texas Board of Human Services or the DHS commissioner has the authority to grant an exemption to this rule in individual cases. A written request for an exemption to the board or commissioner will be considered in situations in which the client's needs cannot be met within the estimated cost ceiling and cannot be provided through any other setting or programs.

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 April 23, 2004.

TRD-200402719
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

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CHAPTER 51. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

40 TAC §51.39

The Texas Department of Human Services (DHS) proposes new §51.39, concerning changes in Medically Dependent Children Program services, in its Waiver Program for Medically Dependent Children chapter. The purpose of the new section is to describe in the Texas Administrative Code the methodology for considering changes in client services within the Medically Dependent Children Program (MDCP). The new section also incorporates the addition of a cost ceiling to MDCP services, as required by a budget rider (Rider 7b(2)) that was attached to DHS's funding levels authorized for the 2004 - 2005 biennium.

The new section states that the estimated costs for needed services, excluding minor home modifications and adaptive aids, may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month individual plan of care (IPC) period. If the estimated cost exceeds either of these limits, then the client is no longer eligible for services, unless the client was already receiving services under DHS's budget rider (Rider 7) from the 77th legislative session. The proposed rule establishes DHS's criteria for considering changes in the client's service plan and authorizes the Texas Board of Human Services or the DHS commissioner to grant exemptions if warranted in individual cases.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section. Although the proposed new rule should result in a slight reduction in the average cost per client, which may enable DHS to serve a few additional clients, there is no net fiscal impact to the agency's budget.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that MDCP methodology for considering service changes and the terms of Rider 7b(2) will be detailed in the Texas Administrative Code, and that DHS will be in compliance with provisions of the 2004 - 2005 Legislative Appropriations Act. There may be a minimal adverse economic impact on some home and community support services provider agencies that deliver services to MDCP clients, because the rule will cut back services for some clients. The number of clients affected by the change is very small, however, and there would not be a disproportionate effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of the proposal may be directed to Gerardo Cantú at (512) 438-3693 in DHS's Community Care Provider Services section. Written comments on the proposal may be submitted to Supervisor, Rules Unit-124, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

These rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003). At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

§51.39. Changes in Medically Dependent Children Program Services.

(a) The Texas Department of Human Services (DHS) may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers, if:

(1) those services are required for that individual to live in the most integrated setting appropriate to his or her needs;

(2) the estimated cost for needed services, excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling per month for six months during the individual plan of care (IPC) year. The six months may be continuous or intermittent during the IPC year; and

(3) DHS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an ongoing client has a change in needs that would cause the estimated cost for needed services to exceed 100% of the cost ceiling, the DHS case manager may consider the client's request to exceed the cost ceiling. The estimated costs for the needed services (excluding minor home modifications and adaptive aids) may not exceed 133.3% of the cost ceiling in any month, nor may the costs exceed 100% of the cost ceiling in more than six months during a 12-month IPC period. The DHS case manager will make the determination to approve or deny the request. A request for a change in the IPC will be considered if there is a change in:

(1) the client's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the client; or

(3) the need for a service or support to adequately support the client living in the most integrated setting appropriate to his or her needs.

(c) The estimated cost of the IPC can never exceed 133.3% of the cost ceiling. If the client's needs cannot be met within the estimated cost of 133.3% of the cost ceiling, then the client is no longer eligible for services, unless the client meets the criteria in subsection (e) of this section. All available non-waiver support systems and resources must be accessed in the development of the IPC.

(d) The estimated cost of the client's needed services can be between 100% and 133.3% of the cost ceiling for six months during the IPC year, if approved in accordance with subsection (b) of this section. If the client has received six months of service with an estimated cost of 100% to 133.3% of the cost ceiling, the client is not eligible for services if the estimated cost of services exceeds 100% for any one of the remaining six months in the IPC year.

(e) DHS will continue services to those individuals receiving services in a waiver program, under authority granted in Rider 7 of the Appropriations Act, 77th Texas Legislature, when continuation of the services is necessary for the individual to live in the most integrated setting appropriate to his or her needs and DHS continues to comply with CMS cost-effectiveness requirements.

(f) The Texas Board of Human Services or the DHS commissioner has the authority to grant an exemption to this rule in individual cases. A written request for an exemption to the board or commissioner will be considered in situations in which the client's needs cannot be met within the estimated cost ceiling and cannot be provided through any other setting or programs.

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 April 23, 2004.

TRD-200402720
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 6, 2004
For further information, please call: (512) 438-3734

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) has withdrawn from consideration the proposed amendment to §251.6 which appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2141).

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402764
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: April 26, 2004
For further information, please call: (512) 305-6933

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1 TAC §251.14

The Commission on State Emergency Communications (CSEC) has withdrawn from consideration proposed new §251.14 which appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2153).

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402768
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: April 26, 2004
For further information, please call: (512) 305-6933

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1035

The Texas Education Agency has withdrawn from consideration the proposed amendment to §61.1035 which appeared in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11462).

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402754
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: April 26, 2004
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS
SUBCHAPTER D. HEALTH GROUP COOPERATIVES

28 TAC §§26.401 - 26.411

The Texas Department of Insurance has withdrawn from consideration the proposed new §§26.401 - 26.411 which appeared in the January 9, 2004, issue of the *Texas Register* (29 TexReg 306).

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402774
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 26, 2004
For further information, please call: (512) 463-6327

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 116. PROPERTY MANAGEMENT DIVISION

SUBCHAPTER B. MANDATORY PAPER RECYCLING PROGRAM

1 TAC §§116.20 - 116.28

The Texas Building and Procurement Commission adopts amendments to Title 1, Texas Administrative Code, Chapter 116, Subchapter B, §§116.20-116.28, relating to the Mandatory Paper Recycling Program, with nonsubstantive changes to the text as published in the February 13, 2004 edition of the *Texas Register* (29 TexReg 1281).

The changes clarify and add definitions, replace references to Commission; expand program goals to actively seek all possible recycling methods and add a new goal to increase the amount of paper diverted from the waste stream; amend the duties of the recycling coordinator to cover reporting of contaminants and to designate areas for toner cartridge receptacles.

The rules expand performance measures to include the amount of revenue generated by the program and clarify that the revenue generated, minus the costs of the program, shall be deposited to the credit of the general revenue fund.

The rules expand the duties of a recycling coordinator and address requests for delegated recycling authority.

The public comment period ended March 14, 2004. No comments were received.

The amendments to §§116.20-116.28 are adopted under the authority of the Texas Government Code, Sections 2152.003, 2175.061, 2175.131, 2175.134, 2175.303, and 2175.902.

The following codes are affected by these rules: Texas Government Code, Title 10, Chapter 2175, subchapter Z.

§116.20. Authority.

(a) Pursuant to the Texas Government Code, §2175.061 and §2175.902, the Texas Building and Procurement Commission is authorized to adopt rules to implement and establish a mandatory paper recycling program for state agencies that occupy Commission controlled facilities.

(b) Under Chapter 2175 proceeds from the sale of materials by the Commission, less the expenses of cost recovery, shall be deposited to the credit of the general fund of the state treasury.

§116.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Commission--the Texas Building and Procurement Commission.

(2) Commission controlled facilities--Those facilities which are listed on the Commission's facilities inventory.

(3) Contaminants--Any material that significantly decreases the market value of recyclable paper. Contaminants include, but are not limited to, food containers (bottles, cans, plastic cups, polystyrene, aluminum, food wrappers, etc.) food waste, hardbound covered books, plastics (including plastic paper clips and plastic spiral notebook binders), paper towels, napkins, rubber bands, express mail envelopes, padded envelopes, laminated paper, wrappers on packaged paper stock, self-adhesive nonpaper products, and toner cartridges.

(4) Facility--a building, utility system, grounds or other physical entity included in the inventory of the Commission.

(5) Facilities inventory--a compilation of the property referenced in §116.21 (2) of this Title.

(6) Mandatory Paper Recycling Program--A statutory program to collect all paper deposited in specifically marked containers for the purpose of recycling.

(7) Mixed paper--A mixture of various grades of contaminant-free recyclable waste paper that includes colored paper, glossy paper, envelopes (excluding padded envelopes and express mail envelopes), sticky notes, office paper, cover stock, paperboard, small amounts of cardboard and softbound books. Cardboard boxes are not included with mixed paper and are to be sorted and collected separately.

(8) Newsprint--Newspapers (including advertisement inserts), magazines and catalogs. Newsprint does not include discarded telephone books.

(9) Paperboard--Paper stock used for indexes, hanging files, kraft files (brown or golden), corrugated cardboard, pressboard and tube stock.

(10) Recycling coordinator--An agency's point of contact who shall coordinate recycling efforts within the agency, track the success of the program, and educate employees on recycling methods.

(11) Surplus and salvage property--For the purposes of this subchapter, surplus and salvage property include paper materials and toner cartridges suitable for recycling.

(12) Toner cartridge--A cartridge containing a substance used to develop a latent xerographic image, commonly used in connection with computer printers, facsimile and copier machines.

(13) Waste paper--Used paper stock that is commonly generated in the office environment and consists of a mixture of various qualities of used paper.

(14) White paper--Contaminant-free white office paper in single sheets or continuous forms, including white computer paper, copy paper, letterhead, white notebook paper, ledger paper, rolodex or index cards and calculator tape. Not more than 25 % of the white paper's surface can be covered with colored ink other than black ink.

§116.22. Goals.

The goals of the paper recycling program are to:

(1) encourage agencies to cooperatively participate in the Mandatory Paper Recycling Program;

(2) dispose of waste paper in an efficient manner;

(3) obtain revenue at the highest possible rate for the State;

(4) actively seek all possible recycling methods and solutions; and

(5) increase the amount of paper diverted from the waste stream.

§116.23. Designated Recycling Coordinator.

(a) An agency that occupies a building listed on the facilities inventory maintained by the Commission shall designate a recycling coordinator for the agency.

(b) The recycling coordinator shall execute the following responsibilities:

(1) act as liaison between the agency and the Commission on the effectiveness of the recycling program within the agency;

(2) foster a sense of teamwork for the recycling program within the agency and enlist the support of all employees;

(3) identify areas that generate a large volume of paper, such as a computer room or an in-house print shop and provide information and appropriate receptacles in order to eliminate the waste of recyclable materials;

(4) visually inspect recycling containers for contaminants and notify the appropriate agency personnel and the Commission of the location of receptacles that were found to contain contaminants, and take appropriate remedial measures as necessary;

(5) identify areas within the agency that improperly dispose of recyclable waste paper and request assistance from the Commission to assist with efforts to mitigate the waste;

(6) designate receptacles within the agency to deposit used toner cartridges; and

(7) provide reports or information on the recycling program as requested by the Commission.

(c) The Commission shall annually compile and update a list of agency recycling coordinators. Agencies that are subject to the requirements of the Program, but have failed to designate a recycling coordinator, will be referred to the Office of the State Auditor.

§116.24. Performance Measures.

(a) Performance measures for the Mandatory Paper Recycling Program shall report the information listed below:

(1) complaints reported by the contracted vendor regarding the quality or quantity of the waste paper received for recycling;

(2) the total weight of paper recycled by all agencies;

(3) the number of employees, recycling coordinators and custodial personnel trained in recycling procedures by the Commission; and

(4) the amount of revenue generated by recycling.

(b) Commission staff shall compile this information on a quarterly basis.

§116.25. Paper Recycling Training.

(a) Custodial education and training. The Commission shall provide annual training on recycling procedures to all custodial personnel that collect or handle trash for collection. Custodial personnel shall include state employees and employees of contracted private vendors that provide custodial and recycling services for the Commission.

(b) Recycling coordinator training. The Commission shall provide annual training on recycling procedures to all agency recycling coordinators. Training shall include methods to promote recycling efforts within the agency, how to monitor the effective use of recycling containers, and how to recognize those areas within the agency that have successfully followed recycling procedures.

(c) Employee training and education. The Commission, upon request of a participating agency, shall provide training and education to employees on recycling procedures for separating and disposing of waste paper and contaminants. The Commission shall provide training and/or educational information and material for state agencies that have been approved to conduct in-house recycling training.

(d) Training records. The Commission shall maintain records of all training offered to custodial personnel, state employees, and recycling coordinators. Agencies that provide training under this section shall forward the records to the Commission no later than October 15 of each year. The records shall be maintained according to the Commission's record retention schedule.

§116.26. Delegation of Responsibility.

(a) The Commission may delegate responsibility for maintaining a paper recycling program to agencies located outside of Travis County in state buildings that are under the Commission's control, if they have demonstrated they have met and can continue to meet the following standards:

(1) compliance with Commission guidelines regarding the proper separation and disposal of waste paper in appropriate recycling containers;

(2) the paper recycling coordinator actively monitors and trains employees according to Commission procedures on disposal of contaminants found in recycling containers;

(3) development of a paper recycling contract to sell paper to the highest bidder;

(4) adequate staff and equipment to transport the waste paper to the purchasing vendor;

(5) Commission standards, procedures and guidelines for the Mandatory Paper Recycling Program continue to be followed; and

(6) the agency has continuously maintained a designated recycling coordinator.

(b) An agency seeking delegated responsibility to operate a paper recycling program shall make written application to the Commission, in a format prescribed by the Commission. The application should include the agency's justification for the requested delegation and documentation that the standards of this section have been met or exceeded.

(c) The Commission shall determine if the standards for delegation have been met and are in the best interest of the State. The Commission shall submit a written response to the requesting agency.

The Commission's decision shall be final for the fiscal year in which the application was made.

(d) An agency that has been delegated responsibility to administer a paper recycling program that fails to follow the Commission's standards, procedures, and guidelines shall forfeit the delegated responsibility upon notice from the Commission. The Commission shall include the basis of the decision in the notice.

(e) Agencies that have been delegated responsibility to administer their own paper recycling program shall provide the Commission with quarterly reports stating the quantity of paper recycled and sold, the revenue received by the agency, and their expenses in administering the program. Reports shall be forwarded to the Commission no later than forty-five (45) days after the end of each fiscal quarter.

§116.27. Guidelines and Procedures for Collecting and Recycling Waste Paper.

State employees who office in buildings under the Commission's control and those listed on the Commission's facilities inventory shall adhere to the following paper recycling guidelines and procedures:

(1) all contaminant-free white and mixed waste paper, newsprint, and small sized cardboard must be separated and placed in designated recycling containers provided to the agency. Cardboard boxes, or large sized cardboard, and discarded telephone books are to be sorted and collected separately;

(2) recycle containers shall be centrally located in areas accessible to employees;

(3) all employees shall participate in the mandatory paper recycling program training and make a conscientious effort to keep contaminants from entering the recycling containers;

(4) affected state agencies shall designate paper recycling coordinators who will promote the use of proper recycling methods within the agency;

(5) custodial personnel that have attended training described in §116.25 of this Title shall collect and separate white and mixed waste paper, newsprint, cardboard boxes, large size cardboard, and discarded telephone books, and place them in an area designated by the Commission for disposal.

(6) The Commission shall collect all waste paper, newsprint, cardboard and discarded telephone books, and transport them to the contracted recycling vendor; and

(7) The Commission or an agency with delegated responsibility shall contract with the highest bidder for the sale of recyclable paper.

§116.28. Interagency Agreement for Paper Recycling Services.

The Commission may enter into an interagency agreement to provide paper recycling services to an agency that is statutorily excluded from the mandatory paper recycling program. The interagency agreement shall include, but is not limited to the following terms:

(1) the goals of the program;

(2) mandatory employee training;

(3) the responsibilities of the designated recycling coordinator;

(4) required reports;

(5) performance measures; and

(6) guidelines and procedures relating to collection and disposal of recyclable materials.

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 April 22, 2004.

TRD-200402702
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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Proposal publication date: February 13, 2004
For further information, please call: (512) 463-4257

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 32. DISEASE MANAGEMENT

1 TAC §354.1415

The Texas Health and Human Services Commission (HHSC) adopts Chapter 354, Medicaid Health Services, Division 32, Disease Management §354.1415, concerning Conditions for Participation, without changes to the proposed text as published in the February 6, 2004, issue of the *Texas Register* (29 TexReg 1117) and will not be republished.

The new section describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The new rule outlines the requirements for entities that wish to contract with HHSC to provide disease management services to recipients of Medicaid. The new section is required to satisfy the requirements of House Bill 727, 78th Legislature, regular session (2003), which mandates that HHSC, by rule, shall prescribe the minimum requirements that a provider of a disease management program must meet to be eligible to receive a contract.

No public comments were received concerning the proposed rule.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provides the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2004.

TRD-200402596

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 10, 2004
Proposal publication date: February 6, 2004
For further information, please call: (512) 424-6576

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CHAPTER 363. COMPREHENSIVE CARE PROGRAM

SUBCHAPTER C. PRIVATE DUTY NURSING

1 TAC §363.303, §363.305

The Texas Health and Human Services Commission (HHSC) adopts the proposed amendments to Chapter 363 concerning the Comprehensive Care Program (CCP). Specifically, HHSC adopts amendments to §363.303, concerning Definitions, and §363.305, concerning Provider Participation Requirements, relating to private duty nursing (PDN). The amendments are adopted without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9145) and will not be republished.

The amendments are a result of changes needed to comply with House Bill 2292, 78th Texas Legislature, §2.204, R.S. (2003), which contained a provision amending Subchapter B, Chapter 32, Human Resources Code, by adding section 32.067, concerning Delivery of Comprehensive Care Services to Certain Recipients of Medical Assistance. Section 32.067 states that any agency licensed to provide home health services under Chapter 142, Health and Safety Code, and not only a certified agency licensed under that chapter, may provide home health services to individuals enrolled in the Texas Health Steps Comprehensive Care Program. The amendments will allow licensed home and community support services agencies (HCSSAs) to deliver the services either through Licensed and Certified Home Health (LCHH) or Licensed Home Health (LHH). The amendments will remove the requirement that home health agencies delivering CCP PDN be Medicare certified.

Summary of Public Comments

HHSC received comments from the following organizations:

Texas Association of Home Care (TAHC), Austin, Texas

Comment: TAHC commented that it supports the rule changes allowing THSteps-CCP Private Duty Nursing services to be delivered through the "licensed home health" or "licensed and certified home health" categories of a Home and Community Support Services Agency License.

Response: HHSC agrees with the comments by TAHC in support of the proposed rule amendments.

Medical Staffing Network, Temple, Texas

Comment: Medical Staffing Network commented that it supports the rule change.

Response: HHSC agrees with the comments by Medical Staffing Network in support of the proposed rule amendments.

The Commission did not receive any additional comments regarding the proposed amendments.

The amendments are adopted under government code §531.033, which provides the Commissioner of HHSC with broad rule-making authority; and Human Resource Code §32.021, and the Texas Government Code §531.021, which provide HHSC with the authority to administer the Federal Medical Assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Health and Human Services Commission (HHSC or Commission) adopts the amendments to §370.4, Definitions, and §370.44, Income and Assets, with changes to the proposed text as published in the February 20, 2004, issue of the *Texas Register* (29 TexReg 1491). The text of the rules will be republished. The rules have been revised in response to comments received and the amended text follows.

Currently §370.44 provides for an assets test for CHIP applicants with a gross monthly income greater than 150 percent of the federal poverty level (FPL). Section 62.101(b), Health and Safety Code, allows HHSC to establish standards regarding the amount and types of assets such families may have and still be eligible for CHIP. The proposed amendments define the elements of the assets test to be implemented. The Commission has determined that the proposed assets test is necessary to enable HHSC to provide health care coverage to eligible families that are least able to afford it within the limits of appropriated funds.

The adopted amendment to §370.4 adds definitions of "countable liquid assets," "excess vehicle value," and "household," which are used in the assets test described in the proposed amendment to §370.44. The amendment also corrects the order of the defined terms. The adopted amendments to §370.44 set out the elements of the assets test. The assets test will be applied to all eligibility determinations made on or after August 24, 2004.

HHSC received comments concerning the proposed rules. All comments but one were opposed to the proposed rules. Comments were received from seventy-seven individuals and twenty-nine organizations. Three individuals submitted comments that did not pertain to the content of the proposed rules. Comments were received from the following organizations: Advocacy Incorporated, Amerigroup Texas, Austin Child Guidance Center, Camp Fire USA First Texas Council, Center for Brain Health, Center for Public Policy Priorities, Central Texas Regional Children's Health Insurance Coalition, Children at Risk, Children's Defense Fund of Texas, Children's Hospital Association of Texas, Coalition for North Texas Children, DePelchin Children's Center, Driscoll Children's Health Plan, FSS Partnerships, Insure-a-Kid, Methodist Health Care Ministries, Seton HealthCare Network, Tarrant Area CHIP Coalition, Texas Association of Health Plans,

Texas Center for Disability Studies, Texas Council for Developmental Disabilities, Texas Federation of Families for Children's Mental Health, Texas IDA Network, Texas Impact, Texas Medical Association, Texas Pediatric Society, United Way of San Antonio and Bexar County, United Ways of Texas, Voices for Children San Antonio, and WBCO Head Start.

A summary of the comments received by HHSC concerning the proposed amendments to the rules are listed below. Following each comment is HHSC's response.

Comment: Several comments were received concerning the CHIP assets test vehicle policy. Commenters indicated that the policy is a barrier to obtaining or retaining employment, the vehicle limits are more restrictive than those for Children's Medicaid, and families should not be penalized for having safe, reliable transportation.

Response: HHSC acknowledges the commenters' concern regarding the vehicle policy. The CHIP assets test as proposed, however, would allow families to own at least one vehicle valued at up to $15,000.00 and additional vehicles valued at up to $4,650.00 each. Some vehicles may be exempt from inclusion in the assets test calculation altogether, such as vehicles used more than 50 percent of the time to produce income. HHSC believes this policy allows families to obtain reliable transportation for employment and ensures that families least able to afford health care coverage qualify for the program. No changes were made to the rules in response to the comments.

Comment: Several commenters expressed concern that the implementation of the CHIP assets test would further reduce enrollment. These commenters stated that changes to CHIP policies implemented since last September have already lowered enrollment to caseload levels contemplated by House Bill 1, 78th Legislature, Regular Session, 2003, and that the additional reductions that would follow the implementation of the assets test are unnecessary.

Response: HHSC acknowledges the commenters' concerns regarding CHIP enrollment levels. HHSC projects that fiscal year 2004 CHIP caseloads will be higher than House Bill 1, 78th Legislature, Regular Session, 2003, budgeted level even when the impact of the asset test is taken into account. HHSC will continue to closely monitor CHIP enrollment, including the impact on enrollment of previous policy changes as well as the implementation of the assets test. No changes were made to the rules in response to the comments.

Comment: Several commenters asked why the Commission was proposing to implement the CHIP assets test when it was not mandated to do so by the Legislature.

Response: HHSC acknowledges the concerns expressed by the commenters about imposing an assets test for enrollment in CHIP when such test was not expressly mandated by the Legislature. The legislation authorizing the use of an assets test for CHIP (section 2.46 of House Bill 2292, 78th Legislature, Regular Session, 2003) was permissive; however, budget projections were based in part on the implementation of the test. The Legislature authorized an assets test as a method of maintaining the CHIP income eligibility level at 200 percent of the federal poverty level, while also ensuring that only families who were the least able to afford health care coverage could qualify for the program. No changes were made to the rules in response to the comments.

Comment: Some commenters remarked that the assets test creates a more complicated bureaucracy that is expensive to administer and works against the goal of a streamlined simple application process.

Response: HHSC acknowledges the commenters' concern. There will be some expense involved in implementing the assets test. However, the CHIP administrative services contractor will make one-time changes to its automated processes and to the application document and other program documents. In most cases, the information provided by applicants on the revised application will be sufficient to determine eligibility based on assets, which will support the goal of streamlining the application process. No changes were made to the rules in response to the comments.

Comment: Several commenters expressed concern that the implementation of the assets test will result in a significant loss of federal matching funds.

Response: HHSC acknowledges the commenters' concern. Again, implementation of the asset test was assumed by the state budget. By federal law, the federal CHIP match is tied to state expenditures. Federal matching funds will be reduced to the extent that the asset test reduces state expenditures. No changes were made to the rules in response to the comments.

Comment: Several commenters expressed their belief that the $5000.00 limit on assets is too low. They explained that while this level might be appropriate for the Food Stamp program, it is not an appropriate maximum for CHIP families, as they have a higher income limit. Commenters suggested that if the rule were to be adopted, the limit on assets be raised to at least $10,000.00. One commenter felt it should be raised to between $25,000.00 and $35,000.00.

Response: HHSC acknowledges the commenters' concern, but disagrees that the $5000.00 limit is too low. The assets test for most Medicaid families has a maximum of $2000.00. HHSC concluded that the higher level used in the Food Stamp program was more appropriate for the CHIP assets test and ensures that families who are the least able to afford health care coverage qualify for the program. Keeping the $5000.00 limit will assist HHSC in operating CHIP within budget allocations. No changes were made to the rules in response to the comments.

Comment: Several commenters expressed concern about the inclusion of the cash values of an Individual Development Account, Individual Retirement Account, Simplified Employee Pension plan, and Keogh retirement plans in the definition of liquid assets in §370.4(12)(D). They commented that families should not be penalized for saving for retirement, the purchase of a home, or for their children's education, and that this policy is contrary to "Texas Values." These commenters were concerned that families would be forced to exhaust their savings in order to qualify for CHIP. The commenters further stated that this policy would imperil the family's financial security and create a barrier to achieving self-sufficiency and independence. These commenters recommended the deletion of §370.4(12)(D) if the rule is adopted.

Response: HHSC acknowledges the commenters' concerns and agrees that this portion of the rule should be modified. The definition of liquid assets will be modified to exclude: Individual Development Accounts and any retirement accounts that have penalties for early withdrawal; life insurance, burial insurance or other insurance with a cash value; educational savings accounts such as 529 qualified tuition plans (26 U.S.C. §529) and Texas

Tomorrow Fund accounts; and funds received as educational grants or scholarships.

Comment: Several commenters stated that the fiscal note in the proposed preamble was not accurate. These commenters stated that there would be an impact on local health and human services agencies. They said that while this policy might save the state government money, the burden for providing health care for these children would be shifted to the local level.

Response: HHSC acknowledges the comments and recognizes the possible impact these rules as amended may have on local governments and local health and human services agencies. However, HHSC cannot quantify the potential impact to local governments, but, based on caseload estimates, believes that the impact will be minimal and dispersed across the state. No changes were made to the rules in response to the comments.

Comment: Some commenters stated that the implementation of the assets test will exacerbate an already significant declining enrollment problem. The commenters explained that declining enrollment would lead to adverse selection, which could actually threaten the viability of the CHIP health plans and of the program itself. These commenters stated that it was probable that the families of sick children would spend down their assets to gain CHIP coverage, while the families of well children would not. Commenters believe that this could lead to a population of CHIP children that is sicker and more costly for plans to care for, which could make health plan participation in the program actuarially unsound.

Response: HHSC acknowledges the concerns expressed about the declining enrollment in CHIP and agrees that the possibility of adverse selection is an ongoing issue that health plans and HHSC must monitor. The possibility of adverse selection was a concern from the outset of the Children's Health Insurance Program. HHSC will continue to work with the plans regarding this issue. No changes were made to the rules in response to the comments.

Comment: Some commenters suggested that other money is available for the CHIP program and that cost savings from the implementation of the assets test are, therefore, unnecessary. The commenters specifically cited $469 million in federal funds.

Response: HHSC acknowledges the commenters' concern. Use of the federal fiscal relief funds referred to by the commenters is addressed in the state budget, House Bill 1, Article 9, 78th Legislature, Regular Session, 2003. No changes were made to the rules in response to the comments.

Comment: Several commenters expressed concern about the lack of other affordable health insurance for families denied CHIP coverage because of the assets test.

Response: HHSC acknowledges the commenters' concern. A preliminary analysis of recent CHIP disenrollment data suggests that some children previously eligible for CHIP obtain health coverage by enrolling in Medicaid or by later re-enrolling in CHIP. Some children may also be newly covered for care through private insurance obtained by a working parent. The Commission is required to operate CHIP within the limits of appropriated funds. The Commission remains committed to exploring all options for offering insurance coverage to children whose families are not able to afford it on their own. No changes were made to the rules in response to the comments.

Comment: Some commenters were concerned that families denied CHIP coverage due to the assets test would be forced to choose between spending on basic necessities and possible life-saving medications.

Response: HHSC acknowledges the commenters' concern. The assets test would only be applied to those families with monthly incomes greater than 150 percent of the federal poverty level. The assets test ensures that those families least able to afford health care coverage qualify for the program. No changes were made to the rules in response to the comments.

Comment: One commenter suggested that savings accrued on behalf of children with disabilities should be exempt.

Response: HHSC acknowledges the commenter's concern. In determining CHIP eligibility, only the assets of budget group members are counted. Children who are disabled and receiving supplemental security income (SSI) are not part of the budget group when CHIP eligibility is determined for other children in the family. Bank accounts in the name of a child receiving SSI would not be counted in the CHIP assets test. No changes were made to the rules in response to the comment.

Comment: One commenter suggested that, if the rule is adopted, §370.44(i)(4) be modified to exempt all vehicles modified to transport a household member with disabilities. The commenter stated that two-parent families will often have two such modified vehicles. Since these vehicles are frequently valued in excess of $15,000.00, such families could be determined ineligible for CHIP based on assets.

Response: HHSC agrees with the commenter's suggestion and will modify the rule to allow the exemption of all vehicles modified to transport a household member with disabilities.

Comment: Several commenters recommended that §370.44(e)(i) be modified to fully exempt one vehicle for each working parent.

Response: HHSC appreciates the recommendation. The rule as written allows families to own at least one vehicle valued at up to $15,000.00 and any number of additional vehicles valued up to $4,650.00 each. Some vehicles may be exempt from inclusion in the assets test calculation all together, such as vehicles used more than 50 percent of the time to produce income. HHSC concluded that the rules allow families to obtain reliable transportation for employment. No changes were made to the rules in response to the comments.

Comment: Several commenters recommended that §370.44(i)(4) be modified to fully exclude the family's first vehicle. This would put the CHIP vehicle policy more in line with Medicaid policy.

Response: HHSC acknowledges the commenter's recommendation, but the Commission believes that the Medicaid and CHIP vehicle policies, though not identical, are coordinated and consistent in that both are linked to and reflect the different program populations and different income eligibility levels. The assets test used for the Food Stamp program was chosen as the model for the CHIP rules because it is applicable to a population with a higher income than the general Medicaid population. Moreover, within CHIP imposition of the assets test (and consideration of vehicle valuation) depends on the budget group's gross income. Families whose income is at or less than 150 percent of the federal poverty level are not subject to the assets test at all. Also, putting CHIP assets tests rules in line with Medicaid policy would mean limiting a family's assets to $2,000.00. No changes were made to the rules in response to the comments.

Comment: Two commenters asked that the definition of excess vehicle value be rewritten. One of them suggested the following: "the lesser of a vehicle's wholesale value or the owner's equity in the vehicle, minus any allowable exemption."

Response: HHSC appreciates this suggestion. Wholesale value is used in TANF, Food Stamp, and Medicaid policies. The equity value of a vehicle is not a consideration. HHSC believes that introducing the concept of equity value into the rule will complicate and add additional expenditures for the administration of the assets test. No changes were made to the rules in response to the comments.

Comment: One commenter asked that §370.4(12)(E) be modified to distinguish between fully prepaid irrevocable contracts and open-ended prepaid funeral plans. One commenter felt that prepaid burial plans should be exempt altogether.

Response: HHSC acknowledges the commenter's concern and agrees that this section of the rule should be modified. The cash value of any pre-paid burial and funeral plan will be exempt.

Comment: One commenter felt that money saved for education should be exempt all together.

Response: HHSC acknowledges the commenter's concern and agrees the rule should be modified. Internal Revenue Code 529 qualified tuition plans (26 U.S.C. §529), such as Texas Tomorrow Fund accounts, will be exempt.

Comment: One commenter asked that §370.4(12)(G) be deleted and that all accessible trust funds be exempted.

Response: HHSC acknowledges the suggestion. However, accessible trust funds are an asset to the family and available for family needs. To exempt this asset for some families and to count other assets (such as savings accounts) for other families would be inequitable. No changes were made to the rules in response to this comment.

Comment: One commenter asked that §370.4(12)(B) and (C) (which include cash in the bank and cash in a TANF Electronic Benefit Transfer (EBT) account as countable liquid assets) be clarified as to what point in time these assets would be countable.

Response: HHSC appreciates the comment and agrees that the rule should be modified to clarify at what point in time these assets would be countable. The rule will be modified to provide that cash in the bank and cash in a TANF EBT account are defined as the balance available on the last day of the month prior to the date of the submission of an application for healthcare benefits (either initial or renewal).

Comment: One commenter felt that §370.4(12)(F) should be clarified as to what point in time the money remaining from the sale of a homestead will be counted. The commenter suggested that the rule be rewritten to match the Texas Property Code to allow six months from the date of sale before any remaining money becomes countable.

Response: HHSC acknowledges the commenter's concern. The commenter is apparently referring to Texas Property Code §41.001(c), which exempts proceeds of a sale of a homestead from seizure for a creditor's claim for six months following the sale of the property. The Commission has concluded that assessing a family's eligibility for the CHIP program and exemption from a creditor's claim are not related determinations. The proceeds from the sale of a homestead are a liquid asset available to the family to pay for health care coverage. No changes were made to the rules in response to this comment

Comment: One comment was received in support of the rule adoption. This commenter felt that it is appropriate for parents with assets to be responsible for their children's health insurance.

Response: HHSC appreciates the comment. HHSC is committed to making CHIP coverage available to those children whose families are least able to afford health coverage for them. The assets test will assist CHIP in identifying just who those families are. Families with assets in excess of $5000.00 have funds they can use to provide health care for their children. No changes were made to the rules in response to the comment.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4

The amendments are adopted under authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties; and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.4. Definitions.

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

(1) "Administrative Contractor" means the entity that performs administrative services for the CHIP under contract with the Commission.

(2) "Applicant" means an individual who lives with the child and applies for health insurance coverage on behalf of the child. An applicant can only be:

(A) a child's custodial parent, whether natural or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) an emancipated minor applying for himself/herself; or

(D) a child's step-parent.

(3) "Application" means the standardized, written document issued by TexCare that an applicant must complete to apply for health care benefits or coverage through CHIP.

(4) "Application completion date" means the calendar date a completed CHIP application is entered into the TexCare database.

(5) "Budget Group" means the group of individuals who live in the home with the child for whom an application for health insurance is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget group. Budget group members include only:

(A) the child seeking health insurance benefits;

(B) the child's siblings who live with the child (biological, adopted, or step-siblings);

(C) the child's natural or adoptive parents; or

(D) the child's step-parent.

(6) "Children's Health Insurance Program" or "CHIP" means the Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C, §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(7) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

(8) "Commission" or "HHSC" means the Health and Human Services Commission.

(9) "Community-based Organization" or "CBO" means an organization that contracts with the Commission to provide outreach services to applicants for CHIP coverage.

(10) "Completed application" means an application entered into the TexCare database that includes all information required under §370.23.

(11) "Countable income" means any type of payment that is a regular and predictable gain or a benefit to a budget group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and/or was received on a regular and predictable basis in past months. It does not include income that is not received on a regular and predictable basis in past months, or is received by the child or sibling member of the budget group who is enrolled in school.

(12) "Countable liquid assets" means resources that an applicant can readily convert to cash to meet immediate needs and whose values are used in calculating a child's eligibility for CHIP.

(A) Countable liquid assets include the balances, as of the last day of the month prior to the date of submission of an application (either initial or renewal), of the following:

(i) cash on hand;

(ii) cash in the bank;

(iii) cash in a TANF (Temporary Assistance to Needy Families) Electronic Benefit Transfer account;

(iv) money remaining from the sale of a homestead; and

(v) accessible trust funds.

(B) Countable liquid assets do not include:

(i) any resource exempted by federal law from consideration for purposes of determining eligibility or benefit levels for any federally funded program, such as TANF and Assets for Independence Act (AFIA) Individual Development Accounts; or

(ii) any financial instrument subject to rules limiting use of its proceeds, including penalties and/or tax liabilities incurred for early liquidation, such as individual retirement accounts and Keogh plans; or

(iii) the cash value of any insurance policy; or

(iv) Internal Revenue Code 529 qualified college savings program accounts, such as Texas Tomorrow Fund accounts; or

(v) funds received as educational grants or scholarships.

(13) "Enrollment" means the process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(14) "Entrant" means a person who is not a native born or naturalized citizen of the United States of America.

(15) "Excess vehicle value" means a vehicle's wholesale value minus any allowable exemption.

(16) "Exempt income" means income received by the budget group that is not counted in determining income eligibility.

(17) "FPL" means Federal Poverty Level Income Guidelines.

(18) "Gross budget group income" means monthly countable income before any payroll deductions.

(19) "Health Plan" means a licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the Commission to provide health benefits coverage to CHIP members.

(20) "Household" means the budget group plus any SSI recipient who is

(A) the child's sibling who lives with the child (biological, adopted, or step-sibling);

(B) the child's natural or adoptive parent; or

(C) the child's step-parent.

(21) "Income eligibility standard" means monthly gross budget group income at or below 200% of current (FPL). A child meets the CHIP income eligibility standard if the budget group's monthly gross income exceeds the income eligibility standard applied to the child in the Texas Medicaid Program and is at or below the 200% of FPL CHIP monthly income standard.

(22) "Member" means a child enrolled in a CHIP Health Plan.

(23) "Qualified Entrant" means an alien who applies for CHIP coverage and who, at the time of such application, satisfies the criteria established under 8 U.S.C. §1641(b).

(24) "SSI" means Supplemental Security Income.

(25) "State fiscal year" means the 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(26) "TDHS" means the Texas Department of Human Services.

(27) "TexCare" means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.

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. APPLICATION SCREENING, REFERRAL AND PROCESSING
DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §370.44

The amendments are adopted under authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties; and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.44. Income and Assets.

(a) General principles.

(1) Income is either countable income or exempt income.

(2) TexCare must consider the income of all persons included in the budget group.

(b) Earned income is countable income received by the budget group and includes:

(1) Military pay and allowances for housing, food, base pay, and flight pay;

(2) Self-employment income (minus business expenses). A person is self-employed if he is engaged in an enterprise for gain, either as an independent contractor, franchise holder, or owner-operator. If someone other than the earner withholds either income taxes or FICA from the earner's earnings, the earner is an employee and is not self-employed;

(3) Wages, salaries, and commissions; and

(4) On-the-Job Training payments funded under the Workforce Investment Act of 1998, 29 U.S.C. §§2801 - 2872, if received by an adult member of the budget group.

(c) Unearned income is countable income received by the budget group and includes:

(1) Cash contributions received on a regular and predictable basis;

(2) Child support payments;

(3) Disability insurance benefits;

(4) Government-sponsored program payments, (except for Supplemental Security Income payments); however, payments from crisis intervention programs are exempt;

(5) Pensions;

(6) Retirement, survivors, and disability insurance (RSDI) benefits and other retirement benefits (minus the amount deducted from the RSDI check for the Medicare premium and any amount that is being recouped for a prior overpayment);

(7) Income from property, whether from rent, lease, or sale on an installment plan;

(8) Unemployment compensation;

(9) Veterans Administration (VA) benefits other than benefits that meet a special need;

(10) Worker's compensation benefits; and

(11) Alimony.

(d) All income that is not included as countable earned income or countable unearned income is exempt income.

(e) Gross Income Test.

(1) Gross income is used to determine eligibility.

(2) Gross monthly income is monthly income before any payroll deduction.

(3) A child is eligible if the budget group's gross monthly income, after rounding down cents, is equal to or less than the 200% of FPL for the budget group's size. All budget groups must pass the gross income test.

(4) Budget groups with a gross monthly income greater than 150% of FPL will be subject to an assets test conducted in accordance with subsection (i) of this section.

(f) Computing countable income. TexCare converts income received non-monthly to monthly amounts by:

(1) dividing yearly income by 12;

(2) multiplying weekly income by 4.33;

(3) adding amounts received twice a month; or

(4) multiplying amounts received every other week by 2.17.

(g) Verification of current countable income.

(1) Countable income must be verified unless the amount of income reported by the applicant makes the child ineligible.

(2) TexCare verifies all countable income at initial application.

(3) Verification may include, but is not limited to, obtaining:

(A) copies of one or more paycheck stubs issued within the immediately preceding 60-day period;

(B) a copy of the most recent federal income tax return;

(C) a copy of the applicant's most recent Social Security statement;

(D) copies of one or more child support checks; or

(E) written confirmation from an employer of the applicant's income.

(h) Verification of income deductions. Verification may include, but is not limited to, obtaining:

(1) a copy of a paycheck stub showing garnishment of wages for a child support deduction if the paycheck clearly indicates the deduction is for child support;

(2) a copy of a hand written statement authored and signed by the custodial parent verifying the child support deduction; or

(3) a copy of a divorce decree specifying child support payments.

(i) Assets test.

(1) In order to be eligible for CHIP, a budget group with a gross monthly income greater than 150% FPL must own $5,000.00 or less in countable liquid assets and excess vehicle value combined.

(2) Determination of countable liquid assets. Budget groups will provide a single value that represents the total value of their countable liquid assets.

(3) Determination of excess vehicle value.

(A) Vehicles whose value must be considered include: any operable, licensed automobile, truck, motorcycle, SUV, van, motor home or boat that is owned by a member of the budget group. Vehicles whose value is not considered in the determination of excess vehicle value include vehicles that are:

(i) leased;

(ii) owned by a business; or

(iii) trailers, mobile homes, ATVs and tractors/farm equipment.

(B) Vehicle values will be taken from the *Hearst Corporation National Auto Research Division Black Book*. The vehicle value taken from the *Black Book* will be the lowest wholesale price in the average quality range listed for the make, model and year of vehicle provided by the budget group. If the *Black Book* has no listing for a particular vehicle, the value self-declared by the budget group will be used.

(C) Excess value is determined only for vehicles that are not fully exempt.

(4) Fully exempt vehicles.

(A) A vehicle is fully exempt from the determination of excess vehicle value if:

(i) the vehicle is used more than 50% of the time to produce income for the budget group. Examples of income producing vehicles are taxis, delivery vans, glazier's trucks, etc. A vehicle used simply to travel back and forth to a place of work is not exempt;

(ii) the vehicle is used by a self-employed person more than 50% of the time to carry equipment or employees to worksites;

(iii) the vehicle is the family's only home;

(iv) the vehicle is necessary to carry fuel or water; or

(v) the vehicle has been modified to provide transportation for a household member with a disability. Such modifications may include lifts, ramps, hand controls, etc.

(B) A budget group may claim an exemption under subparagraph (A)(i) - (iv) of this paragraph for only one vehicle worth $15,000.00 or more.

(C) A budget group may claim an exemption under subparagraph (A) of this paragraph for all vehicles worth less than $15,000.00.

(D) A budget group may claim an exemption for all vehicles described in subparagraph (A)(v) of this paragraph, regardless of their value.

(5) Other exemptions for vehicles. If a budget group has no fully exempt vehicle:

(A) the first $15,000.00 of the value of the budget group's highest valued countable vehicle is exempt. Any value over $15,000.00 is considered excess vehicle value and is counted towards the budget group's $5,000.00 assets limit; and

(B) the first $4,650.00 of the value of each additional vehicle owned by the budget group is exempt. The value in excess of $4,650.00 is considered excess vehicle value and is counted towards the budget group's $5,000.00 assets limit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §§371.212 - 371.214

The Health and Human Services Commission (HHSC or Commission) adopts amendments to Chapter 371, Medicaid Fraud and Abuse Program Integrity, Subchapter C, Utilization Review, §371.212, Case Mix Classification System, §371.213, Utilization Review and Control Activities Performed by Health and Human Services Commission (HHSC), concerning the authority for on-site utilization review activities, and §371.214, Texas Index for Level of Effort (TILE) Assessments. Section 371.212 is adopted with changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 743). Those changes are in response to public comments. Section 371.213 is adopted without changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 743) and will not be republished. Section 371.214 is adopted without substantive changes to the proposed text published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 743). A grammatical error has been corrected in §371.214(c)(3)(C). The text will be republished.

Section 371.212 generally describes the case mix classification system and facility documentation requirements, gives direction on completing the Client Assessment Review and Evaluation (CARE) form, and defines the various clinical categories necessary to establish a Texas Index for Level of Effort (TILE) assessment.

Section 371.213 provides the authority for the HHSC staff to conduct on-site activities related to utilization review and instructions for the facility staff to cooperate with and fully support the Commission staff during on-site reviews.

Section 371.214 generally describes and provides direction for the completion of the TILE assessment, process for conducting routine TILE reviews, process for reconsiderations, TILE training requirements for providers, and the process for corrective action.

HHSC received written comments from the Texas Health Care Association (THCA), concerning §371.212 (7)(B) & (C), and 371.214 (c)(1) & (d)(2), during the 30-day comment period from January 30, 2004, to February 29, 2004. A summary of each written comment and the Commission's response follow.

Comment: One comment concerned §371.212 (7) (B), requesting that the following sentence be added before the last sentence in this section: "Once the facility is in compliance with the required signatures, the compliance cycle is reestablished."

Response: The Commission disagrees with adding the suggested language. The addition is not necessary, because once

a TILE review shows that a facility is in compliance with the required signatures, the compliance cycle is reestablished.

Comment: One comment requested that the Commission add the phrase "and formal appeal" after the word "reconsideration" in §371.212(7)(B) and (C).

Response: The Commission disagrees with this request. There are two types of appeals in regard to the Case-Mix process: (1) A reconsideration is an informal appeal. This appeal allows nursing facility (NF) staff to submit a request for reconsideration when they disagree with the Commission nurse reviewer's decision concerning TILE classification. (2) A formal appeal can be requested when the nursing facility (NF) staff disagrees with the reconsideration determination, as stated in §371.214 (4). The addition of the words "and formal appeal" following the word "reconsideration" is, therefore, not appropriate. However, in order to further clarify the reconsideration process, the Commission has modified the language in §371.212 (7) (B) and (C) to refer to a "reconsideration request".

Comment: One comment concerning §371.214 (c) (1) suggested that the Commission not change the announced on-site review process, but continue the current process of unannounced visits when fraud is suspected.

Response: The Commission disagrees. Unannounced visits have proven to be more effective than announced visits in determining the accuracy of the documented condition (level of care) of a NF recipient during the assessment period.

Comment: One comment concerning §371.214(d)(2) requested that a procedure be established so providers understand what happens after the vendor hold is released by HHSC and when to expect payment to be resumed. THCA would like to work with the Commission on developing these procedures.

Response: The Commission disagrees. NF staff is provided with very detailed instructions in the Vendor Hold guidelines submitted to them when placed on Vendor Hold. Language in the guidelines has been clarified to explain what happens after Vendor Hold is released and when the provider can expect payment to resume.

The amendments are adopted under authority granted to HHSC by §533.033, Texas Government Code, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties, and under §531.021(a), Texas Government Code, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§371.212. Case Mix Classification System.

The case mix classification system is defined in terms of the recipient's condition, functional performance in activities of daily living (ADL), and level of staff intervention. The classification system is divided into four clinical categories, which are further subdivided based on ADL scores that measure functional performance for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 Texas Index for Level of Effort (TILE) case-mix classifications.

(1) Assessment period. The information on the Client Assessment Review and Evaluation (CARE) form for assignment of a clinical category or ADL score must be based on the recipient's status in the facility during the four weeks immediately preceding the assessment date. The following instances are exceptions to the four week assessment period:

(A) If the recipient has experienced what appears to be a significant change in clinical or functional status within the past four weeks, the nursing facility or the hospice provider can choose to complete a new assessment. "Significant change" as used here means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease related clinical interventions, and requires review of the plan of care. Information in the new assessment shall be based on the recipient's current status.

(B) If the recipient has been admitted or readmitted to a facility during the past four weeks, the assessment is based on the status since the date of admission or readmission to the nursing facility, until the date the assessment is completed.

(C) The condition or event that precipitates the need for rehabilitative therapy/restorative nursing may have occurred no more than six months prior to the assessment period.

(2) Documentation. The documentation in the clinical record must be descriptive and quantitative to allow the accurate completion of the CARE form items relating to the recipient's condition(s), treatment(s), and the ADLs of eating, transferring, and toileting.

(A) In the absence of required facility documentation, the Texas Health and Human Services Commission (Commission or HHSC) nurse reviewers may use available data, staff interviews, and nursing observation to assign ADL scores.

(B) The required documentation must appear in the clinical record during the assessment period to qualify for a clinical category. Lack of documentation will result in a change to an assessment item for a clinical category.

(C) Lack of, conflicting, or altered documentation may be the basis for an adjustment in TILE. The adjustment would be made based on a review of the available clinical record documentation, and, if necessary, staff interviews and observation of the recipient.

(D) Suspected fraudulent documentation, such as medical records that appear to have been altered, falsified, or fabricated, will result in a referral for investigation to the Office of Inspector General's (OIG) Medicaid Program Integrity (MPI) Division, Health and Human Services Commission. This referral will be made as part of the state's methods for identification, investigation and referral for fraud under the Texas Administrative Code, Title 40, Part 1, Chapter 79, Subchapter V (relating to Fraud or Abuse Involving Medical Providers) and Code of Federal Regulations, Title 42, Chapter IV, Part 455 (concerning Program Integrity: Medicaid).

(3) Clinical categories. Each recipient is assigned to one of the following four clinical categories based on qualifying conditions or treatments.

(A) The heavy-care group. To qualify for the heavy-care clinical group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments, with supporting documentation in the clinical record, and the recipient must have a total ADL score of at least six out of a possible nine.

(i) Coma. Persistent unconsciousness and unresponsiveness from which a recipient cannot be aroused; must be documented in the assessment period.

(ii) Quadriplegia. Neurologic disorder causing paralysis of the four extremities, excluding loss of movement caused solely by contractures. Paralysis is defined as loss of power of voluntary movement in a muscle through injury or disease of its nerve supply. A description of the recipient's functional abilities and

limitations must be documented in the clinical record in the assessment period.

(iii) Stage III or IV decubitus with physician-ordered decubitus care and/or wound dressings twice a day. Decubitus covered by eschar is considered Stage IV. Decubitus must be described and care/dressings must be documented in the assessment period.

(iv) Non-oral administration of 60% or more of the recipient's nourishment. Times, amount, and types of feeding must be documented in the assessment period.

(v) Daily oral or nasal suctioning, which must be documented daily in the assessment period.

(vi) Daily tracheotomy care or suctioning, excluding self-care, which must be documented daily in the assessment period.

(B) The rehabilitation/restorative group. To qualify for the rehabilitation/restorative clinical group, a recipient must receive TILE 202 restorative nursing care as follow-up to rehabilitation therapy. The TILE 202 restorative nursing and rehabilitation therapy must meet the following criteria with supporting documentation in the clinical record. For hospice recipients residing in nursing facilities, rehabilitation or restorative nursing care is only applicable for conditions unrelated to the terminal illness. A recipient who receives rehabilitation and restorative care must be able to participate and/or follow instructions from the therapist and/or nursing staff, in order to maintain or improve on goals achieved during PT or OT.

(i) The rehabilitation therapy must be:

(I) physical or occupational therapy, ordered by a physician, and provided by a licensed therapist or by certified or licensed occupational or physical therapy assistants (COTA/LPTA) under the supervision of a licensed therapist. Positioning, splinting, decubitus ulcer care, and training nursing staff (as in a functional maintenance program) are excluded from the TILE 202, even if provided by an occupational therapist or physical therapist;

(II) initiated due to a documented event, i.e., an illness, traumatic injury or an exacerbation/significant improvement of a chronic medical condition in the past six months, which resulted in a visible change in the individual's ability to physically perform ADLs. The event and change in ADL functioning must be documented in the clinical record by nursing staff, and/or other healthcare professionals in addition to the therapist, before the rehab services are initiated;

(III) expected to result in the recipient's making significant, measurable, functional progress, and this must be documented in the therapy goals;

(IV) provided on a one-to-one basis three times per week for at least two therapy weeks (therapy week: a seven-day period beginning the day of the first therapy treatment); and

(V) reimbursable by Medicare, Medicaid rehabilitative services, or another third party payer.

(ii) The TILE 202 restorative nursing must:

(I) be provided as part of a restorative care plan, based upon the therapist's written plan of care at discharge from skilled therapy, must be developed by the restorative team, and signed by the therapist and a registered nurse;

(II) begin during the assessment period; the restorative care sessions provided under Medicare will not count towards the required restorative care sessions for Medicaid;

(III) begin within 14 days of the therapist's written restorative plan of care, which must be provided to the commission nurse reviewer(s) upon request;

(IV) be provided for a minimum of 24 sessions within eight therapy weeks, which can be provided no more than two sessions per day, no less than four weeks, and must continue as long as clinically indicated; and

(V) be supported by a Restorative Nursing Care Program form, or similar form containing the same elements, which must document each restorative session and the recipient's response to the restorative plan through:

(-a-) a weekly note by the nursing or therapy staff (as appropriate); and

(-b-) a written monthly review by the licensed nursing staff or, if services are supervised or delivered by a licensed therapist, by the licensed therapist.

(iii) A recipient will be considered to be properly classified in this clinical group if all criteria in clauses (i) and (ii) of this subparagraph are met except clause (ii)(IV) and (V) of this subparagraph, which must be met within three months of the date of assessment;

(C) The clinically unstable group. To qualify for the clinically unstable group, a recipient must have at least one of the following conditions or receive one of the following treatments during the assessment period.

(i) Amputation of arm(s), leg(s), or parts thereof in the six months preceding the assessment date. Date and site of amputation must be documented in the clinical record.

(ii) Seizures, which occurred in the facility, during the assessment period. A description of the seizure(s) and nursing interventions must be documented in the clinical record.

(iii) Dehydration with documented intake/output monitoring (including frequency and amounts of output) on at least two shifts per day. Dehydration that was diagnosed, treated, and resolved outside the facility and is no longer symptomatic is excluded. The signs, symptoms and interventions must be documented in the assessment period.

(iv) Acute, symptomatic urinary tract infection (UTI) with a documented intake and output (including frequency and amounts of output) on three shifts a day. UTIs that were diagnosed and treated outside the facility and are no longer symptomatic or UTIs identified by routine urinalysis or urinalysis for culture and sensitivity alone are excluded. The signs, symptoms and interventions must be documented in the assessment period.

(v) Incontinence or a Foley catheter, with an individualized bowel or bladder rehabilitation program requiring staff intervention at least three times per day. The program must state the cause of the incontinence and the rehabilitative potential, and document the interventions and outcomes. The care plan must include the individualized goals and approaches that reflect both the recipient's and nursing participation in the process. Frequency of staff intervention must be documented.

(vi) Oxygen administration, must be documented every day for a minimum of two weeks, including the method of administration, during the assessment period.

(vii) Respiratory therapy, ordered by a physician, performed by licensed nursing staff or a respiratory therapist, received at least three times per day for a minimum of two weeks, and documented in the assessment period. Respiratory therapy includes

nebulizers, percussion, cupping, postural drainage, updrafts, and intermittent positive pressure breathing (IPPB) treatments, but excludes inhalers.

(viii) Wound dressing applied by nursing to an open wound at least two times per day for a minimum of two weeks, excluding simple skin tears and closed abrasions. A description of the wound and the treatment, including frequency, must be documented in the assessment period.

(D) The clinically stable group. This clinical group includes all recipients who do not qualify clinically for the heavy-care, rehabilitation/restorative, or clinically unstable group, and who have an ADL score between 3 and 9. The clinically stable group includes a mental/behavioral condition subgroup. Recipients qualify for this subgroup if:

(i) they have an ADL score of three; and

(ii) they have at least one of the following cognitive or behavioral characteristics:

(I) incoherent/frequent disorientation requiring daily staff intervention. Orientation problems must be described in the clinical record in the assessment period, including the staff intervention required and its frequency; or

(II) disruptive or aggressive behavior, requiring immediate staff intervention on a daily basis. The behaviors must be described in the clinical record, in the assessment period, including the frequency and the required staff intervention.

(4) Computation of the ADL scale. The ADL scale is used to assess recipients' daily functional abilities in eating, transferring and toileting. The facility nurse assessors rate these activities with a value of one to five on the CARE form. The CARE form values are recoded by DHS into a three-point system. The recoding results in points that range from one to three for each item and totals from three to nine for all three items. A recipient's total points for all three ADLs are used to determine case-mix classifications within the clinical categories. The ADLs and their corresponding points on the TILE nine-point scale are:

(A) Transferring, or the process of moving between positions, such as to or from a bed, a chair, or a standing position, but excluding to and from the toilet.

(i) One TILE point is given for recipients rated as:

(I) Independent; no staff assistance required, but recipient may use equipment such as railings, trapeze, etc.

(II) Pro re nata (PRN); recipient requires PRN assistance for transfers.

(ii) Two TILE points are given for recipients rated as "one to transfer"; requires one person continuously for physical or verbal assistance on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(iii) Three TILE points are given for recipients rated as:

(I) Two to transfer; requires assistance of two or more staff during the entire activity on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(II) Not Transferred; may be transferred to a stretcher or chair once a week or less, excluding transfers to bath or toilet.

(B) Eating, including the use of an enteral or parenteral tube, but excluding tray set up and food preparation.

(i) One TILE point is given for recipients rated as:

(I) Independent or recipient has chosen not to receive nutrition.

(II) Intermittent assistance; requires verbal or physical assistance less than 60% of the time.

(ii) Two TILE points are given for recipients rated as:

(I) Being trained to feed themselves. An assessment of the retraining potential and a description of the training program must be documented in the clinical record in the assessment period. Documentation must support that facility staff provided retraining 60% or more of the time to facilitate the recipients' involvement in self-performance of eating. The retraining program must include a minimum of training at two meals per day.

(II) Requiring assistance to syringe or spoon-feed for 60% or more of the time. The type of assistance, when the assistance is required, and for what reason must be documented in the clinical record.

(iii) Three TILE points are given for recipients rated as receiving non-oral feedings for 60% or more of the recipient's nutrition using a tube such as a naso-gastric tube, gastrostomy tube, percutaneous endoscopic gastrostomy tube, or administration of total parenteral nutrition via a central line. The frequency, amounts, routes, and times the non-oral feedings were administered must be documented in the clinical record.

(C) Toileting, or the process of elimination including the use of a bedpan, urinal, bedside commode, or toilet, or ostomy or incontinent care.

(i) One TILE point is given for recipients rated as:

(I) Independent, including the use of special equipment or performing of own incontinent care, self-catheterization, ostomy care.

(II) Requires assistance but can be left alone for privacy. Assistance may include transferring on and off the commode, cleansing after elimination, adjusting clothing, or washing hands.

(ii) Two TILE points are given for recipients rated as incontinent or having an indwelling catheter, including staff-administered ostomy care, incontinence care using protective padding, incontinence briefs, changing clothes, or a propped urinal. A description of what staff is required to do 60% or more of the time must be documented in the clinical record.

(iii) Three TILE points will be given for recipients rated as:

(I) Requiring physical or verbal assist or supervision during entire toileting process, excluding incontinent care, and cannot be left alone. The functional, medical, or behavioral reason the recipient cannot be left alone must be documented in the clinical record in the assessment period.

(II) Receiving scheduled toileting by the staff every two hours during waking hours, or more often if needed by the recipient, as incontinence management. Recipient does not initiate process and stays dry 60% or more of the time as the result of staff-initiated scheduled toileting. A description of staff actions and whether the recipient was wet or dry each time he/she was taken to the toilet must be documented in the clinical record in the assessment period.

Recipients who receive in and out catheterization by the staff two or more times each day are included in this category.

(5) Special cases. A recipient who qualifies for more than one of the 11 TILE case-mix groups is classified in the group with the highest case-mix index and associated per diem rate. If a provider incorrectly or incompletely reports data necessary for TILE determination, the recipient is temporarily classified in the Default TILE 212 group until the data are corrected as provided by §371.214 of this title.

(6) Case-mix classifications. Case-mix classifications are determined by the clinical group in combination with the ADL score as follows:

(A) TILE 201; heavy care and an ADL score of 8-9;

(B) TILE 203; heavy care and an ADL score of 6-7;

(C) TILE 202; rehabilitation and an ADL score of at least 3;

(D) TILE 204; clinically unstable and an ADL score of 7-9;

(E) TILE 205; clinically stable and an ADL score of 7-9;

(F) TILE 206; clinically unstable and an ADL score of 4-6;

(G) TILE 207; clinically stable and an ADL score of 5-6;

(H) TILE 208; clinically unstable and an ADL score of 3;

(I) TILE 209; clinically stable and an ADL score of 4;

(J) TILE 210; clinically stable, an ADL score of 3, and includes a mental/behavioral subcategory;

(K) TILE 211; clinically stable and an ADL score of 3;

(L) Default TILE 212 ; provider incorrectly or incompletely reports data necessary for TILE determination or if the facility fails to cooperate fully with nurse reviewers as provided by §371.214 of this title.

(7) Required signatures. The CARE form must be signed by the director of nurses or the acting director of nurses and the facility nurse assessor, one of whom must be certified as having received, and passed, Commission-approved TILE training, as required by §371.214 of this title (relating to Texas Index for Level of Effort (TILE) Assessments). These signatures certify the information claimed is accurate and complete and subject to penalties for falsification, as provided in 42 Code of Federal Regulations, Part 1003. A copy of the electronically transmitted form with the required signatures must be maintained by the nursing facility. Physicians' signatures must be present on all required Purpose Codes. A physician may delegate task(s) to a physician assistant, nurse practitioner, or clinical nurse specialist who is not an employee of the facility but who is working in collaboration with a physician. Services must be provided in the context of applicable state laws, rules, and regulations governing the practice of physician assistants, nurse practitioners, and clinical nurse specialists.

(A) If the form is completed for a hospice recipient residing in the nursing facility, the form must also be signed by a hospice nurse assessor.

(B) CARE forms that do not have the required signatures on the copies maintained in the facility or that cannot be located will be considered to be invalid assessments. The first time a facility is found to be out of compliance with this requirement, the recipient's TILE for the assessment period covered at the time of the review will count towards the overall error rate for the onsite review. Subsequent findings of non-compliance with these requirements during the next review may result in a default 212 for the effective period of the invalid assessment. If the default 212 is implemented, the facility will be able to submit a reconsideration request for the default 212.

(C) CARE forms submitted with the license number of a former employee or an expired nursing license number may result in the implementation of a default 212 for the effective period of the invalid assessment. If the default 212 is implemented, the facility will be able to submit a reconsideration request for the default 212. The provider(s) and employee(s) involved may be referred to the Commission's Office of Inspector General with a recommendation for an investigation of the facility, and a referral of the nurses to the Board of Nurse Examiners.

§371.214. Texas Index for Level of Effort (TILE) Assessments.

(a) Texas Index for Level of Effort (TILE) Assessment and Client Assessment Review and Evaluation (CARE) form completion. TILE assessments are primarily based on the nursing facility nurse assessor's (FNA) evaluation of the recipient. This evaluation may also be supplemented by staff interviews and documentation in the medical record. TILE assessments are documented on the CARE form, and must be signed by the FNA that completed the assessment. These assessments establish TILE classifications as described in paragraphs (1)-(9) of this subsection.

(1) If the nursing facility recipient is also a hospice recipient, the following must be completed before the Texas Department of Human Services (DHS) will reimburse nursing facility room and board to the hospice provider:

(A) The hospice nurse assessor must also evaluate the hospice recipient and either:

(i) sign the CARE form completed by the nursing facility assessor to indicate complete agreement with the assessment; or

(ii) request the nursing facility assessor to complete a new CARE form based on a joint assessment, and then sign to indicate complete agreement with the assessment.

(B) The hospice provider must submit the Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice (Form 3071), and the TDHS Medicaid/Medicare Hospice Program Physician Certification of Terminal Illness (Form 3074) forms to the DHS, Provider Claims Services Department.

(2) Preadmission assessments do not establish a TILE classification.

(3) Admissions assessments establish TILE classifications as follows:

(A) If the nursing facility recipient has not previously attained permanent medical necessity or if an individual is simultaneously admitted to a nursing facility as a hospice recipient, the nurse assessor submits an admission assessment within 20 calendar days of admission, as provided in the Texas Administrative Code (TAC), Title 40, Part 1, Chapter 19, Subchapter Y, §19.2403 (relating to Utilization Review Process). The admission assessment begins the medical necessity (MN) process, and TILE classification for 180 days.

(B) If the nursing facility recipient has previously attained permanent MN, an assessment with a purpose code 4 is completed, which sets TILE only.

(4) Medical necessity review (MNR) is required 180 days after the effective date of the admission assessment. Nursing facilities can submit the renewal form up to 45 days prior to the expiration date of the current form. MN is established by completing an assessment with a purpose code 3. If the MNR indicates MN for nursing facility care, DHS will notify the facility of the permanent MN. The MNR may also establish a new TILE classification. The permanent MN will be lost if a recipient is discharged to home over 30 days.

(5) After the establishment of permanent MN, recipients with a 211 TILE require no further assessment unless there is a change in their condition. All other TILE levels require a review every 180 days.

(6) If a recipient's medical condition changes to the extent that he qualifies for a different TILE, an off-cycle assessment may be submitted. If a nursing facility recipient becomes a hospice recipient or terminates hospice services, an off-cycle assessment must be submitted. Only two off-cycle assessments for any one nursing facility recipient or hospice recipient residing in a nursing facility are permitted per calendar year, one from January through June and one from July through December. The off-cycle assessment for a nursing facility recipient that becomes a hospice recipient or terminates hospice services is not included in the two allowable off-cycle assessments. The assessment sets a new schedule for submission of forms if permanent MN has been achieved. Before permanent MN, the assessment will not set a new schedule for submission of forms.

(7) A new corrected CARE form and supportive documentation may be submitted for the purpose of correcting errors previously made in the assessment portion of the form (Items 30, 31, and 50-99). The submission of the correction does not change the schedule for submission of forms or necessarily change the TILE group. The new corrected CARE form and the supportive documentation must be submitted within 60 days from the date of the assessment that contained error(s). The Commission will not accept requests for changes submitted:

(A) over 60 days from the date of the assessment that contained the error(s); or

(B) on previously submitted forms with the same assessment date.

(8) If a recipient experiences a significant change related to mental illness, mental retardation, and/or a related condition that indicates the recipient might benefit from specialized services, a request for a recipient Preadmission Screening and Recipient Review (PASARR) must be submitted to the local DHS' PASARR office using a CARE form.

(9) A facility may submit a request for retroactive payment in the following instances:

(A) when a facility provides care for a recipient for a period of time not covered by an effective MN determination at admission or by assessment CARE forms as provided in TAC, Title 40, Part 1, Chapter 19, Subchapter Y, §19.2413 (relating to Reconsideration of Medical Necessity Determination and Effective Dates); or

(B) if a recipient is found to be otherwise eligible for Medicaid for the three months prior to the month of his date of application for Medicaid assistance as provided in TAC, Title 40, Part 1, Chapter 19, Subchapter Y, §19.2408 (relating to Retroactive Medical Necessity Determinations).

(b) TILE training. Nursing facility directors of nursing and nurse assessors must complete and pass the Texas Health and Human Services Commission (Commission) approved TILE training course with a minimum score of 70% in order for the nurse's license number to be registered with the Medicaid Claims Administrator (MCA). The TILE training certification will be effective for a two-year period. Currently certified TILE nurses will be granted a one-year grace period from the effective date of the rule. Nursing facilities with new directors of nurses or nurse assessors may request a one time 60-day waiver to complete the TILE assessments. At the end of the 60-day waiver period, the nursing facility director of nurses, or nurse assessor must have completed and passed the Commission's approved TILE training course with a minimum score of 70%. The hospice nurse assessors may complete the Commission's approved TILE training course, either on-line or by correspondence. Providers are required to pay $30.00 each time they register to take the on-line TILE training course. The correspondence course will continue to be available for a $30.00 fee plus an additional $10.00 handling fee.

(c) Review and appeal of case-mix assessments. Commission nurse reviewers conduct desk reviews and in-depth, on-site reviews of CARE forms completed by nursing facility and hospice staff to verify TILE and medical necessity information.

(1) Commission nurse reviewers will conduct unannounced on-site visits. The decisions regarding the validation of a claimed TILE, will be based on documentation that is presented to the nurse reviewers during the on-site visit. Forms expired over 12 months will not be routinely reviewed. For all on-site visits, nurse reviewers must be given prompt access to information and resources necessary to conduct the TILE review.

(2) When a Commission nurse reviewer determines that the TILE classification is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and give the provider an opportunity to submit additional information for the assessment period to support the item claimed. An exit conference is held with the nursing facility staff following the review. Hospice staff are encouraged to attend if hospice recipients are reviewed. The nursing facility and hospice staff may submit for consideration, additional information for the assessment period, at any time during the review process or the exit conference. The Commission gives the nursing facility administrator and hospice provider formal written notification of all TILE changes within 15 days of the exit conference.

(A) At the direction of the Commission, DHS recovers funds paid to the nursing facility and/or hospice provider under incorrect TILE classification. At the direction of the Commission, DHS reimburses the nursing facility and/or the hospice provider any increase due to a change in TILE classification.

(B) The changes in TILE classification and per diem rate are retroactive to the "effective date" of the assessment reviewed.

(3) If the nursing facility and/or hospice provider disagrees with the Commission's TILE classification, either, or both, provider(s) may submit a reconsideration request to the Commission.

(A) The request for reconsideration and all documentation supporting the requested changes must be received by the Commission within 15 days of the facility's receipt of formal notification of TILE changes.

(B) Commission staff will review material submitted by the provider.

(C) The TILE classification and associated per diem rate specified by the Commission nurse reviewer remain in effect during the reconsideration period.

(D) If the reconsideration establishes that the Commission has changed a TILE classification in error, the Commission will direct DHS to correct the error retroactively.

(4) If the provider disagrees with the reconsideration determination, the provider may request a formal appeal, as stated in Title 40, Chapter 79, Subchapter Q (relating to Contract Appeals Process) by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 within 15 days of the facility's receipt of notification of the results of the reconsideration.

(A) The TILE classification and associated per diem rate specified in the reconsideration determination remains in effect during the formal appeal.

(B) If the formal appeal process establishes that the Commission has changed a TILE classification in error, the Commission will direct DHS to correct the error retroactively.

(d) Error rate. The error rate for a TILE review is determined by dividing the number of forms with an identified TILE decrease by the total number of forms reviewed.

(1) Frequency of on-site TILE reviews may be determined by the accuracy of the assessment and error rate history. Nursing facilities whose TILE error rates are below 25% may be visited less frequently, but within 16-month intervals. TILE error rates of 25% or higher, may require a return visit within 7 months.

(2) If the TILE error rate is 20% or higher on the return visit, the Commission may direct DHS to hold vendor payment to the facility, including pass through funds to hospice providers until the facility's error rate is below 20%. During a vendor payment hold, facilities may not submit CARE forms to the MCA either electronically or by mail. All CARE forms and supportive documentation, which includes both NF recipients and hospice recipients, must be submitted to HHSC.

(3) Corrective action plan. For hospice providers, deficient practice in documentation may result in a corrective action plan.

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 April 22, 2004.

TRD-200402697
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 12, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 424-6576

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

SUBCHAPTER A. POLICIES AND PROCEDURES

10 TAC §257.10

The Office of Rural Community Affairs (Office) adopts new §257.10 of the Texas Administrative Code to implement an appeals process for persons protesting the award of a contract by the Office. (For purposes of this section contract does not include a grant contract.)

Section 2155.132 of the Texas Government Code requires the Texas Building and Procurement Commission (TBPC) to formulate a procurement plan for the purchase of goods and services by state agencies. Pursuant to that directive the TBPC has adopted regulations that require state agencies to provide a process to appeal an agency's decision when it selects a vendor or consultant. This new §257.10 implements that requirement.

There are no changes to the rules as proposed and published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 267). No comments were received by the Office in response to the publication of the proposed rules. The rules as adopted will provide for an appeal to be in writing, and sworn to and filed within 10 days of the award of the contract with the Executive Director. They establish required elements in the written appeal and allow for an appeal of the staff's determination to be made to the Executive Director and ultimately to the Executive Committee.

The rules will assist the Office and interested persons by providing a process whereby persons not awarded a contract by the Office can appeal the Office's determination. The rules will provide the Office with the opportunity to be made aware of any deficiencies in the award process.

The rule is adopted pursuant to the authority of Section 487.052 of the Texas Government Code that provides the Office with the authority to adopt rules to implement its responsibilities.

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 April 20, 2004.

TRD-200402630
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Effective date: May 10, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 936-6710

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.1

The Texas Residential Construction Commission (commission) adopts new Title 10, Texas Administrative Code, §300.1 (10 TAC §300.1), relating to Procedures for Resolving Vendor Protests, without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2163).

The adopted new §300.1 will provide procedures for resolving vendor protests relating to agency purchasing activities as required by Texas Government Code Annotated §2155.076. The adopted new section closely follows the rule on such protests promulgated by the Texas Building and Procurement Commission in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.3.

The commission received no comments on the new section.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, and under the specific authority provided in Government Code §2155.076, which requires state agencies to adopt rules to resolve vendor protests relating to purchasing issues.

Cross Reference to Statutes: Title 16, Property Code §408.001 and Government Code §2155.076.

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 April 23, 2004.

TRD-200402734
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: May 13, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 475-0595

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10 TAC §300.2

The Texas Residential Construction Commission (commission) adopts new Title 10, Texas Administrative Code, §300.2 (10 TAC §300.2), relating to the Historically Underutilized Business Program, without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2165).

The new section adopts by reference the Texas Building and Procurement Commission's rules related to the use of historically underutilized businesses in agency procurement procedures as required by Texas Government Code Annotated §2161.003 and as reported in the Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, §§111.11 - 111.28.

The commission received no comments on the new section.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, and under the specific authority provided in Government Code §2161.003, which requires state agencies to adopt the Texas Building and Procurement Commission's rules on the use of Historically Underutilized Businesses.

Cross Reference to Statutes: Title 16, Property Code §408.001 and Government Code §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Residential Construction Commission
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CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION
SUBCHAPTER B. CERTIFICATION OF ARBITRATORS

10 TAC §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, 318.32

The Texas Residential Construction Commission (the "commission") adopts new rules at Title 10, Part 7, Chapter 318, Subchapter B, §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, and 318.32, relating to the certification of arbitrators who provide arbitration services to homeowners and builders involving residential construction disputes as provided for in Title 16, Property Code. The new rules are adopted with changes to the proposed text as published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 581).

The new rules are adopted to implement provisions of House Bill 730 (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01) and specifically provisions of Chapter 417, Property Code, which provides in part that the commission establish eligibility requirements and procedures for individuals interested in becoming certified by the commission as arbitrators with experience performing arbitration services in disputes between homeowners and builders relating to residential construction.

At the Open Meeting on January 6, 2004, the commission adopted emergency rules relating to the certification of arbitrators and approved the publication of the proposed rules for comment in the January 23, 2004, issue of the *Texas Register*.

The rules were published for comment in the January 23, 2004, issue of the *Texas Register* (29 TexReg 581).

Written comments were due February 23, 2004. Written comments were submitted by John Cobarruvias of Homeowners Against Deficient Dwellings (hereinafter "HADD") and Joseph Scallon. No party requested a hearing pursuant to the Administrative Procedure Act, Government Code §2001.029. However, the commission held informal public meetings around the state between January and March of 2004 and gathered comments on a variety of issues pending before the commission, including rule comments. During those informal meetings, the commission received specific oral comments on the proposed arbitration certification rules from HADD, Scott Hamilton, Jay Dyer of the Texas Association of Builders (hereinafter "TAB") and Steve Lane of Lennar Family of Builders (hereinafter "Lennar").

Scott Hamilton and HADD made comments on §318.20(b) regarding qualifications for certified arbitrators. Mr. Hamilton made the comment that the requirement that certified arbitrators have five years of experience might make it hard to find arbitrators. Although Mr. Hamilton's assessment may have validity, the requirement is statutory pursuant to Property Code §417.001(b)(1). HADD commented that arbitrators should not

have to be familiar with the warranty and building standards in order to make a decision. Property Code §417.001(b)(2) requires that certified arbitrators have familiarity with the warranty standards adopted by the commission pursuant to Property Code Chapter 430. Accordingly, the commission has not changed the text of the proposed rule as a result of these comments.

TAB recommends that the commission eliminate the reference to the Property Code in §318.20 as it relates to familiarity with warranties adopted by the commission pursuant to Property Code 430 and the provisions of the Property Code Chapter 27, which is the Residential Construction Liability Act. The commission has determined that the references to the Property Code are appropriate because the rule quotes the language of Property Code §417.001(b)(2), which states, in part, requirements for certification of arbitrators. The references provide clear direction for those directly affected by the certification requirements of this subchapter. However, the commission has determined that it may be more descriptive and therefore more useful to interested parties to describe those statutory references. Accordingly, the commission has modified the proposed language of rule to include descriptive language.

Lennar commented that it did not understand the meaning of §318.20(b)(4) as it relates to an "indirect personal or business relationship" and that the language as written might create a basis for a party to challenge the impartiality of an arbitrator. The commission finds that the terminology "indirect personal or business relationship" is commonly used and understood to mean a relationship created by an association between an interested party and a close family member, business partner or affiliate and that common understanding is clear in this context. Therefore, the commission does not find it necessary to modify the language for the reason stated. However, in reviewing the rule in light of the comment, the commission does believe that a direct or indirect financial relationship may also create a conflict of interest and has modified the proposed rule language to include the term "financial." With regard to the issue of whether §318.20(b)(4) will create a basis for challenging an arbitrator, the commission notes that the use of an arbitrator who has been certified by the commission under Property Code Chapter 417 is completely voluntary. The statute only requires that the commission maintain a list of arbitrators that have met certain statutory qualifications and other qualifications that may be required by the commission. The commission believes that it may be useful for someone requesting information about an arbitrator included on the commission-maintained list to have access to information about an arbitrator's direct and indirect personal, financial and business relationships with others who are likely to be parties involved in a dispute involving the residential construction industry who are registered by the commission. Moreover, arbitration agreements often include the method of selection of the arbitrator or arbitration panel and Property Code §417.001(c) specifically provides that arbitrators not certified under Chapter 417 are not prohibited from conducting arbitrations involving residential construction defects. Therefore, nothing in this subchapter requires a party to a residential construction dispute to select an arbitrator from the commission-maintained list.

TAB commented that §318.22 should also include certain statutory language that during the comment period any person may contest the application in writing submitted to the commission. The commission does not believe the statutory language adds anything to the rule meaning because the current language invites interested persons to comment both positively and negatively on the applications published in the *Texas Register*. Therefore, the commission declines to include the more restrictive language suggested, which might be construed as an implication that only negative comments will be considered. However, the commission has modified the rule language to include the requirements that the comments be submitted in writing to the commission to clarify the procedure for submission.

Lennar commented that it is unclear as to whether §318.22, which requires individuals certified under this subchapter to notify the commission of a material change in the information provided to the commission in connection with the certification process, includes notification of a change in the list of relationships submitted under §318.20(b)(4). The term "material change" is commonly understood to mean a substantive change in the information previously provided and relied upon by the recipient. However, to clarify that the request for notification of a material change in information includes the information submitted under §318.20, the commission has modified the rule language to include a reference to §318.20.

Lennar commented that §318.32(d)(1)(C) as written would not include the American Arbitration Association because that association is not organized for the purpose of conducting educational seminars or courses. Although the rule as currently written would allow the Executive Director to approve courses provided by the American Arbitration Association, the commission has modified the language to make clear that professional associations of arbitrators and other entities organized for the purpose of providing arbitration services that regularly conduct arbitration courses are acceptable. The subparts of the rule have been revised to accommodate the changes.

Joseph Scallon commented on §318.32 as it relates to continuing education and notes his belief that continuing education is not appropriate for builders. Section 318.32 does not impose a continuing education requirement on builders; therefore, the commission has not made any change to the rule language as a result of Mr. Scallon's comment.

TAB commented that the renewal provision in §318.32 should be permissive and not mandatory. The point is well-taken and the commission has modified the rule on renewal to reflect this comment.

HADD commented that arbitrators should have to disclose whether they are affiliated with any organizations, such as the American Arbitration Association, and whether any lawsuits or complaints have been filed against them for any arbitration. The commission has determined that the process of publication of the application will allow persons with complaints about a specific arbitrator to provide such information to the commission. The commission agrees that disclosure of membership in a professional association of arbitrators may be useful to someone seeking information about the commission-maintained list of certified arbitrators. As a result, the commission has modified the rule language on that point.

All comments regarding these rules, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The new sections are adopted under the Property Code Chapters 27, 417 and 430 and House Bill 730, 78th Legislature, Regular Session.

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

§318.20. Application.

(a) An individual seeking to become certified as a residential construction arbitrator with the commission must submit a completed application on a commission-prescribed form accompanied by the appropriate fee.

(b) An individual seeking to become certified as a residential construction arbitrator with the commission shall:

(1) provide evidence that the individual has acquired a minimum of five (5) years of experience conducting arbitrations between homeowners and builders involving construction defects;

(2) certify that the individual is familiar with the statutory warranties and building and performance standards established by the commission pursuant to Property Code, Chapter 430 and with the provisions of Property Code, Chapter 27, known as "the Residential Construction Liability Act";

(3) certify that the individual has not had any professional license or certification suspended or revoked in any jurisdiction;

(4) disclose whether the individual is currently a member of a professional association of arbitrators or licensed as a member of a bar association; and

(5) submit a list that includes any person known by the applicant to be registered as a builder or registered as a third-party inspector by the commission with whom the applicant has a direct or indirect personal, financial or business relationship that could reasonably be considered to create a conflict of interest for that applicant in serving as an arbitrator in a dispute involving the person listed as a party or a witness.

§318.22. Publication and Comment.

(a) The commission shall publish in the *Texas Register* notice of the application of each individual seeking to become certified under this subchapter.

(b) The commission shall accept written public comment submitted to the commission on each application for twenty-one (21) days after the date of publication of the notice and consider the comments received when reviewing the application.

§318.24. Certification.

After the conclusion of the comment period under §318.22 of this subchapter, if the commission finds it would serve the public interest, the commission shall certify the individual as an arbitrator under this subchapter.

§318.26. Denial of an Application.

(a) The commission shall deny an application for certification if the commission determines that the individual is not qualified or if certification of the individual would otherwise not serve the public interest.

(b) If the commission denies an application, the commission shall provide written notice to the individual not later than the 15th day after the closing of the public comment period on the application.

§318.28. Appeal.

(a) An individual whose application has been denied under §318.26 of this subchapter may appeal the decision by written request to the Executive Director.

(b) The decision of the Executive Director on the appeal is a final agency decision not subject to further administrative appeal.

§318.30. Material Change in Information.

Each individual who is certified as an arbitrator under this subchapter shall report to the commission in writing any material change in the information provided to the commission under §318.20 of this subchapter or as otherwise requested by the commission in providing a certificate pursuant to Property Code Chapter 417 within thirty (30) days of the change.

§318.32. Renewal of Certification.

(a) An individual who has been certified by the commission under this subchapter may submit an application for renewal of the certification no later than thirty (30) days prior to the expiration of the effective date of the certificate as established by the commission.

(b) The individual seeking renewal shall submit a renewal application on a commission-prescribed form accompanied by the appropriate fee as established by the commission.

(c) Each individual seeking to renew a certificate previously approved under this subchapter must provide evidence that the individual has completed five (5) hours of approved continuing education since the effective date of the certificate provided by the commission.

(d) For purposes of renewal under this section "approved continuing education" includes attendance of a course or seminar on arbitrations conducted by:

(1) an accredited institution of higher education;

(2) a state bar association;

(3) an entity organized for the purpose of conducting educational seminars or courses for arbitrators or lawyers;

(4) a professional association of arbitrators that also regularly sponsors or conducts seminars or courses for arbitrators or lawyers;

(5) an entity organized for the purposes of providing arbitration services that also regularly sponsors or conducts seminars or courses for arbitrators or lawyers; or

(6) any other course or seminar approved by the Executive Director for purposes of this subchapter.

(e) An individual seeking to renew under this section who is also an attorney licensed by the State Bar of Texas may satisfy the continuing education requirements of this section by satisfying the annual continuing legal education licensure requirements set by the State Bar.

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 April 23, 2004.

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Susan Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 475-0595

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission adopts new §2.59 concerning the loan and exhibition of state archives; new §2.60 concerning friends groups; amended §§2.1 - 2.4, 2.6, 2.51 - 2.56, and 2.70 concerning the general policies and procedures of the commission; and amended §2.115 concerning procedures for peer review of grants. Sections 2.1, 2.52 and 2.59 are adopted with changes to the text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9181). Sections 2.2 - 2.4, 2.6, 2.51, 2.53 - 2.56, 2.60, 2.70, and 2.115 are adopted without changes and will not be republished.

The purpose of new §§2.59 - 2.60 is to enable the commission to propose and adopt rules relating to friends groups and the loan and exhibition of archives in coherent sections so that those interested in participating in a friends group will have a clear understanding of the scope and purpose of such groups and those wishing to borrow and exhibit materials from the state archives will have a clear understanding of the terms and conditions of such loans. Section 2.1 is amended to provide a definition for competitive grants, the director and librarian, and the Texas State Library. Section 2.2 is amended to clarify the authority of the director and librarian to approve certain grants and acknowledge the acceptance of certain gifts and grants and to change the number of members of the commission from six to seven. Section 2.3 is amended to clarify a reference to statutory law, to specify the disposition of the minutes of the commission, and to delegate the approval of certain grants to the director and librarian. Section 2.4 is amended to correct references to statutory law and to delete an unneeded subsection relating to historically underutilized businesses. Section 2.6 is amended to establish a sunset date for the commission's Electronic Recording Advisory Committee. Section 2.51 is amended to correct references to another state agency and its administrative rules, to amend the charges for certain public records fees, and to correct grammatical errors. Section 2.52 is amended to change certain procedures for registration for the use of Texas State Library materials, to change the loan period for borrowed materials, to delete an unneeded subsection concerning confidential records, and to delete subsections relating to the loan and exhibition of state archival materials that are now incorporated in proposed new §2.59. Section 2.54 is amended to correct a reference to another state agency whose title has been changed in law. Section 2.56 is amended to correct grammatical errors that are currently present in the rule. Section 2.70 is amended to correct a reference to another state agency whose title has been changed in law. Section 2.115 is amended to establish clarified procedures for peer review of grants. In addition to what has been noted, the language of §§2.1-2.4 and 2.51-2.56 has also been amended to conform to the current Texas Register style guidelines.

The new and amended rules will provide the public with a coherent and clear body of rules concerning the general policies and procedures of the Texas State Library and Archives Commission and the requirements for the use of its collections.

No comments were received on the proposal. There were minor grammatical and spelling changes made to the originally proposed text.

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.1 - 2.4, 2.6, 2.51 - 2.56, 2.59, 2.60, 2.70

The new and amended rules are adopted under the following statutes: Government Code, §441.006(a)(1), which provides that the commission will govern the Texas State Library; Government Code, §441.006, which requires the commission to adopt rules relating to complaints by customers; Government Code, §§441-0091(b)(3) and 441.136, which require the commission to adopt rules governing its library grant programs; Government Code, §§656.048 and 656.102, which require state agencies to adopt rules relating to the training and education of staff; Government Code, §2161.003, which requires state agencies to adopt the rules promulgated by the Texas Building And Procurement Commission relating to historically underutilized businesses; Government Code, §2171.045, which requires a state agency with a vehicle fleet to adopt rules concerning the use of the fleet; and Government Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a private donor or for which a private organization exists that is designed to further the purposes and duties of the agency to adopt rules governing the relationship between the agency and the donor or organization.

§2.1. Definitions.

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

(1) Commission--The Texas State Library and Archives Commission.

(2) Competitive grant--Any grant awarded by the Texas State Library and Archives Commission based on competition among eligible entities for available grant funds.

(3) Director and librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

(4) Loan period--A period of time beginning with the date the Texas State Library delivers or mails an item to a customer and ending with the date that the customer returns it to the library.

(5) Over-size paper copy--Any printed impression on paper larger than 8 1/2 inches by 14 inches. Each side of a piece of paper is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.

(6) State Archives--A non-circulating collection of Texas state and local government records, private papers, maps, photographs, newspapers, and published materials that documents the history of the State of Texas and the growth and actions of its government.

(7) Texas State Library--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(8) Friends group--An affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the Texas State Library and Archives Commission and that has been so designated by the commission.

§2.52. Customer Service Policies.

(a) Registration.

(1) Texas state employees and persons affiliated with state or local governments in Texas, staff of public, academic, special, or school libraries, and faculty or students of graduate schools of library

and information science in Texas must register each year in person, by telecommunications or mail. Registration includes providing the following information:

(A) place of employment or study, address, and telephone number;

(B) home address and telephone number; and

(C) driver's license or date of birth.

(2) Others must register each year in person, presenting valid photo identification with a current address, sign a registration agreement, and provide the information detailed in paragraph (1) of this subsection. The signed registration is kept on file. Registration must be renewed annually by presenting current photo identification with an address and provide the information detailed in paragraph (1) of this subsection.

(3) No corporations, libraries, or groups may register; only individuals who are 16 years or older may register. However, persons under age 16 are welcome to use the services if supervised by an adult. Persons age 12 or younger are not admitted in the State Archives reference room; however, they may use other services and facilities of the library under supervision of a registered customer.

(4) Customers without acceptable photo identification or other information may be registered temporarily for supervised use of materials at the library; however, customers without a verified work or home address in Texas may not check out circulating materials.

(b) Loan Periods.

(1) Loans of circulating items are four weeks with the following exceptions.

(A) Video materials are loaned for three weeks.

(B) Materials are loaned to other libraries for five weeks.

(C) Collection development materials are loaned for eight weeks.

(2) Renewal of loans.

(A) Loans may be renewed once for four weeks if there are no reserves on the item.

(B) Customers may renew loans in person, by telecommunications or mail.

(C) Libraries may renew interlibrary loans once if there are no reserves on the item.

(D) Overdue materials may be renewed if they are less than 4 weeks overdue.

(3) Number of items per customer.

(A) The number of circulating items that may be borrowed at one time is not limited, except that a customer may only borrow six reels of microfilm at one time.

(B) Additional restrictions apply to the State Archives. Only one box, one pension application, case file, bill file, or map may be used at a table at a time. No more than five volumes may be on a table at a time. Only one folder may be removed from a box at a time. Added materials may be requested and kept on a book truck or at a staff member's desk.

(c) Overdue and Lost Items.

(1) Customers are responsible for items checked out in their name until they are returned to the circulation desk of the collection from which they were borrowed. Items may be returned by either of the following:

(A) United States mail services to Texas State Library, Box 12927, Austin, Texas 78711-2927;

(B) interagency mail or commercial delivery services to Texas State Library, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin, Texas 78701-1938.

(2) There is no fine for overdue items.

(3) The costs of replacement are assessed for lost items.

(4) An invoice for the value of an item is sent when it is six weeks overdue.

(5) For government publications the replacement cost is the current price or $.10 per page.

(d) Subsections (b) and (c) of this section are not applicable to the loan of materials from the commission's Talking Book Program. The loan policies of the program are administered according to guidelines set by the National Library Service of the Library of Congress.

(e) Services Requiring Registration. Customers must be registered to check out materials, request interlibrary loans of materials, use password services, or receive services for fees.

(f) Password Services. Some information services provided by telecommunications are limited to state employees or to staff of participating libraries and require a valid password for access.

(g) Suspension of Service.

(1) Borrowing privileges may be suspended permanently for failures to return materials within eight weeks of the due date more than two times.

(2) Services at the library may be suspended for six months for smoking in a facility of the commission or eating or drinking in a reading or reference room.

(3) Services at the library may be permanently suspended for behavior that is threatening, harassing, or obscene toward staff or other customers. If the service can be provided through an alternate method that eliminates the problem behavior, for example mail instead of telephone or telephone rather than at the library, the service will be provided.

(4) Theft or destruction of state resources or property will result in permanent suspension of all services immediately.

(5) Prior to a permanent suspension of service, a customer will be notified in writing of the problem and provided an opportunity to respond by a certain date if the customer has a known postal or e-mail address. A temporary suspension will be imposed until a decision has been reached.

§2.59. Loan and Exhibition of State Archives.

Archival material, historical items, artifacts, or museum pieces will be loaned for public exhibition only under conditions specified in paragraphs (1)-(8) of this section. Requests for loan of the original Texas Declaration of Independence, and original copies of the Constitutions of Texas, treaties of the Republic of Texas, and certain other highly significant documents will require the formal approval of the commission. Prior to archival materials being lent for exhibition, the commission will create microfilm reproductions, preservation photocopies, other photographic reproductions, or digital images of those materials.

(1) General Requirements.

(A) A formal loan request must be made in writing at least 60 days before the materials are to leave the commission. The request shall be addressed to the director and librarian. The written request shall include the exhibition title, dates of exhibition and loan period, a general description of the exhibition, and complete citations for each item requested. If special circumstances warrant, the director and librarian may waive the 60-day requirement.

(B) The maximum loan period is normally six months. The director and librarian reserves the right to recall loaned materials for good cause at any time and will attempt to give reasonable notice thereof.

(C) The borrower must agree in writing to adhere to the commission rules governing the loan and exhibition of materials. If the borrower wishes to use its own incoming loan agreement form as well, it must first agree that the terms of the commission loan agreement are the controlling terms if there is a conflict between the two documents.

(D) The borrower may not take any of the actions detailed in clauses (i), (ii), and (iii) of this subparagraph without first obtaining written permission from the director and librarian.

(i) Display commission materials in a location or exhibition other than that cited on the loan agreement.

(ii) Transfer physical custody of the loaned items to another institution or third party.

(iii) Alter, clean, or repair loaned items; perform any conservation treatment; or remove a document from a housing provided by commission (e.g., polyester encapsulation, mat, etc.).

(2) Security and Environmental Conditions.

(A) Archival material, historical items, and artifacts must be displayed in a facility equipped with fire protection equipment as described in National Fire Protection Association-Standard for the Protection of Cultural Resources Including Museums, Libraries, Places of Worship, and Historic Properties (NFPA909-1997).

(B) Items on loan must be secure at all times. Professional security guards or other trained personnel must regularly patrol exhibition areas during hours of public access. The borrower shall have sufficient 24-hour guards or a 24-hour electronic security system to effectively monitor and protect the exhibition, storage, and preparation areas at all times.

(C) Temperature and humidity levels must be monitored and controlled. A temperature of 70 degrees Fahrenheit, plus or minus 5 degrees, and a relative humidity of 50% plus or minus 5% without rapid fluctuations must be maintained in the storage, preparation, and exhibition areas. Before approving a loan and while items are on loan, the director and librarian may request copies of temperature and humidity readings from the borrower to verify that these requirements can and are being met.

(D) Exhibition cases must be dirt-free, dust-proof, and secured with locks or security screws. Frames must also be dirt- and dust-proof and secured to the wall with security screws or other hanging methods approved by the director and librarian. Glass or acrylic sheeting, such as plexiglas, lucite, or polycast must protect all materials displayed in frames or cases. The director and librarian may specify grades of acrylic sheeting that filter ultraviolet light for materials that are especially light sensitive.

(E) The exhibition must be monitored daily to ensure security and stability of documents within the cases and frames as well as adequate maintenance and cleaning of the exhibit area.

(F) Eating, drinking, and smoking must be prohibited in the storage, preparation, and exhibition areas.

(3) Lighting Conditions.

(A) Incandescent bulbs are the preferred light source for exhibition lighting. All light sources must be filtered to remove the ultraviolet component.

(B) When lighting items exhibited in a case, exterior incandescent lights shall be used whenever possible. If interior case lights are used, fluorescent lights with ultraviolet filters are preferable because fluorescent tubes will have minimal effect on the temperature in the case.

(C) No original archival materials, historical items, or artifacts shall be exhibited where they will be exposed to direct or unfiltered sunlight.

(4) Handling and Installation.

(A) Original archival materials, historical items, or artifacts may be handled and installed by only a curator, registrar, preparator, or conservator under contract to or on the staff of the borrower.

(B) The commission may encapsulate or mat documents for loan to minimize dangers associated with handling and exhibition. No item borrowed for exhibition may be altered, cleaned, repaired, or removed from housing provided by the commission without first obtaining written permission from the director and librarian.

(C) The commission reserves the right to directly supervise the installation of its materials.

(D) If documents are displayed in exhibition cases, the cases must be dirt-free, dust-proof, and locked or secured with security screws.

(E) All items must be handled, supported, and conveyed by means that will prevent damage during transport to and from the borrowing institution and within it.

(F) All items must be given sufficient support to prevent damage during exhibition.

(5) Inspections.

(A) A commission staff member may inspect the exhibition area before the loan is approved. If, after a commission staff inspection, in the opinion of the director and librarian any loan requirement cannot be met, the loan will not be made.

(B) Commission staff members or personnel designated by the director and librarian may make inspection trips at any time during the period of the loan.

(6) Packing and Transportation.

(A) Unless the commission specifies otherwise, commission staff will pack items going out on loan. The borrower is responsible for packing loan items to return to the commission. All items must be given sufficient support and protection to prevent damage during transit.

(B) The borrower will pay all costs associated with shipping or transporting the items on loan from the commission.

(7) Insurance. All borrowers, other than state agencies, must provide all-risk insurance coverage in an amount satisfactory to the commission for all loaned items from the time the items leave the commission until the time of return. Evidence of this policy must be provided the commission before any items are removed from the commission.

(8) Publicity and Credit.

(A) The director and librarian must approve any plans to reproduce loaned items for exhibition-related publications, other publications, and publicity purposes.

(B) Commission materials on exhibition may be photographed by the general public without the use of flash or tripod.

(C) In the exhibition and related publicity, the commission must receive clear and prominent credit. The following credit line shall be used: Archives and Information Services Division, Texas State Library and Archives Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200402698
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: May 12, 2004
Proposal publication date: October 24, 2003
For further information, please call: (512) 463-5459

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SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §2.115

The amended rule is adopted under the following statutes: Government Code, §441.006(a)(1), which provides that the commission will govern the Texas State Library; Government Code, §441.006, which requires the commission to adopt rules relating to complaints by customers; Government Code, §§441-0091(b)(3) and 441.136, which require the commission to adopt rules governing its library grant programs; Government Code, §§656.048 and 656.102, which require state agencies to adopt rules relating to the training and education of staff; Government Code, §2161.003, which requires state agencies to adopt the rules promulgated by the Texas Building And Procurement Commission relating to historically underutilized businesses; Government Code, §2171.045, which requires a state agency with a vehicle fleet to adopt rules concerning the use of the fleet; and Government Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a private donor or for which a private organization exists that is designed to further the purposes and duties of the agency to adopt rules governing the relationship between the agency and the donor or organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 2. GENERAL POLICIES AND PROCEDURES
SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.60 - 2.64

The Texas State Library and Archives Commission adopts the repeal of §§2.60 - 2.64, concerning friends groups, as proposed in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9191).

The purpose of the repeal is to enable the commission to propose and adopt rules relating to friends groups in one coherent section. By doing so, those interested in participating in a friends group will have a clear and complete understanding of the scope and purpose of such groups.

No comments were received on the proposed repeal.

The repeal is adopted under Government Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a private donor or for which a private organization exists that is designed to further the purposes and duties of the agency to adopt rules governing the relationship between the agency and the donor or organization.

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. GRANT POLICIES
DIVISION 7. TEXAS READS GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.170 - 2.175

The Texas State Library and Archives Commission adopts new rules, 13 TAC §§2.170-2.175, without changes to the text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9192). These sections establish the guidelines for the administration of a new grant program for Texas public libraries, Texas Reads Grant Program, whose general purpose is to fund

public library programs to promote reading and literacy in local communities. These sections set forth the general terms, conditions, and criteria for awarding these grants. Grants will aid local communities to enhance local library services.

No comments were received during the comment period.

These new sections are adopted under the authority of Government Code §441.0092, that provides the Commission authority to make grants to fund programs to promote reading and literacy through public libraries, determine eligibility standards for grants, provide procedures for grant applications, and determine the recipient and amount of each grant. The collection of revenue to fund the grant program is authorized under Transportation Code, §504.616.

The adopted new sections affect the Government Code, §441.0092 and the Transportation Code, §504.616.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 6. STATE RECORDS
SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.3

The Texas State Library and Archives Commission adopts an amendment to §6.3, concerning the submission of records retention schedules for recertification, without changes to the proposed text published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9193).

The purpose of the amendment is to permit a state agency that assumes the functions and duties of an abolished state agency to continue to use the certified records schedule of the abolished agency until its own schedule has been recertified. The adoption of the amendment will assist state agencies that assume new functions as a result of legislative reorganization of state government in managing and lawfully disposing of records associated with those functions.

No comments were received on the proposed amendment.

The amended section is adopted under Government Code, §441.185(e), which provides the commission authority to adopt rules concerning the submission of records retention schedules to the state records administrator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.3

The Texas State Library and Archives Commission adopts amendments to §8.3, regarding operation of the TexShare library consortium with changes to the text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9194). These amendments bring the rules affecting the way in which TexShare members are assessed fees into alignment with the current membership composition.

One comment was received during the comment period, suggesting that membership fee schedules be part of the rules. The amendment, as it was proposed, provides the consortium the flexibility required for fee schedules to quickly reflect changes in services. Such flexibility would be lost should fee schedules be posted in the rule. The rule does set guidelines for assessing fees. Applied in conjunction with §8.4 of this title (establishment of TexShare advisory board as prescribed by §441.226 of the Government Code), the rules ensure that fees are set, maintained, and altered as needed on the basis of relevant criteria and membership recommendation. Therefore, no changes were made based upon this comment.

Section 8.3(f) has been altered from the proposed text to allow the commission to use the TexShare annual report as a source for data. §8.3(g) has been altered from the proposed text to reflect the language of §2.55 of this title, to which it refers. There were also minor grammatical or spelling changes made to the text.

The amendments are adopted under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The new rules affect Government Code, §441.221 through §441.230.

§8.3. Membership.

(a) Eligibility. Membership in the consortium is open to all institutions of higher education as determined by the Texas Higher Education Coordinating Board, to libraries of clinical medicine, and to all public libraries that are members of the state library system, as defined in Government Code, §441.127.

(b) Agreement. Public libraries will be TexShare Members so long as they remain members of the state library system. Institutions of higher education and libraries of clinical medicine must file a membership agreement, signed by a duly authorized administrative official, on joining the consortium. Participation in specific programs of the consortium may require additional agreements and fees.

(c) Annual Report. Libraries of member institutions of higher education and member libraries of clinical medicine shall file a current and complete annual report for the preceding year with the commission

by January 15 of each year. Public libraries shall file their state library system reports as required by §1.85 of this title.

(d) Multiple Libraries. For institutions of higher education, the unit of membership in the TexShare Library Consortium shall be the institution. Community college districts may apply as a single unit or as individual campuses; other institutions of higher education with libraries in multiple locations shall apply as a single unit. Public libraries with branches shall apply as a single unit. Libraries affiliated with professional schools that demonstrate they are administered and budgeted independently of the campus library may apply for separate membership. For libraries of clinical medicine, the unit of membership shall be the nonprofit corporation; those having multiple locations shall apply as a single unit.

(e) Suspension of membership.

(1) Institutions of higher education and libraries of clinical medicine: Membership will be automatically renewed for each state fiscal year, provided that the library of clinical medicine or institution of higher education continues to meet the definition required in subsection (a) of this section; and an annual report has been filed as required by subsection (c) of this section.

(2) Public libraries: Public libraries shall remain TexShare members so long as they remain members of the state library system.

(3) Institutions of higher education, libraries of clinical medicine, and public libraries that no longer meet the definition in subsection (a) of this section, or are otherwise not qualified, will be suspended from membership. They may re-join TexShare when they meet the definition in subsection (a) of this section.

(f) Members may receive services or be assessed fees based on demographic, financial, or other relevant information, as reflected in the latest statistics from the National Center for Education Statistics, the Texas Higher Education Coordinating Board, and the Independent Colleges and Universities of Texas or from the most current statistical data reported to the commission in the Texas academic library survey, the Texas public library annual report (filed as required by subsection (c) of this section), or the TexShare annual report (filed as required by subsection (c) of this section).

(g) Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services, in consideration of the costs involved in providing these services to member libraries. Protests regarding fee assessments, including requests for fee reduction or waiver, will be processed in accordance with procedures outlined in §2.55 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE

SUBCHAPTER I. PERMIT PROCESSING

16 TAC §1.201

The Railroad Commission of Texas (Commission) adopts amendments to §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively, with changes to the version published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2509). The Commission adopts the amendments in order to conform the rule text and Table 1 in §1.201 with organizational changes made at the Commission, with substantive changes adopted in rules in other chapters, and with the transfer of the Quarry Safety program to the Texas Department of Transportation, pursuant to House Bill (HB) 3442, 78th Legislature (2003) (Acts 2003, 78th Leg., ch. 200, eff. September 1, 2003).

The adopted amendments to the rule text and to the table are non-substantive and made for clarification purposes. Changes that reflect the new organizational structure of the Commission are found in subsections (a), (d), and (e); these changes indicate the correct names of Commission divisions, employee titles, and the title of Chapter 1. In certain rows, the name of an Oil and Gas Division section is changed from the "Production and Permitting Section" to the new name, the "Permitting/Production Services Section." This change is found in the rows for §§3.6, 3.10, 3.23, 3.38, 3.41, 3.43, 3.48, the three rows for §§3.50, 3.57, 3.83, and 3.101.

In the row for §3.70, the rule number is corrected from the old number of §3.65, and the section name is corrected from the Gas Services Division "Pipeline Safety Section" to the "License and Permit Section."

In the row for §3.81, the rule number is corrected from the old number of §3.77

In the row for §9.10, the rule number and title are corrected from the old rule number and title, and the Gas Services Division section is corrected to the new "License and Permit Section." The $20 fee is correct but applies only to an employee-level examination; the $50 fee for a management-level examination is added. These fees previously were adopted in §9.10 and are not new.

In the row for §9.27, the rule number is corrected and the division is corrected from Gas Services Division, LP-Gas Section, to the new "Rail/LP-Gas/Pipeline Safety Division." The reference to an "individual application" is deleted to conform to the current language of §9.27.

A new row is added for §9.54, Commission-Approved Outside Instructors; this rule applies to persons who wish to provide Commission-approved training or continuing education to LP-gas companies or employees. The Alternative Fuels Research and Education Division processes these applications, which are made on written request, do not require a Form P-5, require an application fee of $300, and have an initial review period of 14 days and a final review period of 10 days. These requirements previously were adopted in §9.54 and are not new.

In the row for §9.101, the rule number and the division name are corrected in the same manner as the row for §9.27.

Four rows are deleted from the Table because the Quarry Safety program was transferred from the Commission to the Texas Department of Transportation; the deleted rows are for §§11.1038 (two rows), 11.1043, and 11.1045.

In the row for §12.148, the initial review period has decreased from 120 days to 60 days.

In the row for §12.226, regarding administrative permit revisions, the application form has been corrected from SMRD-1C to SMRD-2C; the application fee for a permit revision of $500 added; the footnote deleted; and the initial review period changed from 120 days to 60 days. The $500 fee previously was adopted in §12.108(a)(2) and is not a new fee.

In the row for §§12.231-12.233, the application fee for a permit transfer of $500 has been added; again, this fee previously was adopted in §12.108(a)(2) and is not a new fee.

In the row for §13.35, the division name has been corrected to the Rail/LP-Gas/Pipeline Safety Division, and the reference to an individual application has been deleted; as with §9.27, §13.35 requires an application form.

In the rows for both §13.70 and §14.2019, the rule titles are corrected and the new "License and Permit Section" name is added. As with §9.10, a statement clarifying that the $20 examination fee is for an employee-level examination and the $50 fee for a management-level examination is added; these fees previously were adopted in §9.10 and are not new.

In the row for §14.2040, the rule number and division name are corrected.

In the row for §14.2052, the rule number and division name are corrected, and the reference to an individual application is deleted in the same manner as in the rows for §§9.27 and 13.35.

Finally, in the row for the clearance deviation authorization pursuant to Texas Revised Civil Statutes Annotated, article 6559f, the division name is corrected.

The Commission adopts §1.201 with seven changes from the proposal, all found in Table 1. In the first row for §3.46, the fee for an injection permit is $200 per well; the words "per well" are added for clarification. In the second row for §3.46, the fee for an injection permit with authorization to inject resh water was published in the proposal as "$200; $150 per exception." In fact, this permit does not require a fee, so that block is changed to "None." In the third row for §3.46, the fee for an area permit is $200 per well; the words "per well" are added for clarification. In the row for §3.81, the fee for a brine mining injection permit was proposed as $100; that fee is corrected to $200 pursuant to recently adopted amendments to §3.78 of this title (relating to Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed). In the rows for §§3.95, 3.96, and 3.97, the fees were in the proposed Table as $100 per well; pursuant to §3.78, these fees are in fact $200 per well.

The Commission received no comments on the proposal.

The Commission adopts the amendments to §1.201 pursuant to Texas Government Code, §§2005.001 - 2005.007, which require the Commission to adopt procedural rules for processing permit applications and issuing permits and to establish by rule a complaint procedure allowing permit applicants to complaint directly to the chief administrator of the agency; Texas Government Code, §2001.004, which requires agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and HB 3442 (78th Legislature, 2003) (Acts 2003, 78th Leg., ch. 200, eff. September 1, 2003).

Texas Government Code, §2001.004 and §§2005.001-2005.007, and Texas Natural Resources Code, Chapter 133, as amended by HB 3442 (Acts 2003, 78th Leg., ch. 200, eff. September 1, 2003), are affected by the adopted amendments.

Statutory authority: Texas Government Code, §§2001.004, and 2005.001 - 2005.007, and Texas Natural Resources Code, Chapter 133, as amended by HB 3442.

Cross-reference to statute: Texas Government Code, §§2001.004 and 2005.001-2005.007, and Texas Natural Resources Code, Chapter 133.

Issued in Austin, Texas, on April 23, 2004.

§1.201. Time Periods for Processing Applications and Issuing Permits Administratively.

(a) Applicability. This rule applies to the permits listed in Column A of Table 1 of this section. For purposes of this rule, the term "permit" includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail/LP-Gas/Pipeline Safety Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules and for which the median processing time exceeds seven days.
Figure: 16 TAC §1.201(a)

(b) Completeness. An application is complete when the division or section shown in Column B of Table 1 has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the division or section processing the application. For purposes of this section, certain applicants, as shown in Column D of Table 1, are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be complete.

(c) Time periods.

(1) The date a permit application is received under this section is the date the application reaches the designated division or section within a division as shown in Column B of Table 1.

(2) The division or section shown in Column B of Table 1 shall process permit applications in accordance with the time periods shown in Columns F and G of Table 1 for a particular permit. Time periods are counted on the basis of calendar days.

(3) The Initial Review Period, shown in Column F of Table 1, begins on the date the designated division or section receives the application and ends on the date the division or section gives written notice to the applicant indicating that either:

(A) the application is complete and accepted for filing; or

(B) the application is incomplete, as described in paragraph (4) of this subsection.

(4) If the division or section determines that an application is incomplete, the division or section shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. The Initial Review Period shall start again each time the division or section receives a supplemental filing relating to an incomplete application. After the second supplemental submission, if the application is complete, the division or section shall

administratively rule on the application; if the application is still incomplete, the division or section shall administratively deny the application. The division or section specifically does not have the authority to accept or review any other additional supplemental submissions. The division or section shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands. The applicant may withdraw the application.

(5) The Final Review Period, shown in Column G of Table 1, begins on the date the division or section makes a determination under paragraph (3)(A) of this subsection and ends on the date the permit is:

(A) administratively granted;

(B) administratively denied; or

(C) docketed as a contested case proceeding if the application is neither administratively granted nor administratively denied.

(6) An applicant whose application has been administratively denied may request a hearing by filing a written request for a hearing addressed to the division or section processing the application, within 30 days of the date the application is administratively denied.

(7) Within seven days of either docketing an application under paragraph (5)(C) of this subsection or receiving a written request for a hearing under paragraph (6) of this subsection, the division or section processing the application shall forward the file and any request for hearing, including any memoranda or notes explaining or describing the reasons for docketing or administrative denial, to the Docket Services Section of the Office of General Counsel. The Office of General Counsel shall process the application as prescribed in subsection (e) of this section.

(d) Complaint procedure.

(1) An applicant may complain directly to the Executive Director if a division or section does not process an application within the applicable time periods shown in Columns F and G of Table 1, and may request a timely resolution of any dispute arising from the claimed delay. All complaints shall be in writing and shall state the specific relief sought, which may include the full reimbursement of the fee paid in that particular application process, if any, as shown in Column E of Table 1. As soon as possible after receiving a complaint, the Executive Director shall notify the appropriate division director of the complaint.

(2) Within 30 days of receipt of a complaint, the division director of the division or section processing the application that is the subject of the complaint shall submit to the Executive Director a written report of the facts relating to the processing of the application. The report shall include the division director's explanation of the reason or reasons the division or section did or did not exceed the established time periods. If the Executive Director does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Executive Director may deny the relief requested by the complaint.

(3) For purposes of this section, good cause for exceeding the established period means:

(A) the number of permit applications to be processed by the division or section exceeds by at least 15 percent the number of permit applications processed by that division or section in the same quarter of the previous calendar year;

(B) the division or section must rely on another public or private entity to process all or part of the permit application received by the agency, and the delay is caused by that entity; or

(C) other conditions exist that give the division or section good cause for exceeding the established period, including but not limited to circumstances such as personnel shortages, equipment outages, and other unanticipated events or emergencies.

(4) The Executive Director shall make the final decision and provide written notification of the decision to the applicant and the division or section within 60 days of receipt of the complaint.

(e) Hearings. If an application is docketed as a contested case proceeding, it is governed by the time periods in this chapter (relating to Practice and Procedure) once the application has been filed with the Docket Services Section of the Office of General Counsel.

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 April 23, 2004.

TRD-200402728
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: May 13, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 475-1295

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §15.125

The Railroad Commission of Texas adopts amendments to §15.125 (relating to Application) without changes from the version published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2510). The amendments change the application period for certain rebates from 60 days after installation to 30 days after installation. This change was recommended by the Propane Alternative Fuels Advisory Committee (AFRED advisory committee) as a means of better managing the consumer rebate program budget.

All administrative requirements of the rebate program will remain unchanged, except that an applicant for a rebate on domestic equipment, such as an appliance, will have 30 days rather than 60 days after installation to submit an application for a rebate. Thirty days appears to be adequate time, given the brevity and simplicity of the application and required documentation for these rebates. The application for a rebate on domestic equipment consists of a one- or two-page form, depending on the type of rebate, verifying the equipment for which the rebate is being sought. The form requires, for example, the make, model, and serial number of the eligible equipment installed or being replaced; the date and physical address of the installation; the applicant's name, address, and telephone number; and the participating propane marketer's name, address, telephone number, and Railroad Commission LP-Gas license number. The form also requires the signature of the applicant and the Company

Representative and, for certain rebate amounts, the applicant's tax identification number or social security number. The required documentation is typically a one-page work order showing that the equipment for which the rebate is being sought is installed and operating in the State of Texas in compliance with Railroad Commission requirements.

The amendment in §15.125(a) adds language specifying that the forms and supporting documentation must include required information, must describe with sufficient particularity the equipment for which the rebate is being sought, and must show that the equipment is installed and operating in the State of Texas in compliance with Railroad Commission requirements.

The amendments in §15.125(d) make the distinction between the deadlines applicable to domestic equipment rebates and to other types of rebates. An application for a rebate on domestic equipment, such as an appliance, must be received at the Commission no later than 30 days following the date of the eligible installation to be eligible for a rebate. An application for a rebate on a motor vehicle, industrial lift truck, or other industrial equipment must be received at the Commission no later than 60 days following the date of the eligible installation to be eligible for a rebate.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Natural Resources Code, §113.2435(b), which authorizes the Commission to adopt rules relating to the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial fuels for the purpose of achieving energy conservation and efficiency or improving air quality in this state; and Texas Natural Resources Code, §113.243(c)(6), which authorizes the Commission to use money in the Alternative Fuels Research and Education Fund, now Alternative Fuels Research and Education Fund Account 101, General Revenue-Dedicated, to pay the direct and indirect costs of such programs.

Texas Natural Resources Code, §§113.243, 113.2435, and 113.246, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§113.2435(b) and 113.243(c)(6).

Cross-reference to statute: Texas Natural Resources Code, §§113.243, 113.2435, and 113.246.

Issued in Austin, Texas, on April 23, 2004.

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 April 23, 2004.

TRD-200402727
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: May 13, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

19 TAC §102.1011, §102.1013

The Texas Education Agency (TEA) adopts an amendment to §102.1011 and new §102.1013, concerning master teacher grant programs, without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2167) and will not be republished. Section 102.1011 defines terms and sets forth the procedures for school district applications and administration of master reading teacher grants. The adopted amendment updates eligibility requirements for the Master Reading Teacher Grant Program authorized by the Texas Education Code (TEC), §21.410. The adopted new §102.1013 establishes implementation and eligibility requirements for the Master Mathematics Teacher Grant Program authorized by the TEC, §21.411.

House Bill (HB) 2307, 76th Texas Legislature, 1999, added TEC, §21.410, creating the new Master Reading Teacher Grant Program. Through 19 TAC §102.1011, the commissioner exercised rulemaking authority to adopt rules for implementation of this grant program and to make grants to school districts to pay stipends to selected certified master reading teachers who teach at high-need campuses as identified in rule. The adopted amendment to 19 TAC §102.1011 revises the definition of a high-need campus to include charter schools and to allow a transition period for changing from Texas Assessment of Academic Skills (TAAS) scores to Texas Assessment of Knowledge and Skills (TAKS) scores as the basis for determining eligible campuses. The amendment also updates provisions to be consistent with current application instructions and provisions included in the adopted new 19 TAC §102.1013, Master Mathematics Teacher Grant Program.

HB 1144, 77th Texas Legislature, 2001, added TEC, §21.411, creating the new Master Mathematics Teacher Grant Program. Through new 19 TAC §102.1013, the commissioner exercises rulemaking authority to adopt rules for implementation of the grant program to allow for the distribution of grants to school districts with identified high-need campuses for payment of stipends to certified master mathematics teachers designated by the districts. The adopted new 19 TAC §102.1013 defines terms and sets forth the procedures for school district applications and administration of grants consistent with application instructions and updated provisions included in 19 TAC §102.1011, Master Reading Teacher Grant Program. The new rule also includes a transition period for use of the TAAS scores to TAKS scores as the basis for determining eligible campuses.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Education Code, §21.410 and §21.411, which authorize the commissioner of education to adopt rules as necessary to implement the master reading teacher grant program and the master mathematics teacher grant program.

The amendment and new section implement the Texas Education Code, §21.410 and §21.411.

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 April 26, 2004.

TRD-200402753
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 16, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC, Chapter 101, §101.1 and §101.8, the repeal of §101.2, §101.3, §101.7, and §101.9, and new §101.2, §101.3, §101.4 and §101.5, all of which concern dental licensure, without changes to the proposed text published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2519). The text will not be republished.

Section 101.1(c)(5) contains new language specifying that an entity designated by the Board may administer the jurisprudence examination.

Section 101.2, concerning staggered dental registration, is repealed. The language of this section is contained in the new §101.5.

New §101.2 is adopted to specifically address dental licensure by examination. Section 101.2(d) has been added to that language to specify the regional examining boards designated as acceptable by the Board, and the effective dates of their acceptance.

Section 101.3, concerning temporary licensure by credentials, is repealed. The language of this section is contained in new §101.4.

New §101.3 addresses dental licensure by credentials.

New §101.4 addresses temporary dental licensure by credentials.

New §101.5 addresses staggered dental registrations.

Section 101.7, concerning dental licensure by credentials, is repealed. The language of this section in contained in new §101.3.

Section 101.8(e), which enumerates crimes that are considered to be of such a serious nature that they relate to fitness to practice dentistry, has been amended to update the terminology describing certain criminal offenses, and to add any felony subjecting a defendant to sex offender registration requirements.

Section 101.9, which concerns the collection of dental profile data, is repealed because the collection of that data is managed by the Texas On-Line Authority, and no longer rests with the Texas State Board of Dental Examiners.

The Board received a comment from Patricia Blanton, DDS, PhD., the President of the Texas Dental Association. Dr. Blanton objected to the inclusion of the northeast Regional Board (NERB) and the Southern Regional Testing Agency (SRTA) in §101.2(d)(1) as regional examining boards designated as acceptable by the Board. Dr. Blanton expressed concern that the standards of those examining boards are inadequate, and that the passage of those examinations may not demonstrate sufficient competence.

The Board appreciates these comments; however, no changes to the proposed rule will be made. The rule as amended lists all examining boards that have been designated as acceptable by the Board in accordance with Board rules. NERB and SRTA were designated as acceptable by vote of the Board at its October 31, 2003 meeting.

No other comments were received.

22 TAC §§101.1 - 101.5, 101.8

The sections are adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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 April 20, 2004.

TRD-200402602
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 475-0972

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22 TAC §§101.2, 101.3, 101.7, 101.9

The repeals are adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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 April 20, 2004.

TRD-200402604
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 475-0972

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.63

The Texas State Board of Dental Examiners (Board) adopts amendments to §107.63, concerning the Board's use of informal and alternative dispute resolution processes, without changes to the proposed text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1817). The text will not be republished.

The section as amended provides for additional case resolution methods, including alternative dispute resolution methods, or by an informal settlement conference presided over by board staff.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties; the Government Code, Chapter 2009, which allows for and promotes the use of alternative dispute resolution processes; and Senate Bill 263, §10 and §19, 78th Legislature, 2003, which requires the Board to establish rules for the use of alternative dispute resolution processes and staff settlement conferences for the resolution of contested matters.

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 April 20, 2004.

TRD-200402621
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 475-0972

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SUBCHAPTER C. ADMINISTRATIVE PENALTIES

22 TAC §107.202

The Texas State Board of Dental Examiners (Board) adopts amendments to §107.202, concerning disciplinary guidelines and administrative penalties, without changes to the proposed text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1820). The text will not be republished.

The amendment removes the words "and address" from §107.202(d)(6)(B), as required by Senate Bill 1571, §4, 78th Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties; and Senate Bill 1571, §4, 78th Legislature, 2003, as discussed above.

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 April 20, 2004.

TRD-200402625
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 475-0972

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The Texas State Board of Dental Examiners (Board) adopts amendments to §108.7, concerning the minimum standard of care in dentistry, without changes to the proposed text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1820). The text will not be republished.

The amendment clarifies that blood pressure and heart rate measurements must be taken as part of the required initial medical examination of any patient, except that such measurements are not required for patients 12 years of age or younger, unless the patient's medical condition or history indicate such a need.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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 April 20, 2004.

TRD-200402645
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 475-0972

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SUBCHAPTER C. ANESTHESIA AND ANESTHETIC AGENTS

22 TAC §108.33

The Texas State Board of Dental Examiners (Board) adopts amendments to §108.33, concerning sedation and anesthesia permits, without changes to the proposed text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1821). The text will not be republished.

The amendment adds §108.33(c), which creates a process and requirements for a provisional permit that allows a licensed dentist with appropriate qualifications to administer parenteral conscious sedation and/or deep sedation and general anesthesia. Currently, permits require the approval of the Board, which only meets four times per year.

The amendment also adds language to §108.33(h)(1)(A)(i) that imposes a five-year limit on the amount of time certain training will be considered current for the purpose of acquiring a nitrous oxide/oxygen inhalation conscious sedation permit.

All other amendments are for grammatical or organizational purposes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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 April 20, 2004.

TRD-200402626
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 475-0972

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22 TAC §108.34

The Texas State Board of Dental Examiners (Board) adopts amendments to §108.34, concerning permit requirements and clinical provisions for the administration of sedation and anesthesia, with one change to the proposed text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1823).

The amendments are made necessary by adopted amendments to §108.33, and only change three citations to subsections of §108.33.

However, due to a typographical error, §108.34(c)(1)(A) as proposed referred to §108.33(g)(3), where it should have cited §108.33(h)(3). That change has been made in the version as adopted. No other changes have been made.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

§108.34. Permit Requirements and Clinical Provisions.

(a) Nitrous Oxide/oxygen inhalation conscious sedation. To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional requirements.

(A) Each dentist wishing to utilize this technique must be permitted by the State Board of Dental Examiners (SBDE) to deliver nitrous oxide/oxygen conscious sedation after having met the Education Requirements as detailed in rule 108.33(h)(1) of this title (relating to Sedation/Anesthesia Permit).

(B) Nitrous oxide/oxygen inhalation conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in rule 108.32 of this title (relating to Minimum Standard of Care), and shall in addition:

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of nitrous oxide/oxygen inhalation conscious sedation.

(C) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross; and

(D) not allow a nitrous oxide/oxygen inhalation conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed. This provision and similar provisions in subsequent sections of this rule addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of nitrous oxide/oxygen inhalation conscious sedation:

(A) Patient Evaluation. Patients subjected to nitrous oxide/oxygen inhalation conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk should be considered.

(B) Pre-Procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of the nitrous oxide/oxygen inhalation conscious sedation.

(ii) the inhalation equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.

(C) Personnel and Equipment Requirements:

(i) in addition to the dentist, at least one member of the assistant staff should be present during the administration of nitrous oxide/oxygen inhalation conscious sedation in non-emergency situations;

(ii) the inhalation equipment must have a fail-safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation:

(i) maintain personal supervision of the patient during induction of the nitrous oxide/oxygen inhalation conscious sedation procedure and during maintenance of nitrous oxide/oxygen inhalation conscious sedation for such a period of time necessary to establish pharmacologic and physiologic vital sign stability. The dentist may delegate under direct supervision, as defined in Rule 108.31 of this title (relating to Definitions), the monitoring of the nitrous oxide/oxygen inhalation conscious sedation procedure to a dental auxiliary who has been certified to monitor the administration of nitrous oxide/oxygen inhalation conscious sedation by the State Board of Dental Examiners. Certification is obtained by successful completion of a written examination offered by the State Board of Dental Examiners on said subject.

(ii) individuals present during administration should be documented;

(iii) maximum concentration administered must be documented.

(E) Recovery and Discharge:

(i) recovery from nitrous oxide/oxygen inhalation conscious sedation, when used alone, should be relatively quick, requiring only that the patient remain in an operatory chair as needed;

(ii) patients who have unusual reactions to nitrous oxide/oxygen inhalation conscious sedation should be assisted and monitored either in an operatory chair or recovery room until stable for discharge;

(iii) the dentist must determine that the patient is appropriately responsive prior to discharge.

(F) Emergency Management. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of nitrous oxide/oxygen inhalation conscious sedation.

(b) Parenteral conscious sedation intravenous (IV), intramuscular (IM), subcutaneous (SC), submucosal (SM), intranasal (IN). To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements:

(A) each dentist wishing to utilize these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral conscious sedation after having met the educational requirements as detailed in Rule 108.33(h)(2) of this title (relating to Sedation/Anesthesia Permit).

(B) parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of Care Requirements. Each dentist must maintain the minimum standard of care as detailed in Rule 108.32 of this title (relating to the Minimum Standard of Care) and shall in addition

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain a written informed parenteral conscious sedation consent for each dental patient on whom each procedure is performed; such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death;

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and which shall include physiologic vital sign monitoring during the course of the procedure;

(D) maintain under continuous personal supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross.

(F) not allow a parenteral conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral conscious sedation:

(A) Patient Evaluation. Patients subjected to parenteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physicians or consulting medical specialists regarding potential procedure risk or special monitoring requirements should be considered.

(B) Pre-procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent must be obtained;

(ii) if inhalation equipment is used in conjunction with parenteral conscious sedation, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation must be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on the technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line must be established and secured throughout a procedure utilizing an intravenous conscious sedation technique and should be maintained with other parenteral conscious sedation techniques when the patient's physical or medical condition warrants, except as provided in subparagraph (F) of this paragraph.

(C) Personnel Requirements and Equipment:

(i) during the administration of parenteral conscious sedation the dentist and at least one member of the assistant staff who is currently competent in Basic Life Support (BLS) must be present;

(ii) any inhalation equipment utilized in conjunction with parenteral conscious sedation must have a fail safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system;

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction of parenteral conscious sedation and during maintenance of parenteral conscious sedation for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the parenteral conscious sedation care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care.

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry except as provided in subparagraph (F) of this paragraph.

(ii) Ventilation. Must perform observation of chest excursions and/or auscultation of breath sounds.

(iii) Circulation.

(I) Shall take and record blood pressure and pulse continually at least every 10 minutes;

(II) Shall perform continuous EKG monitoring of all patients with electrocardioscopy, except as provided in subparagraph (F) of this paragraph.

(iv) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral conscious sedation shall be documented.

(E) Recovery and Discharge.

(i) positive pressure oxygen and suction equipment must be immediately available in the recovery area and/or operatory;

(ii) continual monitoring of vital signs when the sedation/anesthesia is no longer being administered; i.e., the patient must have continuous supervision until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the facility;

(iii) the dentist must determine and provide for documentation that oxygenation, ventilation, circulation, activity, skin color and level of consciousness are appropriate and stable prior to discharge;

(iv) must provide explanation and documentation of postoperative instructions to patient and/or a responsible adult at time of discharge;

(v) the dentist must determine that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques and single dosage techniques (IN, IM and SC) and types of special patients. In selected circumstances, parenteral conscious sedation may be utilized without establishing an indwelling intravenous line or continuous EKG monitoring with electrocardioscopy or pulse oximetry. These circumstances include sedation for brief procedures; young children managed entirely by non-intravenous techniques; or the establishment of intravenous access, EKG monitoring, or pulse oximetry after sedation has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care and/or the American Academy of Pediatric Dentistry Sedation Guidelines published in 1999 for Level 1 and Level 2 conscious sedation, as those levels are defined in the guidelines. When these situations occur, the dentist responsible for administering parenteral conscious sedation shall document the reasons preventing the recommended preoperative or intraoperative management.

(G) Emergency Management.

(i) the sedation/anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications must be available.

(iii) a defibrillator should be immediately available when ASA I and ASA II status patients are consciously sedated and, a defibrillator must be immediately available when ASA III and ASA IV status patients are consciously sedated.

(c) Deep sedation and/or general anesthesia. To induce and maintain deep sedation/general anesthesia on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements:

(A) Each dentist wishing to utilize either of these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver deep sedation and/or general anesthesia after having met the education requirements as detailed in rule 108.33(h)(3) of this title (relating to Sedation/Anesthesia Permit).

(B) Deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in rule 108.32 of this title (relating to Minimum Standard of Care) and shall in addition:

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain a written deep sedation and/or general anesthesia consent for each dental patient on whom each procedure is performed, such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death:

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and shall include physiologic vital sign monitoring during the course of the procedure;

(D) maintain under continuous direct supervision a minimum of two auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of deep sedation and/or general anesthesia;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;

(F) not allow a deep sedation and/or general anesthesia procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of deep sedation and/or general anesthesia:

(A) Patient Evaluation. Patients subjected to deep sedation/general anesthesia must be suitably evaluated prior to the start of any sedative/anesthetic procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV), consultation with their primary care physician or consulting medical specialist regarding potential procedure risk or special monitoring should be considered.

(B) Pre-Procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained;

(ii) if inhalation equipment is used in conjunction with deep sedation and/or general anesthesia, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation should be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line which is secured throughout the procedure must be established, except as provided in subparagraph (F) of this paragraph.

(C) Personnel and Equipment Requirements:

(i) a provider permitted to administer deep sedation and/or general anesthesia shall be designated to be in charge of the administration of anesthesia care;

(ii) two additional individuals who are currently certified in basic cardiopulmonary resuscitation or its equivalent, one of whom is trained in patient monitoring shall be present for the delivery of anesthesia care;

(iii) when the same individual administering the deep sedation and/or general anesthesia is performing the dental/oral and maxillofacial procedure, one of the additional two individuals present for the delivery of anesthesia care must monitor the patient and record required information on the anesthesia record;

(iv) equipment suitable to provide advanced airway management and advanced life support must be on premises and available for use.

(v) any inhalation equipment utilized in conjunction with deep sedation/general anesthesia must have a fail safe system that is appropriately checked and calibrated.

(vi) if nitrous oxide/oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized.

(vii) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(viii) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction and maintenance of deep sedation and/or general anesthesia and during maintenance of deep sedation and/or general anesthesia for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the anesthesia care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care.

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygenation saturation shall be evaluated continuously by pulse oximetry;

(ii) Ventilation. Intubated patient - must auscultate breath sounds and monitor of end-tidal CO2. Non-intubated patient - auscultation of breath sounds, observation of chest excursions and/or monitoring of end-tidal CO2;

(iii) Circulation. Continuous EKG monitoring of all patients throughout the procedure with electrocardioscopy shall occur. Shall record blood pressure and pulse continually at least every five minutes;

(iv) Temperature. A device capable of measuring body temperature should be readily available, if needed, during the

administration of deep sedation/general anesthesia. When agents implicated in precipitating malignant hyperthermia are utilized, continual monitoring of body temperature must be performed;

(v) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of deep sedation/general anesthesia shall be documented.

(E) Recovery and Discharge

(i) oxygen and suction equipment must be immediately available in the recovery area and/or operatory;

(ii) continual monitoring of vital signs when the anesthetic is no longer being administered, i.e., the patient must have continuous supervision until oxygenation, ventilation, circulation and temperature, as indicated, are stable and the patient is appropriately responsive for discharge from the facility;

(iii) the dentist must determine and document that oxygenation, ventilation, circulation activity, skin color, level of consciousness and temperature, as indicated, are stable prior to discharge;

(iv) must provide explanation and documentation of post-operative instructions to patient and/or a responsible adult at the time of discharge.

(v) the dentist must determine and provide for documentation that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques single dosage techniques (IN, IM and SC) and types of special patients:

(i) In selected circumstances, deep sedation/general anesthesia may be utilized without first establishing an indwelling intravenous line or continuous EKG monitoring with electracardioscopy or pulse oximetry. These circumstances include deep sedation/general anesthesia for very brief procedures, or brief periods of time, which, for example, may occur in some pediatric patients; or the establishment of intravenous access after deep sedation/general anesthesia has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care. When these situations occur, the dentist responsible for administering deep sedation/general anesthesia shall document the reasons preventing the recommended preoperative or intraoperative management.

(ii) Due to the fact that some dental patients undergoing deep sedation/general anesthesia are mentally and/or physically challenged, it is not always possible to suitably evaluate these patients prior to administering care. When these situations occur, the dentist responsible for administering the deep sedation/general anesthesia shall document the reasons preventing the recommended preoperative management.

(G) Emergency Management:

(i) the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of deep sedation and/or general anesthesia including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available;

(iii) appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC, Chapter 114, §114.1 and §114.3, the repeal of §114.2, and new §114.2 and §114.10, all of which concern dental assistants. The new §114.2 is adopted with changes to the text published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1824). The amendments to §114.1 and §114.3, new §114.10 and the repeal of §114.2 are adopted without changes and will not be republished. Changes to the proposed text consist of minor grammatical corrections and two non-substantive changes in language.

These sections contain extensive revisions to clarify and standardize language, as well as new language to enact the provisions of Senate Bill 263, §25, 78th Legislature, requiring that dental assistants that make x-rays be registered to do so.

Amendments to §114.1 incorporate the definition of a "reversible" procedure, and specific examples of "irreversible" procedures that were previously contained in §114.2.

Section 114.2, which contains definitions, is repealed, with those definitions reduced and redistributed to the proposed amendments in other sections.

A new §114.2 details the requirements and process for the registration of dental assistants who perform x-ray procedures. The word "examining" in the proposed text of §114.2(b)(3)(A)(i) has been replaced with "exposing." This corrects a typographical error and brings that portion of the language into congruence with the language elsewhere in the section. Also, §114.2(c) has been changed from the text as proposed, pursuant to a comment received. The term "dental" has been changed to the more specific "dental assistant", and the term "license" has been removed, to further clarify that the rule only applies to dental assistant registrations, and bring the language into congruence with the language elsewhere in the section.

Amendments to §114.3 incorporate some of the definitions previously found in §114.2, and clarify and organize the remainder of its language.

New §114.10 relocates language from §115.10, which details the currently-existing x-ray certification process for dental assistants. Language clarifying the dates for transition between the

two registration schemes, pursuant to Senate Bill 263, §34, 78th Legislature has also been added, as §114.10(a).

A number of comments were received regarding §114.2, both at the March 5, 2004 public hearing, and via written correspondence. While appreciated, reviewed and noted, many of the comments received by the Board in regard to the proposed amendments to did not pertain to the rule itself. Some commenters addressed the wisdom of Senate Bill 263's requirements, and most addressed the actual testing methodology, cost and accessibility. However, because many concerns raised were based on assumptions drawn from inaccurate or incomplete information, the Board wishes to take the opportunity to address some of the more prominent and recurring of those concerns.

Comments involving cost and access to the profession of dental assisting:

1. The costs involved in testing, including missed work time, will create a burden for dental assistants and dentists, and would result in a rise in the cost of dentistry and a reduction in access to care.

2. Dental assistants will demand higher pay if they are certified.

3. Dental assistants will be discouraged from entering the profession.

Response: There is no way to effectively carry out the statutory requirements for dental assistant certification that would be free of cost. As will be discussed below, contracting a third party to administer the examinations, as allowed by the statute, emerged as the best way to ensure the integrity and accessibility of the examinations. The Board worked with the selected testing service, Thomson Prometric, to make the costs as reasonable as possible.

Inevitably, the raising of minimum standards required for participation in any profession creates the risk that some will not be able to meet those standards, and will be forced to leave or not enter the profession. The Board is aware that the profession of dental assisting creates an important occupational niche for many people of varying educational backgrounds. However, there is still a balance to be struck between the accessibility of a profession, and the credibility of a profession, a balance that is a guiding central principle the Board is adhering to in the creation of the examinations, with the participation and input of dental professionals. Finally, while change may initially be discomfiting for some, the Board agrees with a number of dental assistants who made positive comment that the certification will increase the health and credibility of the profession of dental assisting.

Comments involving examination content and development:

1. The examination should be geared to the educational level of dental assistants.

2. The Board should work with or allow the Texas Dental Association to develop the required examinations.

3. The Board should allow practicing dentists and dental educators to participate in the creation of the required examinations.

4. The examinations will not test the dental assistant's ability to take good or accurate radiographs.

5. The examinations should test practical application.

6. The examination should have an acceptable pass/fail rate.

7. A third-party testing service has a financial interest in ensuring a high failure rate.

8. "Test questions are seemingly being developed independently of a manual or course of study."

Response: As discussed above, the Board agrees that raising the standards of the dental assisting profession by administering examinations should be reasonable, practical, and realistic, a principle that has been and will continue to be a major focus of the Board in the development of the examinations. It is to that end that the Board is actively involving the participation and input of the major stakeholder groups in the development of the required examinations. This was the original intent of the Board, and of the statute, which states that:

"The board shall develop the examination or contract with another person the board determines has the expertise and resources to develop the examination. The board may create an advisory committee consisting of dental industry professionals and educators to advise the board in developing the examination."

On March 12, 2004, the Board extended a request to the Texas Dental Association, the Texas Dental Assistants Association, and the Texas Dental Hygienists Association to recommend individuals to serve on a panel of subject matter experts in the development of examination questions. On April 2 and 3, 2004, four individuals from each of those associations, met in Austin for an examination item-writing workshop. The examinations will consist entirely of items developed and approved by stakeholder participants.

Many commenters referred to the low passage rate of the existing radiology certification examination. That examination was not, contrary to the assumption of many, written by Prometric. The Board contracted with a consultant educator for development of that exam. The Board has recently retired questions from that exam that indicated a low success rate with examinees.

Many parties making comment have assumed that there will be no training or study materials for the examinations. That assumption is premature, considering that the examinations themselves are, at this time, still being written. Furthermore, the examination is intended to ensure an acceptable level of knowledge and competency, not to create a required curriculum that would cause even greater expense in time and finances for dental assistants. Rather, the focus of the panel developing the exam questions is to develop an exam that is fair, valid, reliable, and that covers topics that subject matter panelists feel are practical and necessary. The Board expects that review materials will be developed addressing the exam topics.

Comments involving examination accessibility:

1. More test sites are needed.

2. The testing centers will not be able to handle the load of administering such a large number of exams in a timely fashion.

Response: The selected examination service, Prometric, currently has 22 testing centers across the state. Based on the practice addresses of 10,377 dentists and 31,131 dental assistants in Texas, approximately 90% of dental practices in Texas are within 50 miles of a Prometric testing center, 9% are within 50-100 miles, and 1% are within 100-150 miles of a center.

Test center utilization is monitored regularly by Prometric according to geographic and seasonal demand cycles. Their channel of testing centers is updated according to forecast and actual

testing volumes on both an annual and periodic basis. As part of the capacity planning for the April 2004 launch of the AICPA exam (250,000 exams per year) and the TSBDE exams, Thomson Prometric did and continues to perform extensive utilization models to ensure appropriate test center capacity in the state of Texas.

Comment: Local colleges and educational institutions should be allowed to administer the examinations.

Response: The Board examined the feasibility of allowing local educational institutions to administer the examinations. However, coordinating and maintaining adequate controls over a large number of testing centers with disparate management and administration would be logistically infeasible and could foreseeably compromise the integrity and validity of the examinations.

Comment: The examination should be offered online, just as defensive driving courses are.

Response: While it is true that defensive driving courses may be taken online, there is a vast difference between the educational and testing standard of a defensive driving course, which is intended to be remedial and supplemental, and the standard required to ensure that dental assistants are competent to perform tasks in the course of patient care. As some parties making comment noted, the integrity and validity of examinations can only be guaranteed with proctored examinations in a controlled environment.

Comment: The examination should be administered at the annual dental meetings.

Response: Prometric is considering the possibility of offering examinations at annual meetings of dental assistants.

Comment: The required examinations should not be administered by a private third party.

Response: With other alternatives eliminated as not being an effective way to address the legislative mandate, the Board looked primarily to the specific language of that mandate, as codified at Occupations Code, Section 265.005(f): "The examination shall be administered by the board or by a testing service under an agreement with the board." The Board contracted with Thomson Prometric, who was already under contract for the administration of other examinations for the Board.

Comment: Examinations are not available in Spanish.

Response: The Board agrees that making examinations accessible to Spanish-speaking dental assistants is important. Unfortunately, developing a complete set of examinations and materials in Spanish is cost-prohibitive at this time. The Board intends to actively seek additional funding during the 79th Legislature in 2005 to remedy this problem.

Question: Will accommodations be made for those with disabilities?

Response: The Board ensured that it has the contractual ability to administer the examinations itself as necessary to accommodate any special needs.

Comment: Non-profit organizations will be unduly burdened.

Response: This is another area of concern for the Board, for which Senate Bill 263 offers us little latitude. The Board will continue to investigate a variety of methods, possibly including requesting a statutory exception in the 79th Legislature, to ameliorate the effect on non-profit organizations.

Comment: Well-educated dental assistants should be grandfathered.

Response: The Board is aware that a great number of dental assistants have significant practical experience in the areas covered by the examinations. Unfortunately, the new statutory language does not allow for exception or grandfathering.

Comment: Allow dentists to train and monitor their dental assistants.

Response: Allowing dentists to administer the examinations to their own dental assistants would not meet the mandate or intent of Senate Bill 263, in that there would be inadequate controls to guarantee the validity of the testing process.

The Board does recognize that on-the-job training will be a critical component of success for most dental assistants. Accordingly, Board staff intends to propose a rule that would allow dental assistants to perform radiological procedures under appropriate supervision, as a part of on-the-job training, for a period of time before a certificate of registration is required.

Comment: Dental assistants are being exposed to risk by having to travel to testing sites.

Response: The Board has determined that neither online testing nor allowing exams to be taken in unregulated sites are acceptable alternatives to meet the legislative mandate, it is an inescapable reality that test-takers will have to transport themselves to testing sites, just as nurses, attorneys, and students have to in order to take valid and controlled examinations. The Board could only mitigate the risks involved as much as possible by contracting with a testing service that has a sizeable, secure and consistent presence distributed throughout the state.

Comment: Administering the examination on computers will be intimidating or impracticable for many dental assistants.

Response: The Board understands that even in today's society, some individuals are uncomfortable with computers, but their use has been commonly accepted for use by the general population for a variety of purposes. Furthermore, the vast majority of dental assistants have some degree of exposure with computers or other office technology, and the actual process of taking the exam is far simpler than using a word processor or any other software application.

The actual examination process, however, will be as simple as reading an exam question, pointing and clicking the desired response, and pointing and clicking to go to the next exam item. A brief tutorial on that process will precede each examination.

Many competent and knowledgeable individuals experience severe test anxiety. Issues like test anxiety and innate difficulty with standardized testing are unfortunate, but universal, and are faced by some individuals from elementary school students to graduate students. While unfortunate, they are not issues that can be adequately addressed by regulatory agencies, and cannot invalidate the entire modality of testing knowledge by examination.

Comment: There was little input from the dental profession before the legislation was enacted.

Response: The Texas Dental Association, as well as other professional associations, were actively involved in supporting this legislation, and even spoke before legislators in favor of its passage.

Comment: Annual registration fees will be a burden for dental assistants and dentists who choose to pay for them.

Response: The Board has been required by the new legislation to charge fees: Section 265.005 of the Texas Occupations Code requires that "[t]o qualify for a certificate of registration, a dental assistant must pay a fee in an amount determined by the board..."

Within that mandate, the Board has latitude to set those fees. In light of the economic realities facing dental assistants, and in the desire to minimize the impact on dental offices that may pay those fees on behalf of their assistants, the Board staff currently intends to recommend that the fees be minimal, not to exceed $50.00 per year. For purposes of comparison, the registration fee set by the Board of Medical Examiners for non-certified radiological technicians is $50.

Comment: The educational intent of the examination could be handled by continuing education courses.

Response: Continuing education courses would clearly not meet the mandate of the statute, which requires continuing education in addition to the examination.

Comment: The Board has ignored the spirit and the intent of Senate Bill 263.

Response: In drafting rules to enact the requirements of Senate Bill 263, Board staff was aware that the bill had been supported by major dental industry groups, and had been unanimously approved in both houses of the Legislature. Accordingly, Board staff adhered closely to the language and the unequivocally clear mandate of the statute. There is no legislative history or other document indicating any intent that is incongruous with the rules as written.

Comment: There is no telephone listing for Prometric in El Paso.

Response: Prometric in El Paso is co-located with Sylvan Learning Centers, at 5807 N. Mesa Street. Their phone number is (915) 587-7323. Once rules have been passed, and the examination has been developed with the assistance of all parties, the Board, through its personnel, materials, and website, will provide specific locations and contact information to prospective registrants.

Comment: In Rule 114.2(c), the term "license" should not be used to refer to the certificate of registration for dental assistants.

Response: While the Attorney General has ruled that certificates of registration are to be considered licenses, the Board agrees that the term is confusing and inconsistent with the language used elsewhere. Since the correction of that error is semantic and non-substantive, the change was made in the language as adopted by the Board.

Comment: The requirement of proposed Rule 114.2(g), that a dental assistant "display a current registration certificate in each office where the dental assistant provides services," is unwarranted and unnecessary.

Response: The posting requirement of Rule 114.2(g) is consistent with other Board rules requiring the same of dentists and dental hygienists. These posting requirements ensure that the public has access to these validating documents to determine that healthcare personnel are properly authorized and in compliance with the law. No change will be made.

Comment: The regulations put the burden on the dentist to ensure that a dental assistant contracted through a temporary placement service is registered.

Response: This is correct, though the Board believes it is not an onerous, unusual, or unreasonable burden to expect a dentist to confirm that a dental assistant is qualified to perform the duties required before they are hired.

Comment: Six hours of continuing education annually are insufficient.

Response: The new legislation limits the Board to requiring no more than 12 hours of continuing education annually. Fortunately, the Board has more latitude in this area to strike the important balance between meeting the legislative mandate, ensuring public safety, and mitigating the burden on dental assistants. Accordingly, the Board feels that six hours is adequate to ensure a useful and appropriate level of continuing education, while minimizing the burden on dental assistants.

No other comments were received.

22 TAC §§114.1 - 114.3, 114.10

The sections are adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §25, 78th Legislature, 2003, which requires the Board to establish rules for the registration of dental assistants who make x-rays.

§114.2. Registration of Dental Assistants.

(a) Beginning September 1, 2004, a dental assistant may not position or expose dental x-rays unless the dental assistant holds a certificate of registration issued by the State Board of Dental Examiners under this section, except that any dental assistant certified under former Rule 115.10 (now recodified as Rule 114.10) prior to September 1, 2004 shall not be required to register for certification under Rule 114.2 until September 1, 2006, and shall continue to be governed by Rule 114.10 until September 1, 2006.

(b) To be eligible for a certificate of registration as a dental assistant under this section, an applicant must present on or accompanying an application form approved by the State Board of Dental Examiners proof satisfactory to the Board that the applicant has:

(1) Paid all application, examination and licensing fees required by law and Board rules and regulations;

(2) Successfully completed a current course in basic life support; and,

(3) Either:

(A) taken and passed an examination administered by the State Board of Dental Examiners or its designated agent, that covers:

(i) procedures for positioning and exposing dental x-rays;

(ii) jurisprudence; and,

(iii) infection control; or,

(B) if the applicant is certified as a dental assistant by the Dental Assisting National Board, taken and passed a jurisprudence

examination administered by the State Board of Dental Examiners or its designated agent.

(c) The State Board of Dental Examiners has established a staggered dental assistant registration system comprised of initial registration periods followed by annual registrations (i.e., renewals). The initial, staggered registration periods will range from 6 months to 17 months. Each dental assistant for whom an initial certificate of registration is issued will be assigned a computer-generated check digit. The length of the initial registration period will be according to the assigned check digit as follows:

(1) a dental assistant assigned to check digit 1 will be registered for 6 months;

(2) a dental assistant assigned to check digit 2 will be registered for 7 months;

(3) a dental assistant assigned to check digit 3 will be registered for 8 months;

(4) a dental assistant assigned to check digit 4 will be registered for 9 months;

(5) a dental assistant assigned to check digit 5 will be registered for 11 months;

(6) a dental assistant assigned to check digit 6 will be registered for 12 months;

(7) a dental assistant assigned to check digit 7 will be registered for 13 months;

(8) a dental assistant assigned to check digit 8 will be registered for 14 months;

(9) a dental assistant assigned to check digit 9 will be registered for 15 months; and

(10) a dental assistant assigned to check digit 10 will be registered for 17 months.

(11) Initial dental assistant registration fees will be prorated according to the number of months in the initial registration period.

(d) Subsequent to the initial registration period, a registered dental assistant's annual renewal will occur on the first day of the month that follows the last month of the dental assistant initial registration period.

(1) Approximately 60 days prior to the expiration date of the initial dental assistant registration period, renewal notices will be mailed to all registered dental assistants who have that expiration date.

(2) A dental assistant registered under this section who wishes to renew his or her registration must:

(A) Pay a renewal fee set by Board rule;

(B) Submit proof that applicant has successfully completed a current course in basic life support; and,

(C) Provide proof of completion of at least six (6) hours of continuing education in the previous registration year.

(i) The continuing education curriculum must cover standards of care, infection control, and the applicable requirements of the Dental Practices Act and Board Rules.

(ii) Dental assistants shall select and participate in continuing education courses offered by or endorsed by continuing education providers listed in 22 TAC §104.2.

(iii) No more than three hours of the required continuing education coursework may be in self-study.

(3) A registration expired for one year or more may not be renewed.

(e) Applications for registration or for renewal of registration must be submitted to the office of the State Board of Dental Examiners.

(f) An application for registration is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application for registration and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

(g) A dental assistant shall display a current registration certificate in each office where the dental assistant provides services for which registration is required by this chapter. When a dental assistant provides such services at more than one location, a duplicate registration certificate issued by the Board may be displayed. Photocopies are not acceptable. The duplicate may be obtained from the State Board of Dental Examiners for a fee set by the Board.

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 April 20, 2004.

TRD-200402623
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 475-0972

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22 TAC §114.2

The repeal is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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) 475-0972

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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.10

The Texas State Board of Dental Examiners (Board) adopts the repeal of §115.10, concerning the registration of dental assistants performing radiological procedures, without changes as proposed in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1828).

The repeal is necessary because the language in this section is being relocated to newly-adopted §114.10. Although Chapter 115 pertains to dental hygienists, the provisions of §115.10 were only relevant to dental assistants.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 116. DENTAL LABORATORIES

The Texas State Board of Dental Examiners (Board) adopts the repeal of 22 TAC Chapter 116, §§116.1 - 116.5, 116.11, 116.20 - 116.25, and adopts new §§116.1 - 116.6, and 116.20, all of which concern dental laboratories, without changes to the proposed text published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2527). The text will not be republished.

The only substantive changes are in response to the requirements of Senate Bill 1571, §4, 78th Legislature. The adopted repeals and new sections improve the chapter's clarity, consistency, and organization.

Section 116.1, defining the term "dental student", is repealed because that definition is now incorporated into new §116.1.

Section 116.2, defining the term "dental technician", is repealed because that definition is now incorporated into new §116.1.

Section 116.3, concerning dental laboratory requirements, is repealed because the provisions of this section regarding operational requirements have been incorporated into new §116.4 ("Requirements"), and provisions regarding registration, renewal, and reporting requirements have been incorporated into new §116.3 ("Registration and Renewal").

Section 116.4, concerning continuing education requirements, is repealed because the provisions of this section have been incorporated into new §116.6 ("Continuing Education").

Section 116.5, concerning the "grandfathering" exemption from the requirement that a dental laboratory employ one certified dental technician, is repealed because the provisions of this section have been incorporated into new §116.5 ("Certified Dental Technician Required").

Section 116.20, concerning definitions, is repealed because the provisions of this section have been incorporated into new §116.1 ("Definitions").

Section 116.21, defining the term "dental laboratory", is repealed because the definition is now incorporated into new §116.1.

Section 116.22, defining the term "in-house dental laboratory" for purposes of exemption from the requirements of Chapter 116, is repealed because the definition is no longer required, as its terms are now incorporated into new §116.2 ("Exemptions").

Section 116.23, defining the term "commercial dental laboratory" for purposes of distinguishing some laboratories from those exempt from the requirements of Chapter 116, is repealed because the definition is no longer required, due to the revised language defining "dental laboratory" in new §116.1, and the language of new §116.2 ("Exemptions").

Section 116.24, concerning application for registration of a dental laboratory, is repealed because the provisions of this section are now contained in new §116.3 ("Registration and Renewal").

Section 116.25, concerning parties responsible for the operation of a dental laboratory, is proposed for repeal. The provisions of this section are now contained in new §116.20 ("Responsibility").

New §116.1 defines certain terms used in Chapter 116.

New §116.2 defines exemptions from the requirements of Chapter 116. The language was taken from other sections in Chapter 116, with revisions for clarity and organization. Subsection (c) adds language required by S.B. 1571, exempting from the requirements of Chapter 116 certain manufacturers of materials or component parts used in fabricating dental appliances.

New §116.3 consolidates the dental laboratory registration and renewal requirements. The proposed language was taken from other sections in Chapter 116, with revisions for clarity and organization.

New §116.4 consolidates dental laboratory operational requirements. The language was taken from §116.3, with revisions for clarity and organization.

New §116.5 addresses the requirement that a dental laboratory employ a certified dental technician. The language was taken from §116.3 and §116.5, with revisions for clarity and organization.

New §116.6 addresses dental laboratory continuing education requirements. The language was taken from §116.4, with revisions for clarity and organization. The word "nationally" in reference to "recognized board of certification" in subsections (a) and (d) have been removed, pursuant to the requirements of S.B. 1571.

New §116.20 concerns responsibility for the registration and operation of dental laboratories. The language was relocated verbatim from §116.25.

No comments were received regarding adoption of the sections.

22 TAC §§116.1 - 116.5, 116.11, 116.20 - 116.25

The repeals are adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties; and Senate Bill 1571, §4, 78th Legislature, 2003, as previously discussed.

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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Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Effective date: May 10, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 475-0972

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22 TAC §§116.1 - 116.6, 116.20

The new sections are adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties; and Senate Bill 1571, §4, 78th Legislature, 2003, as previously discussed.

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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Bobby D. Schmidt, M.Ed.
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State Board of Dental Examiners
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts amendments to §535.51, concerning general requirements for licensure with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2172). The amendments adopt by reference changes to two real estate broker application forms and one salesperson application form to change the fees referenced in the forms. The amendments also adopt by reference a Moral Character Determination Form to change the statutory provisions referenced in the form. The amendments to the fee provisions in the forms are proposed in conjunction with Government Code Chapter 2054, Subchapter I, Section 2054.252, which requires TREC to participate in an electronic system using the Internet for licensing applications and renewals. Section 2054.252 requires TREC to pay a subscription fee to the TexasOnline Authority for participation and to increase application and renewal fees to cover the cost of the subscription fees charged by the TexasOnline Authority. The proposed revisions include an additional $2 fee for salesperson original applications, and an additional $5 for individual broker original applications and broker late renewal applications. The proposed fee increases will apply to each license type when online application for each license type is effectuated in conjunction with TexasOnline. The $2 will apply to salesperson original applications as of May 10, 2004. The proposed fee increase of $5 will apply June 1, 2004 to broker original applications and September 1, 2004 to broker late renewal applications.

The adopted text differs from the proposed text to adopt by reference revisions to a Moral Character Determination Form to change the statutory provisions referenced in the form to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act and Government Code §2054.252(g) which requires each licensing entity to shall increase the occupational license issuance or renewal fees imposed by the licensing entity by an amount sufficient to cover the cost of the subscription fee imposed on the licensing entity under subsection (e).

The statutes affected by this adoption is Texas Occupations Code, Chapter 1101, and Texas Government Code, Chapter 2054. No other statute, code or article is affected by the adopted amendments.

§535.51. General Requirements.

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the commission for that purpose. Prior to filing the application, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license.

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's signature prior to issuance of a license certificate. The person may provide the signature prior to the submission of an electronic application.

(c) The commission shall return applications to applicants when it has been determined that the application fails to comply with one of the following requirements.

(1) The applicant is not 18 years of age.

(2) The applicant does not meet any applicable residency requirement.

(3) An incorrect filing fee or no filing fee is received.

(4) The application is submitted in pencil.

(5) The applicant is not a citizen of the United States or a lawfully admitted alien.

(6) The applicant has not obtained an evaluation from the commission showing the applicant meets education requirements or experience requirements have not been satisfied.

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy an examination requirement within six months from the date the application is filed;

(2) the applicant, having satisfied any examination requirement, fails to submit a required fee within sixty (60) days after the commission makes written request for payment;

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Effective June 1, 2004, application for a Real Estate Broker License, TREC Form BL-8;

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-4;

(3) Effective September 1, 2004, application for Late Renewal of A Real Estate Broker License, TREC Form BLR-7;

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form BLRC-4;

(5) Application for Real Estate Salesperson License, TREC Form SL-10;

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-8;

(7) Application for Moral Character Determination, TREC Form MCD-5;

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-5;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-5; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200402650
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.65

The Texas Real Estate Commission (TREC) adopts amendments to §535.65 concerning changes in ownership or operation of school; presentation of courses without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2174) and will not be republished.

The amendment to §535.65(d) permits accredited real estate schools to request MCE credit to be given to instructors of real estate core courses by filing a completed MCE Form 11-3, Instructor Credit Request. Currently, schools are required to request credit on school letterhead. The change provides consistency in the credit application process as it makes the process similar to §535.72(m) which permits continuing education providers to request MCE credit to be given to MCE instructors. The amendment to §535.65(i) permits a school to provide a roster of students who take alternate delivery method or correspondence courses 10 days after the end of the month in which the course was taken.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted 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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TRD-200402688
Loretta DeHay
General Counsel
Texas Real Estate Commission
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Proposal publication date: March 5, 2004
For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to §535.101, concerning fees paid by licensees and applicants without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2174) and will not be republished.

The amendments to subsections 535.101(b)(1)-(3) are adopted in conjunction with Government Code Chapter 2054, Subchapter I, Section 2054.252, which requires TREC to participate in an electronic system using the Internet for licensing applications and renewals. Section 2054.252 requires TREC to pay a subscription fee to the TexasOnline Authority for participation and to increase application and renewal fees to cover the cost of the subscription fees charged by the TexasOnline Authority. The adopted revisions include an additional $5 fee for a corporation broker renewal, $2 fee for salesperson original applications, and $5 for individual broker original applications and broker late renewal applications. The fee increases will apply to each license type when online application in conjunction with TexasOnline is effectuated. The $2 fee will apply to salesperson original applications as of May 10, 2004. The fee increase of $5 will apply June 1, 2004 to broker original applications and September 1, 2004 to broker late renewal applications. An increase of $2.50 for annual renewal of a real estate broker corporation license will apply on September 1, 2004.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act and Government Code §2054.252(g) which requires each licensing entity to shall increase the occupational license issuance or renewal fees imposed by the licensing entity by an amount sufficient to cover the cost of the subscription fee imposed on the licensing entity under subsection (e).

The statutes affected by this adoption is Texas Occupations Code, Chapter 1101, and Texas Government Code, Chapter 2054. No other statute, code or article is affected by the adopted 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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.212, 535.218, 535.223

The Texas Real Estate Commission (TREC) adopts amendments to §§535.212 concerning education and experience requirements for an inspector license, 535.218 concerning continuing education, and 535.223 concerning standard inspection reports with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2174).

The amendments to §535.212 are adopted in conjunction with the passage of H.B. 1508 by the 78th Legislature (2003), which, in part amended Texas Occupations Code section 1102.111 to increase from 60 to 320 the number of additional classroom hours that the commission may require of inspector applicants for substitution of additional education in lieu of the number of inspections and previous licensure requirements for licensing. An applicant for a real estate inspector or professional inspector license may substitute professional experience ("alternate experience") or additional education ("alternate education") in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector. Under section 1102.111 the alternate education requirement may not exceed 320 hours. In addition, under Chapter 1102, the commission by rule may specify the length and content of core courses, including alternate education courses under section 1102.111.

The Real Estate Inspector Committee recommended that the Commission increase the alternate education requirements for applicants for a professional inspector license that will require 320 additional education hours for professional inspector applications submitted after January 1, 2005. The alternate education hours will be in addition to the hours required under the traditional track application process. Thus, a professional inspector applicant under the alternate education track will be required to have completed 128 hours in core education courses and 320 additional education hours.

Professional Inspector applicants under the alternate education track will be required to take specific courses with the course content and length as defined in the proposed rule. The alternate education courses will be considered core education courses for purposes of licensure through traditional track licensure, but applicants can not use the alternate education courses more than once. In addition, a course approved to satisfy the additional education requirements may be used by a licensee to satisfy continuing education requirements as long as the licensee completed the full course.

The Real Estate Inspector Committee recommended these changes to the Commission due to concerns that applicants for professional inspector licenses who apply based on additional education do not have sufficient education or experience compared to those who apply through the traditional process which requires both education and experience, or the alternate experience process which requires both traditional education requirements and additional experience in related construction fields.

The adopted amendments to §535.218 permits currently licensed inspectors to use a course approved as an alternate education course to satisfy continuing education requirements as long the as the licensee attended the entire course.

The adopted amendments to §535.223 exempt an inspector licensee who conducts a code compliance inspection of a new home for a builder from using the standard inspection report form if the builder required use of the builder's form and the inspector includes a specific disclosure in the alternate form which addresses the differences between a standard inspection and an inspection conducted under the exemption.

Seven comments were received by the Commission during the notice and comment period. One commenter stated that there will be a significant economic impact on education providers who

will be required to develop additional curriculum and course materials for the required courses. The commenter also stated that it will be difficult to create the courses, get them approved, and offer the courses to applicants by the effective date of January 1, 2005. Finally, the commenter recommends a phase in period over three years rather than increasing the hours required for applications received on or after January 1, 2005, to address the concerns raised by the commenter. Several commenters suggested that the alternate track courses should include hands-on training in the field as applicants who enter the profession through the alternate education method may not have the comparable field experience as those who enter the profession through the traditional process which requires both education and experience, or the alternate experience process which requires both traditional education requirements and additional experience in related construction fields.

The commission agrees with the commenters that course providers should have the flexibility to include on-site field training in each course for up to 10% of the course. However, the field work may not be included as part of correspondence or alternative delivery courses. Regarding the cost of creating the courses required to comply with the provisions, while there may be costs to providers associated with the initial development of the required courses, the costs will be recouped once the courses are offered to prospective applicants. The commission believes, and it is reflected in the legislative mandate that increased from 60 to 320 the number of additional classroom hours that the commission may require of inspector applicants for substitution of additional education in lieu of the number of inspections and previous licensure requirements for licensing, that the consumer benefit of better educated applicants who pursue a license under the alternate education track method outweighs the increased cost to applicants for taking the courses.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

§535.212. Education and Experience Requirements for an Inspector License.

(a) Education requirements.

(1) To be accepted for inspector licensing, a course must meet each of the following requirements.

(A) The course was devoted to a subject listed in Texas Occupations Code, Section 1102.001(5) or this section; provided, however, no more than 30 cumulative classroom hours in course credit may be accepted by the commission for inspection-related business, legal, report writing or ethics courses.

(B) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(C) Successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(D) The daily course presentation did not exceed ten hours.

(E) The course was offered by one of the following providers:

(i) a school accredited by the commission;

(ii) a school accredited by an inspector regulatory agency of another state;

(iii) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(iv) a unit of federal, state or local government;

(v) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(vi) a professional trade association; or

(vii) an entity whose courses are approved and regulated by an agency of this state.

(2) The term "code organization" means a non-profit organization whose members develop and advocate scientifically based codes and standards relating to one or more of the systems found in an improvement to real estate. The term "professional trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(3) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by an accredited college or university.

(4) Providers may obtain prior approval of a classroom course by submitting the following items to the commission:

(A) a course description, including the number of hours of credit to be awarded;

(B) a timed course outline;

(C) a copy of any textbook, course outline, syllabus or other written course material provided to students;

(D) a cross reference to the course material which demonstrates in a manner that is satisfactory to the commission where the required subject matter is covered in the course; and

(E) a copy of the written final examination which measures a student's mastery of the course.

(5) The following subjects shall be considered core real estate inspection courses for purposes of additional education requirements under subsection (b)(1)(B) of this section.

(A) Foundations, which shall include the following topics:

(i) site analysis/location;

(ii) grading;

(iii) foundations;

(iv) flat work;

(v) material;

(vi) foundation walls;

(vii) foundation drainage;

(viii) foundation waterproofing and damp proofing;

(ix) columns; and

(x) under floor space.

(B) Roof Systems, which shall include the following topics:

(i) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing

(ii) roof water control;

(iii) skylights;

(iv) flashing;

(v) ventilation/non-ventilation;

(vi) attic access;

(vii) re-roofing;

(viii) slopes -step roof/low slope/near flat;

(ix) materials -asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and

(x) valleys.

(C) Framing, which shall include the following topics:

(i) flashing;

(ii) wood frame - stick/balloon;

(iii) roof structure - rafters/trusses;

(iv) floor structure;

(v) porches/decks/steps/landings/balconies;

(vi) doors;

(vii) ceilings;

(viii) interior walls;

(ix) stairways;

(x) guardrails/handrails/balusters;

(xi) fireplace/chimney;

(xii) sills/columns/beams/joist/sub-flooring;

(xiii) wall systems/structure -headers;

(xiv) rammed earth;

(xv) straw bale;

(xvi) ICF;

(xvii) panelized;

(xviii) masonry;

(xix) wood I joist;

(xx) roof sheathing;

(xxi) wood wall;

(xxii) steel wall;

(xxiii) wood structural panel; and

(xxiv) conventional concrete.

(D) Electrical Systems, which shall include the following topics:

(i) general requirements, equipment location and clearances;

(ii) electrical definitions;

(iii) services;

(iv) branch circuit and feeder requirements;

(v) wiring methods;

(vi) power and lights distribution;

(vii) devices and light fixtures; and

(viii) swimming pool.

(E) HVAC Systems which shall include the following topics:

(i) heating;

(ii) ventilation;

(iii) air conditioning; and

(iv) evaporative coolers.

(F) Plumbing, which shall include the following topics:

(i) water supply systems;

(ii) fixtures;

(iii) drains;

(iv) vents;

(v) water heaters (gas and electric);

(vi) gas lines; and

(vii) hydro-therapy equipment.

(G) Building Enclosure, which shall include the following topics:

(i) review of foundation and roofing relation;

(ii) review of flashing;

(iii) cladding;

(iv) windows/glazing;

(v) weather barriers;

(vi) vapor barriers;

(vii) insulation;

(viii) energy codes; and

(ix) ingress/egress.

(H) Appliances, which shall include the following topics:

(i) dishwasher;

(ii) food waste disposer;

(iii) kitchen exhaust hood;

(iv) range, cooktop, and ovens (electric and gas);

(v) microwave cooking equipment;

(vi) trash compactor;

(vii) bathroom exhaust fan and heater;

(viii) whole house vacuum systems;

(ix) garage door operator;

(x) doorbell and chimes; and

(xi) dryer vents.

(I) Standards of Practice/Legal/Ethics, which shall include the following topics:

(i) review of general principals;

(ii) inspection guidelines for structural systems;

(iii) inspection guidelines for mechanical systems;

(iv) inspection guidelines for electrical systems;

(v) inspection guidelines for optional systems;

(vi) ethics; and

(vii) legal

(J) Standard Report Form/Report Writing, which shall include the following topics:

(i) required use of report form REI 7A-0;

(ii) allowed reproductions;

(iii) allowed changes;

(iv) exceptions from use of the form;

(v) review of typical comments for each heading in the report; and

(vi) review of generally accepted technical writing techniques.

(K) Other Approved Courses as they relate to real estate inspections, which shall include the following topics:

(i) Environmental Protection Agency;

(ii) Consumer Product Safety Commission; and

(iii) general business practices.

(6) A course approved to satisfy the additional education hours required by subsection (b)(1)(B) of this section in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code, and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector must meet each of the following requirements.

(A) The course must cover one subject only.

(B) The course must include all the topics as described for each subject under subsection (a)(5) of this section.

(C) The total hours of credit to be awarded for the course must be equal to the hours required for each subject under subsection (b)(1)(B) of this section.

(D) A classroom course may include up to 10% of classroom time on site for appropriate field work relevant to the course topic. Such field work may not be included as part of correspondence or alternative delivery courses.

(7) A course that combines more than one subject into a composite course may be approved by the commission to satisfy core course education requirements under Texas Occupations Code §§1102.108 and 1102.109; however, composite courses will not satisfy the additional education requirements to obtain a professional inspector license under Texas Occupations Code §1102.111 and subsection (b)(1)(B) of the section.

(8) A course approved under subsection (a)(5) of this section may not be used more than once by an applicant to satisfy education course requirements under Texas Occupations Code §§1102.108 and 1102.109, and additional education course requirements under Texas Occupations Code §1102.111.

(9) An applicant must not have completed more than one course with substantially the same course content within a two year period.

(b) Experience and additional education requirements.

(1) An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:

(A) For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, with at least 10 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an architect, professional engineer, or engineer-in-training, or has at least five years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(B) Prior to January 1, 2005, for a professional inspector license, the applicant must have completed at least 60 additional hours of core real estate inspection courses acceptable to the commission, with at least 20 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(C) Effective January 1, 2005, for a professional inspector license, the applicant must have completed at least 320 additional hours of education acceptable to the commission. The additional 320 education hours must include 45 hours in Foundation Systems, 40 hours in Roof Systems, 45 hours in Framing, 40 hours in Electrical Systems, 40 hours in HVAC Systems, 40 hours in plumbing, 20 hours in Building Enclosure, 10 hours in Appliances, 15 hours in Standards of Practice/Legal/Ethics,15 hours in Standard Report

Form/Report Writing, and 10 hours of other approved courses or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(2) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission will consider an improvement to real property to be any unit which is capable of being separately rented, leased or sold. Subject to the following restrictions, an inspection of an improvement to real property which includes the structural and equipment/systems of the unit will constitute a single inspection.

(A) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(B) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(C) A report which covers two or more improvements will be considered a single inspection.

(D) Real estate inspectors and professional inspectors may not receive experience credit for an inspection performed by an apprentice under their supervision.

(E) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(F) For the purpose of satisfying any requirement that a license be held for a period of time prior to an applicant's being eligible for a license as a real estate inspector or professional inspector, the commission may not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

§535.218. Continuing Education.

(a) Except as provided by this section, core real estate inspection courses submitted by professional inspectors or real estate inspectors to satisfy the requirements of Texas Occupations Code §1102.205 for continuing education must comply with §535.212 of this title (relating to Education and Experience Requirements for a License).

(b) Courses submitted for continuing education credit must be successfully completed during the 12 month period immediately preceding the expiration date of the license which is being renewed. The commission may not grant continuing education credit twice for the same course taken by a licensee within a 12 month period.

(c) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

(d) A professional inspector or real estate inspector who fails to renew a license which was subject to continuing education requirements and who files an application for renewal within one year after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for renewal of the previous license. Continuing education courses submitted as part of the application must have been completed within a 24-month period prior to the filing of the application.

(e) In addition to the core real estate inspection courses defined in Texas Occupations Code, §1102.001(5) and §535.212 of this title, the commission also will accept a course related to wood-destroying insects, radon, asbestos, lead, or other hazardous substances to satisfy continuing education requirements.

(f) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Professional inspectors and real estate inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status. Continuing education requirements for return to active status must be satisfied as provided by §535.215 of this title (relating to Inactive Inspector Status).

(g) providers may request continuing education credit be given to instructors of core real estate inspection courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach.

(2) The instructors may receive full course credit by attending all of the remainder of the course.

(h) The commission will accept a course approved to satisfy the additional education hours required by §535.212(b)(1)(B) of this title to satisfy continuing education requirements, provided that the licensee attends the entire course.

§535.223. Standard Inspection Reports.

(a) The Texas Real Estate Commission adopts by reference Property Inspection Report, REI 7A-0, approved by the Texas Real Estate Commission in 1998 and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property must be reported on Form REI 7A-0 ("the form"). Licensed inspectors shall complete the applicable portions of the form and provide the report within a reasonable period of time to the persons for whom the inspection has been performed. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the form is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by the standards of practice adopted by the commission, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission. If a part, component or system contained in the form is present in the property and has not been inspected under the departure provisions of §535.227 of this title (relating to Standards of Practice: General Provisions), the inspector shall make an appropriate notation on the form, clearly indicating the reason the part, component, or system has not been inspected.

(c) Inspectors may reproduce the form adopted by the commission from printed copies obtained from the commission and by computer. With the exception of the changes to the form which are permitted by this section, the inspector shall reproduce the text of the form verbatim and the spacing, length of blanks, borders, fonts and placement of text on the page must appear to be identical to that used by the commission in the printed version of the form. Inspectors may insert information in the spaces provided for that purpose.

(d) When using form REI 7A-0, the inspector may make the following changes.

(1) The inspector may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The inspector may use legal sized (8 1/2" by 14") paper.

(3) The inspector may select the information to be inserted below the caption "Property Inspection Report" and above the text of the form relating to TREC rules; however, the inspector must include the name of the inspector's client, the address or other identification of the inspected property, the date the inspection was performed, and the name and license number of any inspector participating in the inspection. If the person performing the inspection is licensed as an apprentice inspector or real estate inspector, the license number and name of the inspector's sponsor also must be included, and the inspector supervising an apprentice must sign the report.

(4) The inspector may select other information to be inserted in the space on the first page of the report reserved for that purpose; provided the caption "Additional Information Provided By Inspector" is not deleted.

(5) The inspector may delete inapplicable provisions relating to the optional systems and re-letter the remaining provisions.

(6) The inspector may add footers to each page of the report except the first page and may add headers to each page of the report.

(7) Whether the form is reproduced by computer or is preprinted by the inspector, the inspector may allocate such space for comments as the inspector deems necessary or may attach additional pages of comments to the report.

(8) The inspector may renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or deleting text.

(9) The inspector may list other built-in appliances and additional captions, letters and check boxes for those items.

(10) The inspector may add numbers or letters in parentheses to the right of the caption for each item and may place the property identification and page number either at the top or bottom of the page.

(e) This section does not apply to inspections performed for a lender or for a person other than the prospective buyer or prospective seller.

(f) This section does not apply to quality control construction inspections of new homes, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or builder's employee in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector. If the inspector attaches the notice, the inspector is not required to use a form adopted by the commission to report the inspection.

(g) This section does not apply to the following:

(1) of remodeling or re-inspections;

(2) inspections for which federal or state law requires use of a different report; or

(3) inspections for which a relocation company or a seller's employer requires use of a different report, and the first page of the report contains a notice either in bold or underlined print reading substantially similar to the following: "This report was prepared for a relocation company or seller's employer in accordance with the company's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspection reports required by the Texas Real Estate Commission may contain additional information a buyer should consider in making a decision to purchase." If the report form required by the relocation company or seller's employer does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector. If the inspector attaches the notice, the inspector is not required to use a form adopted by the commission to report the inspection.

(h) Failure to comply with this section is grounds for the suspension or revocation of an inspector's license or the imposition of an administrative penalty by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2004.

TRD-200402687
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 11, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 157. EMERGENCY MEDICAL CARE

The Texas Department of Health (department) adopts amendments to §§157.1, 157.11, 157.14, 157.32 - 157.34, 157.38, 157.40, 157.43 - 157.44, 157.49, 157.122, and 157.125, concerning regulation of EMS certificants, licensees, providers, training institutions, educators and EMS/Trauma systems, the repeal of §157.4 concerning request for EMS training at the local level, the repeal of §157.31 concerning automated external

defibrillator training course, §157.123 concerning regional emergency medical services/trauma systems, and §157.129 concerning state trauma registry, new §157.4 concerning regulatory audit activities by the Bureau of Emergency Management and new §157.123 concerning regional emergency medical services/trauma systems. Section 157.11 is adopted with changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 785), as a result of comments received during the 30-day comment period. The amendments to §§157.1, 157.14, 157.32 - 157.34, 157.38, 157.40, 157.43 - 157.44, 157.49, 157.122, 157.125, repeal of 157.4, 157.31, 157.123, 157.129, and new §§157.4 and 157.123 are adopted without changes and will not be republished.

Specifically, the sections cover purpose; audits; provider licenses; disciplinary actions; training and course approval; personnel certification, Regional/EMS trauma systems, trauma facility designation and the trauma care system fund.

Rule amendments regarding licensing fees are required as a result of revisions to Chapter 12 of the Texas Health and Safety Code, §§12.0111 and 12.0112, pursuant to House Bill 2292 of the 78th Regular Session of the Texas Legislature. Rule amendments for the clarification of standards for regional advisory councils are required as a result of revisions to Chapter 773 of the Texas Health and Safety Code, §773.113, pursuant to Senate Bill 530 of the 78th Regular Session of the Texas Legislature. Rule amendments for clarification of standards for emergency care attendants are required as a result of revisions to Chapter 773 of the Texas Health and Safety Code, §773.046, pursuant to House Bill 861 of the 78th Regular Session of the Texas Legislature.

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 Procedures Act). The sections have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, revisions to the sections are necessary and described in this preamble. Authority for the board to propose and adopt rules in this section is found in the Health and Safety Code, Chapter 773.

The department published a Notice of Intention to review and consider for readoption, revision, or repeal Chapter 157, Emergency Medical Care, Subchapter A, Emergency Medical Services--Part A, §§157.1 - 157.4; Subchapter B, Emergency Medical Services Provider Licenses, §§157.11 - 157.14, 157.16, and 157.25; Subchapter C, Emergency Medical Services Training and Course Approval, §§157.31 - 157.34, 157.36 - 157.38, 157.40, and 157.41; Subchapter D, Emergency Medical Services Personnel Certification, §§157.43, 157.44, and 157.49; and Subchapter G, Emergency Medical Services Trauma Systems, §§157.122, 157.123, 157.125, and 157.128 - 157.130 in the September 12, 2003, issue of the *Texas Register* (28 TexReg 8013). There were no comments received due to the publication of notice.

The department received four public comments during the comment period.

Comment: Concerning §157.11(a)(2), a total of three commenters generally opposed the fee increases for provider licensing. Two of the commenters opposed the non-refundable application fee of $500.

Response: The department disagrees with the commenters. The fee increases were authorized by HB 2292 in the 78th Regular Session of the Texas Legislature. This bill directed each state fee program to raise its fees to cover 100% of the costs of the regulating the industry/profession. EMS, which currently covers about 50% of its regulatory program costs and had not raised fees in a number of years, was exempted from full cost recovery. The main reason was that Volunteer Providers are exempt from fees under §773.0581 of the Health and Safety Code. However, the expectation is that EMS will raise its cost recovery percentage up to 70-75% through raising fees approximately 20% overall and continuing to cut program costs. Additionally, EMS has historically charged a vehicle inspection fee, but not a provider application fee. There is a significant amount of staff time and resources to process a provider license application and a fee is necessary to partially cover those costs. There were no changes to the rule text due to the comments.

Comment: Concerning §157.11(a)(2), one commenter requested insertion of language that more clearly details the fee structure.

Response: The department agrees with the commenter. Wording has been added to subsections (a)(2) and (a)(4) to clarify that the $500 application fee applies to the EMS Provider and not to each vehicle and that the fees are required every 2 years rather than annually.

The following change was made due to a staff comment.

Change: Concerning §157.11(a)(2), the fee requirement for initial applicants will be implemented on "June 1, 2004" instead of "20 days following adoption of the rule" because this will implement the fee increases from these rules at the same time new fees are imposed by the Texas Online Authority. The original proposed language of "20 days following adoption of the rule" would result in two separate fee increases within a few days.

Three commenters were not in favor of the rules due to the fee increases. One commenter was neither for nor against the rules in their entirety, but suggested changes for clarification.

SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §157.1, §157.4

The amendment and new section are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

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 April 20, 2004.

TRD-200402637
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 1, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 458-7236

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25 TAC §157.4

The repeal is adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

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. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.11, §157.14

The amendments are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

§157.11. Requirements for an EMS Provider License.

(a) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) Candidates for an EMS provider license shall submit a completed application (application, all other required information described in a provider licensing instruction document provided by the Texas Department of Health (department) and a nonrefundable fee) to the department.

(2) A nonrefundable application fee of $500 per provider plus $180 for each EMS vehicle to be operated under the license shall accompany the application. The department will implement the fee requirement for initial applicants on June 1, 2004, and at the time of the next re-license period of currently certified licensed providers following adoption. The license is issued for two years. Fees are required every two years with the license renewal.

(3) If an air ambulance provider advertises in Texas and operates an air ambulance service, the provider shall be required to have a Texas EMS Provider License.

(4) A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas or Louisiana may apply for a reciprocal issuance of a provider license. A nonrefundable administrative fee per provider of $500 shall accompany the application in addition to a nonrefundable fee of $180 for each EMS aircraft to be operated in Texas under the reciprocal license.

(5) Applicants who have no more than five full-time paid medical and support staff, or the full-time equivalent, and who operate with at least 75% volunteer personnel, are exempt from the payment of fees.

(b) Licenses and Designations. Candidates who meet all the criteria for licensure shall be issued a provider license. Licenses may be issued for less than two years for administrative purposes. Licensed EMS providers (providers) shall comply with all requirements of their license at all times.

(1) Licenses. Providers shall be issued a license for a specific number of vehicles. Copies of the license shall be prominently displayed in a public area of the provider's headquarters and in the patient compartment of each of the provider's vehicles.

(2) Designations. The provider will indicate to the department the number of vehicles designated at each level. Designations are not required to be dedicated to a particular vehicle. A designation at one of the following levels shall be prominently displayed in the patient compartment of each vehicle:

(A) Basic Life Support (BLS);

(B) BLS with Advanced Life Support (ALS) capability;

(C) BLS with Mobile Intensive Care Unit (MICU) capability;

(D) ALS;

(E) ALS with MICU capability;

(F) MICU;

(G) MICU Air:

(i) Rotor wing; or

(ii) Fixed wing; and

(H) specialized.

(c) Transfer of licenses and designations. Licenses and designations are not transferable between providers.

(d) Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation safely and efficiently. EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner. Unless otherwise approved by the department, ground vehicles must conform to one of the body types generally recognized as Type I, II, or III.

(2) When response-ready or in-service, EMS vehicles shall have operational two- way communication capable of contacting appropriate medical resources, and shall be in compliance with all applicable state and/or federal laws and; except for fixed wing aircraft shall have the name of the provider prominently displayed on both sides of the vehicle. Licensed providers who operate rotor or fixed wing aircraft must comply with all requirements of §157.12 of this title (relating to

Rotor- wing Air Ambulance Operations) or §157.13 of this title (relating to Fixed-wing Air Ambulance Operations).

(3) Substitution, replacement and additional vehicles.

(A) If a provider substitutes or replaces a vehicle, there is no fee, but the department shall be notified within 10 days.

(B) If a provider adds a vehicle to the fleet, a nonrefundable fee is required and the department shall be notified within 10 days of the designation assigned to the vehicle.

(e) Required Minimum Staffing.

(1) BLS - when response-ready or in-service - two emergency care attendants (ECA)'s.

(2) BLS with ALS capability - when response-ready or in-service below ALS - two ECA's. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate and at least an EMT.

(3) BLS with MICU capability - when response-ready or in-service below MICU- two ECA's. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS - when response-ready or in-service - one EMT-Intermediate and one EMT.

(5) ALS with MICU capability - when response-ready or in-service below MICU- one EMT-Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU - when response-ready or in-service - one certified or licensed paramedic and one EMT.

(7) Specialized - when response-ready or in-service - two certified or licensed personnel, certification or licensure level determined by the type and application of the vehicle and approved by the medical director.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title or §157.13(g) of this title.

(9) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(f) Protocols. The provider shall submit protocols approved by the provider's medical director identifying procedures for each EMS certification or license level utilized by the provider. Protocols shall also address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff provide patient care on behalf of the provider and/or in the provider's EMS vehicles. Physicians, nurses, and other health care practitioners who regularly provide patient care in EMS vehicles shall be EMS certified. The protocols shall address the use of all required, additional, and specialized medical equipment carried by any EMS vehicle in the provider's fleet. Protocols shall have an effective date and an expiration date which corresponds to the effective and expiration dates of the provider's EMS license, and shall indicate specific applications including geographical area and duty status of personnel. For patient care reasons and with appropriate consideration from the medical director, a provider's protocols may be expanded or overridden by on-line medical control, off-line medical direction or by patient-specific orders.

(g) Equipment and supplies. The provider shall submit an equipment and supply list which is approved by the medical director and which is consistent with, and fully supportive of, the protocols. The list shall specify an adequate variety of sizes and types and shall specify quantities appropriate to the provider's call volume, transport times and restocking capabilities. All equipment and supplies shall be clean and in working order. During unannounced inspections consideration will be given to equipment and supply deficiencies caused by recent or repeated EMS calls.

(h) The requirements for air ambulance equipment and supplies are listed in §157.12(h) of this title or §157.13(h) of this title.

(i) At least the following equipment and supplies shall be present on each in-service vehicle and on, or immediately available for, each response-ready vehicle at all times:

(1) BLS:

(A) oropharyngeal airways;

(B) portable and vehicle mounted suction;

(C) bag valve mask units, oxygen capable;

(D) portable and vehicle mounted oxygen;

(E) oxygen delivery devices;

(F) dressing and bandaging materials;

(G) rigid cervical immobilization devices;

(H) spinal immobilization devices;

(I) extremity splints;

(J) equipment to meet special patient needs;

(K) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(L) medications as required by protocols;

(M) Automatic External Defibrillator (AED) or equivalent; and

(N) patient transport device capable of being secured to the vehicle.

(2) ALS or BLS with ALS capability:

(A) all required BLS equipment;

(B) advanced airway equipment; and

(C) IV equipment and supplies.

(3) MICU, BLS with MICU capability, ALS with MICU capability:

(A) all required BLS and ALS equipment; and

(B) cardiac monitor/defibrillator (in lieu of AED).

(4) In addition to medical supplies and equipment:

(A) protocols approved by the current medical director;

(B) emergency warning devices;

(C) personal protective equipment for the crew to include at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) fire extinguisher; and

(G) no smoking signs.

(5) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.

(j) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

(1) an accreditation self-study;

(2) a copy of formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(k) Subscription or Membership Services. An EMS provider who operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:

(1) have a written authorization from the bureau chief elected official of the governmental entity for the provision of subscription emergency prehospital care within that governmental service area;

(2) submit a sample of the contract for subscription service, membership and/or the application used to enroll participants;

(3) submit a copy of all advertising used to promote the subscription service at the time of application for each license period. The EMS provider shall maintain a current file of all advertising for the service;

(4) comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service;

(5) provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self insurance if the provider is a function of a governmental entity;

(6) not deny EMS to nonsubscribers or subscribers of noncurrent status;.

(7) be reviewed at least every two years when the provider license is renewed; and the subscription program may be reviewed by the department during spot inspections;

(8) furnish the names and addresses of all subscribers/members to the department at the beginning of each licensure period in a format mutually acceptable to both the department and the provider; and

(9) not offer membership nor accept members into the program who are Medicaid clients.

(l) Responsibilities of the EMS provider. During the license period the provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are maintained, operated, equipped and staffed in accordance with the requirements of the provider's license;

(2) monitoring and taking appropriate action regarding the quality of patient care provided by the service;

(3) monitoring and taking appropriate action regarding the performance of all personnel involved in the provision of EMS; and ensuring that all personnel are properly certified or licensed;

(4) assuring that continuing education (CE) training is current in accordance with the requirements in §157.38 of this title (regarding Continuing Education);

(5) assuring that all personnel, when on an in-service vehicle or when on-scene, are prominently identified by name, certification or license level and provider name;

(6) maintaining confidentiality of patient information;

(7) assuring that all relevant patient care information is supplied to receiving facilities upon delivery of patients;

(8) assuring that all requested patient records are made promptly available to the medical director;

(9) making available on each vehicle current protocols, current equipment and supply lists, a copy of the provider license and the correct designation;

(10) monitoring and enforcing general safety policies including at least personal protective equipment, immunizations and communicable disease exposure and emergency vehicle operation;

(11) assuring ongoing compliance with the terms of first responder agreements;

(12) assuring that all documents, reports or information provided to the department are current, truthful and correct;

(13) maintaining compliance with all applicable laws and regulations;

(14) submission of run response data upon request by department approved method; and

(15) notification of the department within 10 days if:

(A) a vehicle is substituted or replaced;

(B) a vehicle is added, with submission of the nonrefundable fee if applicable; and/or

(C) there is a change in the:

(i) number of any designation level in the fleet;

(ii) official business address;

(iii) service director;

(iv) medical director, with submission of the new agreement; and/or

(v) physical sublocation or station address.

(m) License renewal process.

(1) The department shall notify the EMS provider at least 90 days before the expiration date of the current license at the address

shown in the current records of the department. It is the responsibility of the provider to notify the department of any change of address. If a notice of expiration is not received, it is the responsibility of the provider to notify the department and request license renewal application information.

(2) Providers shall submit a completed application and nonrefundable fee, if applicable, and must verify continuing compliance with the requirements of their license.

(3) If a provider has not met all requirements for a provider license, the provider may apply for a provisional license by submitting a request and, in addition to the regular nonrefundable licensure fee if applicable, a nonrefundable fee of $30. One provisional license, valid for not more than 60 days, may be granted only to prevent probable adverse impact to the health and safety of the service community. Without a provisional license, a provider may not operate if there is a lapse in time between license expiration and license renewal.

(n) Advertisements. If there are more than five paid staff, but the organization is composed of at least 75% volunteer personnel, the provider shall pay a nonrefundable fee but may continue to advertise the service as volunteer. A provider shall not advertise levels of designation or types of patient care which cannot be provided. Displays on vehicles which indicate the provider's name or the appropriate designation level of the vehicles shall not be considered advertising.

(o) Surveys. All initial candidates for a provider license shall be required to have a comprehensive survey by the department prior to the license being granted. Surveys may be conducted for cause on any licensed provider.

(p) Unannounced inspections. Randomly and/or in response to complaints, the department may conduct unannounced inspections to insure compliance of the provider license holder. Inspections may be conducted at any time, including nights or weekends. The department may review all components of provider licensure during an unannounced inspection. Violations or deficiencies may result in disciplinary action as authorized by §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License). The department may grant a reasonable period of time for the provider to correct deficiencies. If the department must reinspect the provider because of noncompliance noted during a previous inspection, the provider shall pay a nonrefundable fee of $30, if applicable.

(q) Failure to correct identified deficiencies. Failure to correct identified deficiencies within a period of time determined to be reasonable by the department or if the deficiencies are found to be repeated, the provider shall be subject to disciplinary actions in accordance with §157.16 of this title.

(r) For all applications and renewal applications, the department (or the board) 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200402639

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 1, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.31

The repeal is adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
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25 TAC §§157.32 - 157.34, 157.38, 157.40

The amendments are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

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. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

25 TAC §§157.43, 157.44, 157.49

The amendments are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.122, 157.123, 157.125

The amendments and new section are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

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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25 TAC §157.123, §157.129

The repeals are adopted under the Texas Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning certification and licensing of EMS certificants, providers, training institutions and educators; 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 review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 295. OCCUPATIONAL HEALTH
SUBCHAPTER J. TEXAS MOLD ASSESSMENT AND REMEDIATION RULES

25 TAC §§295.301 - 295.338

The Texas Department of Health (department) adopts new §§295.301 - 295.338, concerning the regulation of mold-related activities that affect indoor air quality. Sections 295.301 - 295.306, 295.308 - 295.326, 295.330, 295.331, 295.333, 295.334, and 295.338 are adopted with changes to the proposed text as published in the January 30, 2004 issue of the *Texas Register* (29 TexReg 876). Sections 295.307, 295.327 - 295.329, 295.332, and 295.335 - 295.337 are adopted without changes, and the sections will not be republished in the *Texas Register*.

The new sections cover the following: general provisions; definitions; exceptions and exemptions to licensing and registration; code of ethics; general conditions; general responsibilities; requirements for licensing, registration, and accreditation; minimum work practices and procedures for mold assessment and mold remediation; and enforcement.

These rules are required as a result of House Bill 329 (HB 329), 78th Legislative Session, 2003, which added Chapter 1958 to the Texas Occupations Code (TOC), and requires the department to develop rules to regulate mold-related activities, including licensing and regulation of mold assessors and remediators and to establish minimum performance standards for the licensees; Senate Bill 1152, 78th Legislative Session, 2003, which amended Government Code, Chapter 2054, regarding the Texas Online Authority; and House Bill 2292 (HB 2292), 78th Legislative Session, 2003, which revised Texas Health and Safety Code (THSC), §12.0111 and §12.0112, and requires two-year licenses effective January 1, 2005, with a provision for staggering the issuance and renewal of licenses.

The following comments from the public were received concerning the proposed sections during the comment period. Following each comment is the department's response and any resulting change(s). Other minor editorial changes were made for clarification purposes.

Comment: Concerning the rules in general, some commenters made comments in favor of the rules and commended the department for its important work. Some commenters opposed the rules believing they need more revision before being adopted. One commenter expressed support for the purpose behind the rules and conveyed the importance of imposing regulation on an unregulated industry.

Response: The department is very aware that the underlying legislation, HB 329, and these rules have generated much interest among many different stakeholders, many of whom have differing points of view. The department appreciates the efforts of so many to produce an effective first step in regulating mold-related activities in Texas. While some will think the rules too strict in some areas and too lenient in others, the department has tried to harmonize differing viewpoints consistent with the statutory authority of HB 329. As this regulatory program unfolds, the department remains open to receiving feedback about how these rules might be revised in the future.

Comment: Concerning the rules in general, several commenters raised concerns regarding the health effects of mold: some commenters believed the rules are based on a false premise that mold is "toxic," and as such, are overly prescriptive, while some believed the rules do not adequately address health concerns associated with mold for workers and the general public.

Response: The department acknowledges the varied opinions regarding the health effects of mold in indoor environments. It believes the rules as proposed strike a balance by requiring minimum performance standards and work practices (mandated in TOC, §1958.054) to protect both workers and the public, and allowing more stringent practices and procedures on a case-by-case basis based on professional judgment. Some changes were made regarding minimum work standards and practices for mold assessment and remediation as discussed later in this preamble.

Comment: Concerning the rules in general, one commenter requested that the department issue only two licenses as described by TOC, §1958.101(a).

Response: The department disagrees. It does not read TOC, §1958.101(a), to limit the types of licenses to two, but as describing broad categories of mold-related activities. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter asked the department to recognize the practice of registered professional engineers in reference to these rules.

Response: The department agrees and has added §295.306(f) to indicate that licensees are responsible for determining whether the mold-related activities in which they will engage require additional credentials.

Comment: Concerning the rules in general, one commenter requested that the department promulgate fair standard form contracts between a homeowner and the person(s) conducting initial and post-clearance assessments.

Response: The department disagrees. The department is not authorized under TOC, Chapter 1958, to develop, promulgate, or require such contracts. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter believes that training and licensing requirements are not consistent for mold assessors and remediators, because remediators are licensed based on the size of the project and the type of structure involved, whereas assessors are licensed based on the client and the activity.

Response: The department disagrees. The requirements for training are based on the requirements for licensing in TOC, Chapter 1958, and none of them are related to the type of client. The TOC, §1958.101, requires licensing of both assessors and remediators based on the activities they perform. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that the department require continuing education on homeowners' insurance issues and that questions on homeowners' insurance be added to the state licensing examinations.

Response: The department disagrees. Homeowners' insurance issues lie outside the scope of TOC, Chapter 1958. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter felt that individual licensees should use professional judgment in performing their duties but that a three-to-five day training seminar was not sufficient training to allow for professional judgment.

Response: The department agrees. In addition to prescribed training, assessment consultants and remediation contractors who will be called upon to exercise professional judgment are required under §295.312 and §295.315, respectively, to meet substantial qualifications regarding prior education and experience to become licensed by the department. The department believes the combination of the required education, experience and prescribed training is sufficient to allow the exercise of professional judgment by licensees. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that the department add a "mold remediation supervisor" license.

Response: The department disagrees. The mold remediation contractor will supervise mold remediation workers, as provided under §295.315(b); a separate remediation supervisor license is not necessary. No change was made as a result of this comment.

Comment: Concerning the rules in general, two commenters requested the rule make moisture identification, prevention, and control its central focus, rather than vaguely referring to "the causes of mold growth."

Response: The department disagrees. On-going prevention and control of moisture problems in buildings is the maintenance responsibility of the property owner and is outside the scope of the statute. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested the scope be increased to provide more choices for consumers on how to get mold remediated.

Response: The department disagrees. The TOC, §1958.002, specifies the scope of these rules. No change was made as a result of this comment.

Comment: Concerning the rules in general, two commenters requested the rules include training for existing trades such as property owners and managers, remodeling contractors, landscapers, architects, home inspectors, and code inspectors.

Response: The department disagrees. This expansion would be outside the scope of the statute. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that mold assessors and remediators be required to give the consumer a pamphlet prepared by the department describing some of the mold remediation concerns.

Response: The department agrees and had already included a similar requirement in §295.306(c) of the proposed rules. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that the department require individuals with no previous education and/or experience in the control of hazards to attend classroom and hands-on instruction of several weeks before being licensed under this subchapter.

Response: The department disagrees. The rules require all applicants for individual licenses to have at least one year of experience in mold assessment, mold remediation, building construction, or an "allied field" as defined in §295.302(3) which is sufficient training. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that a General Educational Development (GED) or high school diploma be accepted for non-commercial licenses.

Response: The department does not issue non-commercial licenses for mold-related activities. Any licensee may work on any type of property regardless of use or ownership. No change was made as a result of this comment.

Comment: Concerning the rules in general, a medical mycologist or physician should interpret mold data because licensed individuals are not qualified.

Response: The department disagrees. The required training, education and work experience are sufficient to qualify the licensee to interpret mold data.

Comment: Concerning the rules in general, one commenter recommended that the word "contamination" be replaced by "growth" throughout the rules.

Response: The department disagrees. "Contamination" as defined in standard dictionaries, such as Merriam-Webster's Collegiate® Dictionary, Tenth Edition is the applicable and correct word for these rules. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter recommended that quantitative measurement of mold must be done by a certified environmental microbiology laboratory.

Response: The department disagrees. Analysis of mold samples collected during the conduct of mold-related activities under this chapter must be done by a licensed laboratory as described in §295.317. No change was made as a result of this comment.

Comment: Concerning the rules in general, two commenters requested licensed insurance adjusters be exempted as long as they are not performing assessment or remediation. A staff comment suggested exempting public insurance adjusters who perform similar duties. Another commenter requested the department clarify what activities an insurance adjuster can perform regarding mold assessments.

Response: The department agrees and has clarified the adjuster's role in §295.303(g). The rules prohibit insurance adjusters from performing mold assessments without a mold assessment license if samples need to be collected for mold analysis or a mold assessment needs to be performed for visible mold greater than 25 square feet.

Comment: Concerning the rules in general, one commenter requested the department create a new license category of Loss Prevention Specialist.

Response: The department disagrees. The department has no statutory authority to make this change as this work is neither "assessment" nor "remediation" as defined in TOC, §1958.001. No change was made as a result of this comment.

Comment: Concerning the rules in general, several commenters requested that the department exempt school districts or provide non-commercial licenses for government entities.

Response: The department disagrees. The department has no statutory authority to exempt schools from the rules and does not see the need for non-commercial licenses. No change was made as a result of this comment.

Comment: Concerning the rules in general, four commenters requested that the department adopt existing standards; three specifically suggested the Institute of Inspection, Cleaning, and Restoration Certification's Standard and Reference Guide for Mold Remediation (IICRC S520) as a standard.

Response: The department disagrees. The IICRC S520 standard, and U.S. Environmental Protection Agency's (EPA's) Mold Remediation in Schools and Commercial Buildings are both excellent for mold remediation performance guidelines and the department recommends they be used where applicable. However, the department feels that it would be overly prescriptive to limit the licensees to these standards for fulfilling the requirements of the statute. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested a single license per company.

Response: The department disagrees. As with many other similar licensing programs, individual licenses provide more effective and broad-based regulation. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested that training courses by the Indoor Air Quality Association and the Institute of Inspection, Cleaning, and Restoration Certification be accepted as fulfilling requirements for licensing.

Response: Any training courses that meet the training requirements specified in the rules will be accepted where applicable. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter noted that "access limitations" to property owners would add to remediation costs.

Response: The department found no "access limitations" in the proposed rules. This comment may address language in an earlier draft. No change was made as a result of this comment.

Comment: Concerning the rules in general, some commenters expressed concern that there was not enough public input; one commenter noted that representatives from the air-conditioning and building industries and national code officials did not have input during the rulemaking process.

Response: The department disagrees about the lack of public input. The rules were published in the *Texas Register* on January 30, 2004, for a 30-day comment period and over 900 comments were received from approximately 120 organizations and numerous individuals. The rules were also posted on the Indoor Air Quality Branch's website since January 23, 2004. From July to December of 2003, three revisions of draft rules were e-mailed to over 150 stakeholders and posted on the department's website for comment. Comments were received from those in numerous disciplines. The rules have had national coverage. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter recommended the licensing and notification fees for local governments such as school districts be eliminated.

Response: The department disagrees. Although TOC, §1958.102, exempts residential property owners, managing agents and builders from its licensing and notification requirements under some circumstances, the department finds no similar intent in the statute concerning exemptions for government entities. No change was made as a result of this comment.

Comment: One commenter stated the requirements for worker protection and minimum work practices are not stringent enough.

Response: The department disagrees. The statute directs the department to establish only minimum work practices. The rules require the mold assessment consultant to be trained and use professional judgment in developing the work plan. There are excellent mold remediation performance guidelines available for consultant use to go beyond the minimums, including the EPA's Mold Remediation in Schools and Commercial Buildings and IICRC S520. No change was made as a result of this comment.

Comment: Concerning the rules in general, one commenter requested the department require an individual removing mold of less than 25 square feet to consider asbestos, lead, or other hazardous materials.

Response: The department disagrees. It does not have the authority under TOC, §1958.102(c), to regulate persons when the mold contamination is less than 25 square feet. However, the department does require under §295.312(f)(4) and §295.313(f)(5) of the rules that a licensed assessment consultant and a licensed assessment company, respectively, inquire of a client about the presence of hazardous materials. The 25 square feet threshold does not apply to other regulatory programs such as asbestos or lead-based paint. No changes were made as a result of this comment.

Comment: Concerning §295.301(a) and (b), several commenters requested analytical laboratory work, analytical laboratories or laboratory analysis be added as separate regulated entities or activities in these subsections.

Response: The department disagrees. These entities are already included in these subsections as "mold assessment." Mold assessment is defined in §295.302(22) and in TOC, §1958.001(6), and includes "analysis of a mold sample." No change was made as a result of these comments.

Comment: Concerning §295.301(a), one commenter requested the addition of a definition for "regulated buildings."

Response: The department disagrees but has deleted "in regulated buildings" from this subsection. This subchapter regulates mold-related activities and the persons performing them, rather than buildings.

Comment: Concerning §295.301(b), two commenters noted the scope is limited to assessment and remediation in buildings. The commenters believe the statute's provision for educational activities (TOC, §1958.052) allows the department to enact requirements for the prevention of moisture and mold problems.

Response: The department disagrees. The TOC, §1958.052, allows for a statewide public education program but does not give the department the authority to require licensees or others to take any specific action to prevent moisture and mold problems. No change was made as a result of this comment.

Comment: Concerning §295.302, several commenters requested this section be rewritten to reflect definitions commonly agreed upon by professionals in the industry and definitions used in IICRC S520.

Response: The department disagrees. The definitions are taken directly from the statute or added for clarity based on the statute, and definitions from other sources were often unnecessary. No change was made as a result of these comments. However, several changes were made in this section, as discussed later in this preamble.

Comment: Concerning §295.302, one commenter recommended a definition of "mold analysis laboratory" be added and provided a possible definition.

Response: The department agrees and has included a new definition in §295.302(21).

Comment: Concerning §295.302, one commenter requested the department add a definition for "conflict of interest" as "any individual who performs both mold assessment and mold remediation on the same project, for hire or profit."

Response: The department disagrees. Language regarding "conflict of interest," which the department addressed in §295.307(a) of these rules, is taken directly from TOC, §1958.155(a). The statute does not contemplate that the conflict is based on being "for hire or profit." No change was made as a result of this comment.

Comment: Concerning §295.302, one commenter requested new definitions be added for "Commercial Property," "Institutional Property," and "Industrial Property."

Response: The department disagrees. These definitions are not necessary to effectively implement the statute. No change was made as a result of this comment.

Comment: Concerning the definition of "allied field" in §295.302, one commenter suggested "are applicable" be changed to "may be applicable."

Response: The department disagrees. The intent of this definition is to be applicable in some aspects, not just "may" in all situations. No changes were made as a result of this comment.

Comment: Concerning the definition of "assessor" in §295.302, two commenters suggested that "technician" and "or company" be deleted.

Response: The department disagrees. These two entities are each a licensing category and must be included in the definition. No change was made as a result of this comment.

Comment: Concerning the definition of "containment" in §295.302, one commenter recommended adding "in the building" after "areas".

Response: The department agrees and has made the recommended change.

Comment: Concerning the definition of "containment area" in §295.302, one commenter requested the words "mold-containing dust or materials" be deleted.

Response: The department disagrees. The language is necessary for clarification. No change was made as a result of this comment.

Comment: Concerning the definition of "containment area" in §295.302, one commenter requested the word "prevent" be changed to "control."

Response: The department agrees and has made the requested change.

Comment: Concerning the definition of "contiguous" in §295.302, one commenter recommended that "close proximity" be defined in terms of distance.

Response: The department disagrees. The determination of close proximity will require prudent judgment by a consultant on a case-by-case basis. No change was made as a result of this comment.

Comment: Concerning §295.302, numerous commenters disliked the definition of "direct microscopic examination" and requested it be deleted or modified.

Response: The department agrees. This definition was deleted.

Comment: Concerning the definition of "indoor air" in §295.302, one commenter suggested that the department exclude the air in attics and crawl spaces that are vented to the outside from this definition.

Response: The department agrees and has made the suggested change.

Comment: Concerning the definition of "indoor mold" in §295.302, several commenters requested this definition be deleted or clarified.

Response: The department disagrees. This definition is needed to distinguish and clarify the terms "mold" and "indoor mold" used in the rules. The TOC, §1958.001(7), defines mold remediation to apply to "mold" that was not purposely grown at a location and TOC, §1958.002(a), limits the scope of this subchapter to mold-related activities that affect indoor air quality. The definition of "mold" in TOC, §1958.001(5), encompasses more than visible mold growth. No change was made as a result of these comments.

Comment: Concerning the definition of "mold" in §295.302, two commenters suggested changes to the definition.

Response: The department disagrees. The definition of "mold" in §295.302 comes directly from TOC, §1958.001(5). No change was made as a result of these comments.

Comment: Concerning the definition of "mold analysis" in §295.302, several commenters requested the definition be deleted or modified.

Response: The department disagrees. The TOC, §1958.001(6), includes "analysis of a mold sample" in the definition of "mold assessment" and, therefore, the department is required under the statute to regulate the practice of mold analysis when it is performed. The TOC, §1958.001(6), does not limit the techniques that might be utilized for mold analysis. No changes were made as a result of these comments.

Comment: Concerning the definition of "mold assessment" in §295.302, one commenter requested that subparagraph (B) be stricken from this definition regarding the development of a mold management plan or mold remediation protocol.

Response: The department disagrees. The development of a mold management plan or mold remediation protocol is an important function of mold assessment activities. No change was made as a result of this comment.

Comment: Concerning the definition of "mold assessment" in §295.302, one commenter requested the word "unit" be added after the word "dwelling" because "dwelling" is not defined in the rules, whereas "dwelling unit" is.

Response: The department disagrees for the following reasons: §295.302(22)(A) is identical to TOC, §1958.001(6)(A); the department believes the term "dwelling" has a generally accepted meaning and is unambiguous; and a "dwelling unit" as defined in proposed §295.302(14), which has been replaced by the definition of "residential dwelling unit" in §295.302(34) in response to a staff comment, is not necessarily a structure. No change was made as a result of this comment.

Comment: Concerning the definition of "mold assessment" in §295.302, one commenter suggested that "evaluation of mold" be changed to "evaluation of mold growth."

Response: The department disagrees. The definition of "mold assessment" was taken from TOC, §1958.001(6). No change was made as a result of this comment.

Comment: Concerning the definition of "mold assessment report" in §295.302, two commenters recommended changing "analysis" to "analytical."

Response: The department agrees and has made the requested change.

Comment: Concerning the definition of "mold remediation" in §295.302, several commenters requested changes to the definition. One commenter suggested that "and limited to" be inserted before "applying biocides."

Response: The department disagrees. The language in the first sentence of the definition was taken directly from TOC, §1958.001(7). For clarity, the department included a sentence regarding "preventive activities" in the definition. The department is not authorized under TOC, Chapter 1958, to limit the scope of preventive activities as requested. No changes were made as a result of these comments.

Comment: Concerning the definition of "mold remediation protocol" in §295.302, one commenter requested a new category of "mold remediation consultant" be required to prepare a mold remediation protocol, rather than a mold assessment consultant, because the commenter felt the mold assessment consultant was not qualified.

Response: The department disagrees. Training required for licensing as a mold assessment consultant is extensive and includes an overview of building construction and building sciences in §295.320(c)(4). No change was made as a result of this comment.

Comment: Concerning the definition of "mold remediation work plan" in §295.302, one commenter recommended the following

be added to end of the definition: "will be performed to comply with the mold remediation protocol."

Response: The department disagrees. This concept is already addressed under TOC, §1958.322(b), which states that a remediation contractor is required to prepare a mold remediation work plan based on a mold remediation protocol. No change was made as a result of this comment.

Comment: Concerning the definitions of "mold remediation protocol" and "mold remediation work plan" in §295.302, several commenters objected to the need for two documents that are so similar and suggested changes.

Response: The department disagrees. These definitions come from TOC, §1958.151(a), ("work analysis," which is referred to as a protocol in the rules) and §1958.152(a) ("work plan"). Mold remediation protocols and mold remediation work plans, respectively, are separate documents prepared by different persons. The statute requires both and the department has no authority to make the requested change. No change was made as a result of these comments.

Comment: Concerning the definition of "remediator" in §295.302, one commenter recommended "worker, contractor, or" be deleted. The same commenter also requested the department license only mold remediation contractors.

Response: The department disagrees. The department determined the need for the various licensing categories based on a variety of factors, including the statute, stakeholder input and analogous regulatory programs. No change was made as a result of this comment.

Comment: Concerning the definition of "remediator" in §295.302, one commenter requested adding "supervisor" as one of the credentialed entities.

Response: The department disagrees. The department decided this licensing category was unnecessary. No change was made as a result of this comment.

Comment: Concerning the definition of "residential property" in §295.302, one commenter requested the department change the words "a person" in the phrase "provide living quarters for a person" to the words "an individual."

Response: The department has modified the definition of "residential property" so that the word "person" does not appear in it.

Comment: Concerning §295.302, several commenters requested the definitions for "start-date" and "stop-date" be deleted and several requested clarifying language.

Response: The department disagrees. The TOC, §1958.153(a), requires a license holder to notify the department before the license holder starts mold remediation at a property, unless an emergency exists. The license holder must specify start and stop-dates to enable the department to ensure effective compliance with minimum cost. Procedures for amending start and stop-dates are specified in §295.325(b) and (c) of these rules. No changes were made as a result of these comments.

Comment: Concerning the definition of "survey" in §295.302, one commenter suggested that "growth" be inserted between "mold" and "or."

Response: The department disagrees. The definition is intended to cover "indoor mold" as defined in §295.302(18). No change was made as a result of this comment.

Comment: Concerning the definition of "total surface area of contiguous square feet" in §295.302, one commenter suggested that "contamination" be changed to "growth."

Response: The department disagrees. The definition is intended to cover mold contamination, not mold growth. No change was made as a result of this comment.

Comment: Concerning the definition of "total surface area of contiguous square feet" in §295.302, one commenter was concerned that if mold covered only five square feet of a piece of sheetrock, but it was more economical or practical to replace 32 square feet (a typical size for sheetrock), this situation would require a licensed person.

Response: The department disagrees. The language "that needs to be cleaned or removed" in this definition is intended to clarify this concern. In the example given, only five square feet needs to be cleaned or removed to remediate the mold contamination. An unlicensed person could perform the work described. No change was made as a result of this comment.

Comment: Concerning the definition of "training hours" in §295.302, one commenter requested that scheduled lunch periods be included as part of the classroom instruction.

Response: The department disagrees. The hours specified are required to ensure adequate training. No change was made as a result of this comment.

Comment: Concerning the definition of "working days" in §295.302, one commenter requested it be deleted because it does not comply with the intent of the legislation.

Response: The department disagrees. This definition is in keeping with the statutory scheme and is needed to clarify the use of this term in the rules. No change was made as a result of this comment.

Comment: Concerning §295.303, two commenters requested clarification as to when a property owner or managing agent falls under the regulations.

Response: The department clarifies that, as described under §295.305(a), a property owner or managing agent must comply with this subchapter unless one of the exemptions listed under §295.303 applies. Specifically, a property owner or managing agent is subject to these rules:

(1) if the property in question is a residential property with ten or more residential dwelling units and the mold contamination affects a total surface area of 25 contiguous square feet or more for the project, as those terms are defined in §295.302;

(2) if the property is not a residential property and the mold contamination affects a total surface area of 25 contiguous square feet or more for the project; or

(3) if the property owner or managing agent engages in the business of performing mold assessment or mold remediation for the public.

No change was made as a result of this comment.

Comment: Concerning §295.303(a)(1)(C), one commenter questioned why real estate inspectors are not required to be licensed.

Response: The department clarifies that real estate inspectors are required to be licensed under this subchapter to perform mold assessment and remediation. The exception under TOC,

§1958.002(b)(1)(C), and §295.303(a)(1)(C) of these rules applies only to real estate inspections that are not conducted for the purpose of mold assessment or mold remediation. No change was made as a result of this comment.

Comment: Concerning §295.303(b), several commenters requested changes or clarification regarding the total surface area of less than 25 contiguous square feet.

Response: The department disagrees. This language comes directly from TOC, §1958.102(c). The department has no statutory authority to make the requested changes. The definition of "total surface area of contiguous square feet" in §295.302 clarifies this subsection. No change was made as a result of these comments.

Comment: Concerning §295.303(c), two commenters requested the addition of language to clarify that persons holding this exemption are not required to perform mold assessment or remediation on the properties listed.

Response: The department clarifies that neither TOC, Chapter 1958, nor this subchapter requires the assessment or remediation of mold by anyone on any property. The statute and rules regulate those persons who choose to conduct such activities and who are not exempt, as provided under TOC, §1958.102, and §295.303 of this subchapter. No change was made as a result of these comments.

Comment: Concerning §295.303(c), three commenters believe there is no basis for exempting the owner or managing agent of a residential property with fewer than 10 residential dwelling units.

Response: The department disagrees. The exemption comes directly from TOC, §1958.102(e). No change was made as a result of these comments.

Comment: Concerning §295.303(e), one commenter requested that all construction and renovation activity be included in this exemption.

Response: The department disagrees. This exemption comes directly from TOC, §1958.102(d); therefore, the department has no statutory authority to make the requested change. No change was made as a result of this comment.

Comment: Concerning §295.303(e), one commenter requested clarification as to whether this exemption applies after the "building phase" or after the builder has sold the home. The commenter expressed concern that if the exemption applies after the home has been sold, the buyer will not receive a certificate of mold remediation. The commenter suggested that the exemption apply only during the building phase and asked the department to add a clarifying definition of "repair work" to §295.302.

Response: The department clarifies that §1958.102(d) does not specify a time limit for the exemption. Consequently, the department has no statutory authority to make the requested change. The department notes, however, that the exemption does not allow a person who constructed or improved a dwelling to perform mold assessment or remediation without a license unless:

(1) the mold assessment or remediation is performed at the same time the person performs the construction or improvement or

(2) the mold assessment or remediation is performed at the same time the person performs repair work on the construction or improvement. Otherwise, the person must be appropriately licensed under this subchapter.

If a buyer wants a certificate of mold remediation, the buyer can hire someone who is not exempt to do the remediation. No change was made as a result of this comment.

Comment: Concerning §295.304, one commenter expressed support for the inclusion of a code of ethics in the rules, while several others questioned its inclusion, believing it cannot be enforced.

Response: The TOC, §1958.059, required the department to develop a code of ethics for license holders. The inclusion of a professional code of ethics is common in many other state statutes, and provides impetus for "self-enforcing" by professionals as well as the department. No change was made as a result of these comments.

Comment: Concerning §295.304(b)(5), one commenter recommended changing the words "to the extent required by law" to "unless otherwise required by law" because the commenter felt that a person should keep such information confidential unless required to disclose it.

Response: The department disagrees. The department does not have the statutory authority to impose such a broad ban. Individual consumers can include such "unless required by law" language in their contracts, if needed. No change was made as a result of this comment.

Comment: Concerning §295.304(b)(5), one commenter expressed concern that entities not in the health-care industry do not understand their legal and ethical obligations related to medical information. The commenter recommended that the department require input from medical professionals or mandatory educational curricula in this area.

Response: The department clarifies that training on technical and legal considerations, including regulatory requirements, is already required under §295.320(b)(4), (c)(1), (d)(3)(D), and (e)(5). These legal considerations and regulatory requirements include obligations related to information on medical conditions, and the department will provide guidance to training providers and licensees in this area. No change was made as a result of this comment.

Comment: Concerning §295.304(b)(9), one commenter felt that the word "impaired" was not specific and requested the department objectively define "impaired" in regard to alcohol and drug use.

Response: The department disagrees. This paragraph requires that licensees "not allow those under their supervision to work if known to be impaired" but does not mandate testing to prove impairment. The department also notes that other codes of ethics for licensed professionals contain a general reference to not working while impaired (see, for example, 22 TAC §781.401(a)(10)). No change was made as a result of this comment.

Comment: Concerning §295.320(b)(10), one commenter requested this section be changed to allow any training provided by a recognized trainer to be acceptable.

Response: The department disagrees. The TOC, §1958.106, requires the department to adopt rules regarding continuing education. To ensure that refresher courses meet the necessary requirements, the department must have an accrediting procedure to verify the trainers have the proper credentials and that the courses cover the required material. No change was made as a result of this comment.

Comment: Concerning §295.304(b)(13), two commenters felt that companies should have the right to offer services at whatever costs they choose and that this provision should be eliminated.

Response: The department disagrees. Licensees have an ethical duty not to take advantage of customers by charging prices that are unreasonable or excessive. The department recognizes, however, that costs are determined by a variety of factors and has changed this paragraph to "provide mold-related services at costs in keeping with industry standards."

Comment: Concerning §295.304(b)(14), one commenter stated that the required information in this paragraph should be on the Consumer Mold Information Sheet required under §295.306(c) rather than on written contracts and invoices supplied to a client.

Response: The department agrees and has modified this paragraph to apply only to training providers and licensed mold analysis laboratories, because they will not be giving a Consumer Mold Information Sheet to their customers.

Comment: Concerning §295.304(b)(14), one commenter requested the department address and phone number be added.

Response: The department disagrees. This information is subject to change. If written into this subsection, the result might require the license holder to provide information that is incorrect. No change was made as a result of this comment.

Comment: Concerning §295.305(a), one commenter requested inserting "company or" before "person."

Response: The department disagrees. Companies are included in the definition of "person" in §295.302(30). No change was made as a result of this comment.

Comment: Concerning §295.305(e)(1), two commenters requested clarification on whether an individual without any credentials or experience is allowed to take the state examination and become licensed.

Response: The department clarifies that an individual must have approved prior training and experience before taking the state examination. The required training, however, does not have to be from a department-accredited training provider if the individual submits a complete application to the department before January 1, 2005, and complies with the training requirements under §§295.311(c)(2), 295.312(c)(2)(B), or 295.315(c)(2)(B). No change was made as a result of these comments.

Comment: Concerning §295.305(e)(1), two commenters requested that the words "This paragraph does not apply to applicants who submit complete applications to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork" be deleted from this section.

Response: The department disagrees. All individual applicants are required to have appropriate training in order to obtain licenses. As described in the previous response, §§295.311(c)(2), 295.312(c)(2)(B), and 295.315(c)(2)(B) set forth alternative acceptable training requirements for individuals who apply for licensure before January 1, 2005. No change was made as a result of these comments.

Comment: Concerning §295.305(f), one commenter requested the department to clarify if the state examination must be taken upon license renewal.

Response: The department clarifies that the examination requirements under §295.310 apply only to applicants for initial licenses. Section 295.305(f) refers to a training course required under §295.305(e)(1), which deals only with initial training courses; refresher training courses for licensees are addressed in §295.305(e)(2). Similarly, §295.305(g)(1) and (3) distinguish between initial and renewal applications regarding the examination requirement. No change was made as a result of this comment.

Comment: Concerning §295.305(g)(2), two commenters believed five days was too restrictive and suggested that it be changed to 30 days or 60 days

Response: The department agrees in part. Under §295.314(e) an individual may work as a mold remediation worker without a department-issued registration for up to 30 days after receiving training. The department included this provision of interim registration because employers of remediation workers are directly responsible for guaranteeing the training of their employees. To prevent abuse of this provision, however, the department limited the period after training during which workers are allowed to submit applications. In response to the comment, the department has changed the section to allow ten calendar days.

Comment: Concerning §295.305(h)(2), one commenter requested "mold training manager" be defined in the rules.

Response: The department disagrees. The department believes "mold training manager" is discussed adequately in §295.318(c)(2)(A). No change was made as a result of this comment.

Comment: Concerning §§295.305(h)(2) and (3), 295.312(d)(1), 295.315(d)(1), and 295.318(d)(1), one commenter requested all credentials issued after January 1, 2005, be valid for two years.

Response: The department disagrees. As a part of the transition to mandatory two-year license terms required under THSC, §12.0112, the department is permitted to stagger the issuance and renewal of credentials. This staggering is necessary for one year only, during 2005, to even out the renewal process (i.e., so that the numbers of credentials requiring renewal in any given year are roughly the same). As of January 1, 2006, all credentials will be issued for two-year terms. No change was made as a result of this comment.

Comment: Concerning §295.305(j), one commenter proposed changing the title of this subsection to "Licensed persons other than individuals."

Response: The department agrees and has changed the title to "Credentialed persons other than individuals" to include a broader group than only licensees.

Comment: Concerning §295.306(a)(4), several commenters felt that the availability and cost of insurance will be a significant issue for local governments, including school districts and universities, who use in-house personnel to handle mold projects, and requested that the department either provide such coverage to local governments, as part of the fees collected for licenses and notifications, or exempt local governments from such requirements.

Response: The department agrees and has changed §295.309(a) to provide an exemption for governmental entities that are self-insured.

Comment: Concerning §295.306(b), one commenter requested that companies be required to have a department-issued identification card at the worksite.

Response: The department disagrees. Identification cards are for the purpose of identifying individuals on the worksite as licensed or registered for mold-related work. The department does not believe a card for companies would serve a useful purpose. No change was made as a result of this comment.

Comment: Concerning §295.306(c), one commenter requested the "Consumer Mold Information Sheet" be deleted. Another commenter requested information on how to obtain a copy of this document.

Response: The department disagrees regarding deletion of this paragraph, and believes this document is an important provision to protect consumers' interests. This document will be available by the effective date of these rules from the department's web site at www.tdh.state.tx.us/beh/mold. A definition of "Consumer Mold Information Sheet" was added in §295.302.

Comment: Concerning §295.307, one commenter requested the prohibition of and/or a disclosure requirement to all involved parties when a license holder offers compensation or other valuable incentives to another license holder or authority having jurisdiction (i.e., a "no kick-back" clause).

Response: The department appreciates the concern expressed by the commenter. Section 295.304 addresses this type of violation in subsection (b)(3), (4), and (13), and the duty of credentialed individuals to report ethical violations to the department is stated in §295.304(c). No change was made as a result of these comments.

Comment: Concerning §295.307(a)(1), several commenters were concerned that mold assessors could perform both mold assessment and mold analysis on the same project and requested the language be changed to prevent this dual activity.

Response: The department understands the commenter's concern; however, TOC, §1958.001(6), defines mold assessment to include "sampling and analysis." TOC, §1958.155, does not authorize the department to separate the various duties of the mold assessment consultant. A consultant must have samples analyzed by a licensed lab or be licensed as a lab himself. No change was made as a result of this comment.

Comment: Concerning §295.307(a)(2), one commenter suggested replacing "own an interest in" with the words "own more than a ten percent (10%) interest in" for consistency with other provisions in the rules.

Response: The department disagrees. Section 295.307(a)(2) is a restatement of TOC, §1958.155(b), which prohibits any ownership interest and does not provide the department the authority to make this change. As required in other sections, an ownership interest of greater than 10% must be reported to the department. No change was made as a result of this comment.

Comment: Concerning §295.307(b), one commenter suggested replacing "who is not an individual" with the phrase "who is a person other than an individual," and other occurrences of "person" and "persons" with "individual" and "individuals."

Response: The department disagrees. The language in question comes from TOC, §1958.155(b). No change was made as a result of this comment.

Comment: Concerning §295.307(b), one commenter requested the words "an applicant that is not an individual" in the first sentence be replaced with "licensed persons other than individuals."

Response: The department disagrees. The phrase is appropriate because it is more efficient to have applicants report this information at the time of application rather than complete a second form after the license has been issued. No change was made as a result of this comment.

Comment: Concerning §295.309(a) in general, some commenters thought that "general liability" insurance was not adequate coverage and that other types should be required. Some commenters wanted pollution/environmental insurance and/or professional liability/errors & omissions (E&O) insurance and/or products and completed operations insurance in coverage amounts ranging from $250,000 to $1 million. Some thought that both assessors and remediators should have several types of insurance; others thought that each licensing category should have one type in addition to, or in some cases instead of, general liability insurance. Two commenters requested the department conduct an inquiry and/or consult with experts about the need for and cost of other types of insurance. One commenter noted that a standard commercial general liability (CGL) policy may exclude coverage for work related to mold under some circumstances.

Response: As a result of its inquiries, the department has decided not to require, at this time, professional liability (E&O), pollution or completed operations insurance. The primary factors in the decision not to require additional insurance greater than that proposed are reports of limited availability for those engaged in mold-related activities (unlike more established fields such as asbestos abatement); an inability to verify cost of premiums because of the number of variables involved, including the lack of claims history by the industry and licensees; a general requirement for only some form of "liability insurance" in TOC, §1958.104(5), with no particular type or amount of insurance specified; and the lack of a consensus that CGL is inadequate, and if so, what types of insurance, for which licensees and in what coverage amounts, should be required.

In response to these comments, the department is, however, taking the following actions. First, it is clarifying that a commercial general liability policy for $1 million is the minimum required for all license categories (excluding registered workers). Second, it strongly encourages those required to have insurance to consider adding professional liability, pollution or completed operations endorsements based on the nature of their work. Third, in the required Consumer Mold Information Sheet (see §295.306(c)) the department will encourage consumers to inquire about insurance as a factor in making hiring decisions. Finally, the department remains open to revisiting, through a future rulemaking, the issue of additional or different insurance as the discipline and the insurance markets develop and there is a demonstrated need for other than CGL insurance.

Comment: Concerning §295.309(a), one commenter wanted clarification about the type of required "liability" insurance, another wanted the $1 million requirement reduced to $250,000 and others wanted the department to require additional insurance. One commenter said that CGL coverage was not needed for assessors and that professional liability should be required instead.

Response: The department agrees and disagrees in part. It has added the words "at a minimum" and "commercial" to clarify the insurance required. "Commercial general liability" or CGL insurance is commonly available for those engaged in mold-related activities. The policy amounts are not reduced because licensees are likely to work on large residential and commercial

projects requiring greater coverage. CGL insurance has relevance to assessors as well as remediators, both of whom could cause damage to persons or property in the course of their duties.

Comment: Regarding §295.309(a), one commenter requested that this section be amended to clarify which licensees need insurance.

Response: The department disagrees because §§295.311 - 295.317 already require that all license categories must have the insurance specified in §295.309 except for registered workers (§295.314) who must work for a company that has insurance. No change was made as a result of this comment.

Comment: Regarding §295.309(a), several commenters addressed the issue of self-insurance by requesting that educational institutions and/or other government entities be exempt from the insurance requirements. One commenter also wanted a clarification of the waiver for self-insured companies and individuals. The Texas Department of Insurance advised that it does not issue approvals for those claiming to be self-insured and requested those references be deleted.

Response: The department agrees and has made the requested changes throughout §295.309(a) - (d).

Comment: One commenter requested the department require that remediators give homeowners an insurance disclosure statement advising the type and limits of the remediator's insurance if the department did not require more than CGL coverage.

Response: The department disagrees but reiterates that in the Consumer Mold Information Sheet to be developed under §295.306, it will encourage consumers to inquire about insurance in making hiring decisions. No change was made as a result of this comment.

Comment: Concerning §295.309(b) and (d)(1), one commenter wanted advance notice of cancellation to the department from the insurance company and the licensee increased to 25 days.

Response: The department agrees and has changed the minimum notice from an insurance company to 30 days and the minimum notice from the licensee to 20 days to allow the licensee ten days to contact the department after receiving notice from the insurance company. In response to a staff comment, the rule has been amended to require notice for cancellation "or material change for any reason."

Comment: Concerning §295.309(d)(2), one commenter requested a clarification and/or amendment of the maximum penalties that could be imposed under the statute for working without proper insurance.

Response: The department agrees and has amended §295.331(d)(1) by adding a new subparagraph (G) to address failure of a licensee to meet the insurance requirements of §295.309. In addition, the department has authority for license revocation, civil penalty and injunctive relief under §§295.330, 295.336, and 295.337 for all violations of the Act or rules.

Comment: Concerning §295.310, regarding the state licensing examination, numerous commenters requested various changes including clarifying the required passing score on the state examination, allowing exemptions and/or "grandfathering" for certain individuals and allowing sufficient time to get licensed.

Response: The department has made some changes to this section in response to the comments and for clarity. In §295.310(a)(1), the phrase "with a score of at least 70% correct" was inserted after "the state examination." In §295.310(a)(2), the words "department-approved training course" were deleted and replaced with "training course approved under §295.319 of this title (relating to Training: Approval of Training Courses and Instructors) if the applicant has successfully completed the applicable training allowed under §§295.311(c)(2), 295.312(c)(2), or 295.315(c)(2)." Additionally in §295.310(a)(2), the department changed "state accredited training course" to "training course approved under §295.319 of this title" for consistency. Licensing is not required until January 1, 2005, thus providing a grace period to obtain training and/or submit evidence of previous training to the department, and to pass the state exam. See, for example, §295.312(e) and §295.315(e).

Comment: Concerning §295.310, one commenter felt that accredited training providers should be allowed to administer state licensing examinations to students as part of approved training courses.

Response: The department disagrees. It is preferable to have the department administer the state examinations because doing so safeguards the integrity of the examination process. Allowing a training provider to administer a state licensing examination would be a conflict of interest. It also could create opportunities for fraud and abuse. No change was made as a result of this comment.

Comment: Concerning §295.311 in general, one commenter expressed support, while numerous commenters requested various changes to the section, including changing the mold assessment technician license to a registration and eliminating this section entirely.

Response: The department believes the category of mold assessment technician is necessary and appropriate. Some changes were made, however, as discussed in this preamble.

Comment: Concerning §295.311(b) and §295.312(b)(1) and (8), one commenter suggested wording changes to replace "mold or suspected mold" and "mold contamination" with "mold growth or suspected mold growth."

Response: The department disagrees. The definition of "mold" in TOC, §1958.001(5), encompasses more than visible mold growth. No change was made as a result of this comment.

Comment: Concerning §§295.311(c)(2), 295.312(c)(2)(B), and 295.315(c)(2)(B) regarding licensing, prior to January 1, 2005, several commenters requested these sections be modified to allow training taken either at any time or within a period longer than two years to qualify for licensing.

Response: The department agrees. The phrase, "within two years prior to the application date" was changed to "within four years of the application date" in the requested sections. The department believes it is important to accept only department-accredited training after January 1, 2005, to ensure quality of training.

Comment: Concerning §§295.311(c)(2), 295.312(c)(2), and 295.315(c)(2), two commenters recommended organizations listed under these paragraphs be accredited by the Council on Engineering and Scientific Specialties Board (CESB) and/or the National Commission on Certifying Agencies (NCCA).

Response: The department disagrees. The department believes such a requirement would be excessive. No change was made as a result of these comments.

Comment: Concerning §§295.311(d), 295.312(d), 295.313(d), 295.314(d), 295.315(d), and 295.316(d), one commenter requested that licensing and registration fees for school districts be reduced by 50% or waived entirely. Another commenter requested that licensing fees in §§295.311(d), 295.312(d), and 295.313(d) be reduced by at least 50% for all applicants.

Response: The department disagrees. The TOC, Chapter 1958, contains no exemptions from fees for any entities. The department has structured the licensing fees in amounts sufficient to recover the costs of administering the mold program, as required in TOC, §1958.055, and Texas Health and Safety Code, §12.0111. No change was made as a result of these comments.

Comment: Concerning §295.312(a), two commenters believe assessment consultants doing business as sole proprietorships are not required to meet the same insurance requirements as other assessment consultants and companies.

Response: The department disagrees. All individual assessment consultants (including sole proprietors) are required to comply with the insurance requirements under §295.309, as specified in §295.312(e)(1)(B), (2)(A), and (3)(B). No change was made as a result of this comment.

Comment: Concerning §295.312, one commenter requested inclusion of minimal quality assurance/quality control (QA/QC) protocols to be followed by consultants.

Response: The department agrees. Minimum QA/QC protocols for consultants are already in the rules at §295.321 and §295.324. No change was made as a result of this comment.

Comment: Concerning §295.312(b), one commenter requested that §295.312(b)(1) - (11) be deleted and replaced with reference to specific industry standards.

Response: The department disagrees. Permitted activities must be specified to ensure compliance in a regulatory program. No change was made as a result of this comment.

Comment: Concerning §295.312(b)(7), one commenter suggested that this paragraph should include specifying clearance criteria, as required under TOC, §1958.151(b)(4).

Response: The department agrees and this change was made.

Comment: Concerning §295.312(b)(7), one commenter felt that remediation work plans should be prepared by an assessment consultant rather than by a remediation contractor or that an assessment consultant should be required to review a work plan before actual remediation activities begin.

Response: The department disagrees. The TOC, §1958.152(a), states a license holder who intends to perform mold remediation shall prepare a work plan and does not require review of the work plan by an assessment consultant. No change was made as a result of this comment.

Comment: Concerning §295.312(b)(9), one commenter stated this paragraph is unnecessary and should be deleted.

Response: The department disagrees. In accordance with TOC, §1958.154(b), the mold assessment consultant is licensed to evaluate mold remediation projects and prepare certificates of remediation. No change was made as a result of this comment.

Comment: Concerning §295.312(b)(9), one commenter requested the word "remediated" be changed to a descriptor such as "mitigated," "eliminated," or "corrected."

Response: The department disagrees. The term "remediated" is used in TOC, §1958.154(a). No change was made as a result of this comment.

Comment: Concerning §295.312(c)(1), numerous commenters requested more stringent qualifications than those proposed for a mold assessment consultant license, and most believed that only certain degreed professionals were qualified to hold this license. Several commenters requested a permanent "grandfathering" allowance for persons with advanced degrees and/or professional certifications.

Response: The department disagrees. The department reviewed the paragraph and believes the qualifications for mold assessment consultants are appropriate and consistent with the statute. No change was made as a result of these comments.

Comment: Concerning §295.312(c)(1)(A) and (B), one commenter recommended the words "or in the field in which he or she obtained his or her degree" be added after the words "allied field."

Response: The department disagrees. Experience in an "allied field" as defined in §295.302(3), is required because experience in the field of an approved degree (such as science or engineering) is not necessarily directly relevant to mold assessment and remediation. No change was made as a result of this comment.

Comment: Concerning §295.312(c)(1)(D), one commenter recommended inserting the words "such field or in" before the words "an allied field."

Response: The department disagrees. Experience in an "allied field," as defined in §295.302(3), is required because mold assessment and remediation experience is not required to obtain or maintain certification in one of the listed fields. No change was made as a result of this comment.

Comment: Concerning §295.312(c)(1)(D) and §295.315(c)(1)(D), one commenter requested clarification about whether the one year of required experience was included in, or in addition to, the five years of experience required to become a certified industrial hygienist.

Response: The department clarifies that an additional year of experience is not required if the applicant obtained such experience while pursuing one of the listed certifications. The department has changed the first "and" to "with" to reflect this. The department also inserted "either" between "experience" and "in" in §295.315(c)(1)(D) to further clarify the experience requirements for the mold remediation contractor license.

Comment: Concerning §295.312(c)(2)(A), one commenter requested an initial mold assessment technician course be added, based on the idea that the consultant training should build on the technician training.

Response: The department disagrees. Although there is significant overlap with the training of the assessment technician, the department believes the training for the assessment consultant should be a separate course, because the amount of time needed for the various subject areas will differ. No change was made as a result of this comment.

Comment: Concerning §295.312(c)(2)(B), the same commenter also felt that, contrary to the rule, all of the required training should be obtained from the same organization.

Response: The department disagrees. The department believes such a requirement would be overly restrictive. No change was made as a result of this comment.

Comment: Concerning §295.312(f)(6), one commenter suggested that the words "and management plan" be inserted after the word "protocol."

Response: The department disagrees. The TOC, §1958.151(a), requires an assessor to provide protocols (work analysis) to a client but does not require providing a mold management plan. No change was made as a result of this comment.

Comment: Concerning §295.313(b)(4) and (e)(2), one commenter suggested changing the words "person" and "persons" to "individual" and "individuals."

Response: The department disagrees. The TOC, Chapter 1958, makes reference to "persons" who are not individuals. No change was made as a result of this comment.

Comment: Concerning §295.313(f)(9), one commenter requested the certificate of mold remediation be issued by a mold assessment consultant to both the remediation contractor and the owner rather than having the remediator issue the certificate to the owner.

Response: The department clarifies that under §295.313(f)(9), an assessment company is required to provide a passed clearance report, which is more detailed than the certificate of mold remediation, to the client. The certificate of mold remediation specified by the Texas Department of Insurance in 28 TAC §21.1007(e)(2) includes a statement to be signed by the assessment consultant certifying that the mold contamination identified for the project has been remediated as specified in the mold management plan or remediation protocol. The TOC, §1958.154(a), requires the remediation license holder, not the assessment license holder, to provide the certificate of mold remediation to the property owner. No change was made as a result of this comment.

Comment: Concerning §295.314, several commenters requested this section be deleted.

Response: The department disagrees. The TOC, §1958.103, allows the department to require registration of employees supervised by license holders. The department believes workers should be registered to ensure they obtain proper training both for their protection and that of the public. No change was made as a result of these comments.

Comment: Concerning §295.314(b)(1), two commenters requested adding "educational entity" to this paragraph.

Response: The department disagrees. An "educational entity" would have to be licensed under §295.316 as a company to employ workers. No change was made as a result of these comments.

Comment: Concerning §295.314(b)(2), two commenters requested only accredited training providers be allowed to train remediation workers.

Response: The department disagrees. The department thinks that contractors/companies can adequately provide the required training for the registered worker. No changes were made as a result of these comments.

Comment: Concerning §295.314(d), one commenter requested "five working days" be changed to "ten working days."

Response: The department agrees in part with the commenter. To allow enough time for receipt, processing, and return of materials during the 30-day interim registration period, "five working days" was changed to "ten calendar days" in this subsection and in §295.305(g)(2).

Comment: Concerning §295.314(e), one commenter requested replacing "Temporary" with "Interim."

Response: The department agrees and made the recommended change.

Comment: Concerning §295.314(g)(2), one commenter recommended adding "unless the affected area is less than 25 contiguous square feet" after the word "contractor."

Response: The department agrees with the commenter's concept and replaced the words "as a contractor" with "requiring licensing as a remediation contractor under this subchapter."

Comment: Concerning §295.315(c), one commenter requested more stringent qualifications be required for this license.

Response: The department disagrees. The department reviewed the qualifications and feels they are appropriate and consistent with the statute. No change was made as a result of this comment.

Comment: Concerning §295.315(c)(1)(A), (B) and (D), three commenters recommended the words "in the field in which he or she obtained his or her degree," be added before the words "an allied field."

Response: The department disagrees. Experience in an "allied field," as defined in §295.302(3), is required because experience in the field of an approved degree (such as science or engineering) is not necessarily directly relevant to mold assessment and remediation. No change was made as a result of these comments.

Comment: Concerning §295.315(c)(1)(B), one commenter stated it is not necessary to require a minimum grade.

Response: The department disagrees. A minimum grade is necessary to ensure the competence of licensees. No change was made as a result of this comment.

Comment: Concerning §295.312(c)(1)(D), one commenter recommended inserting the words "such field or in" before the words "an allied field."

Response: The department disagrees. Experience in an "allied field," as defined in §295.302(3), is required because experience relevant to mold assessment and remediation is not required either to obtain or to maintain certification in one of the listed fields. No change was made as a result of this comment.

Comment: Concerning §295.315(d)(1), one commenter suggested that this paragraph be deleted.

Response: The department disagrees. The THSC, §12.0112, mandates that fees be collected on a two-year basis after January 1, 2005. No change was made as a result of this comment.

Comment: Concerning §295.315(f)(8) and §295.316(e)(4), one commenter stated these paragraphs appear to conflict with proposed §295.312(b)(7), which requires an assessment consultant to specify personal protective equipment (PPE) in a mold remediation protocol.

Response: The department disagrees. Under §295.312(b)(6), an assessment consultant specifies the PPE for the project in the mold remediation protocol. The remediation contractor or company, however, is responsible under §295.315(f)(8) or §295.316(e)(4), respectively, for ensuring that its employees are provided with, fit tested for, and trained in the correct use of the specified personal protection equipment. No change was made as a result of this comment.

Comment: Concerning §295.315(f)(11), one commenter felt a remediation contractor should not issue a certificate of mold remediation. The commenter suggested the department issue the certificate, or alternatively, the contractor should issue the certificate to the assessment consultant who signed it, who would then give it to the property owner.

Response: The department disagrees. The TOC, §1958.154(a), requires that the remediation license holder provide a certificate of mold remediation to a property owner. No change was made as a result of this comment.

Comment: Concerning §295.316(b)(4) and (d)(2), one commenter requested the words "a person" be changed to "an individual."

Response: The department disagrees. It is the intent of the department that the definition of "person" in §295.302 applies to these paragraphs. No change was made as a result of this comment.

Comment: Concerning §295.316(e)(6), one commenter felt that remediation work plans should be prepared by an assessment consultant rather than by a remediation contractor.

Response: The department disagrees. The TOC, §1958.152(a), states that a license holder who intends to perform mold remediation shall prepare a work plan. No change was made as a result of this comment.

Comment: Concerning §295.317 in general, there was support for and opposition to requiring mold analysis laboratories to be licensed and for the qualifications criteria under §295.317(c).

Response: The department disagrees with those who oppose the section as proposed. The TOC, §1958.101(a)(1), states that a person may not engage in mold assessment, including analysis of a mold sample, unless the person holds a mold assessment license. No change was made as a result of these comments.

Comment: Concerning §295.317, one commenter requested an exemption from licensing for state university laboratories.

Response: The department disagrees. Licensing requirements as proposed ensure that all laboratories meet a minimum standard. No change was made as a result of this comment.

Comment: Concerning §295.317(a), one commenter noted that it appears that an "individual" does not have to be licensed under this section.

Response: The department clarifies that §§295.311(f)(3), 295.312(f)(7), and 295.313(f)(6) require assessors to use licensed laboratories to provide analysis of mold samples and has deleted "other than an individual" from §295.317(a).

Comment: Concerning §295.317(c), one commenter suggested that the qualifications for a laboratory should include participation in the AIHA Environmental Microbiology Proficiency Analytical Testing (EMPAT) program.

Response: The department disagrees. The AIHA's EMPAT program does not include a QA/QC requirement as does the AIHA's Environmental Microbiology Laboratory Accreditation Program (EMLAP) as specified in §295.317(c)(1)(A). No change was made as a result of this comment.

Comment: Concerning §295.317(c), one commenter felt that labs should not have to meet the EMPAT minimum proficiency score.

Response: The department disagrees. This rule requires the necessary minimum training and QA/QC program. No change was made as a result of this comment.

Comment: Concerning §295.317(c)(1), two commenters requested a grace period of two years for labs to obtain accreditation before they are required to be licensed.

Response: The department disagrees. Section 295.317(a) provides a grace period until January 1, 2005, to obtain licensure. It is important that licensed laboratories be available as soon as possible since the licensed mold assessment consultants must use a licensed laboratory for their sample analyses. No change was made as a result of this comment.

Comment: Concerning §295.317(c)(1), several commenters requested additional accreditation or certification programs be added to the qualifications of laboratories, including the Pan American Aerobiology Certification (PAAC) program and the McCrone Research Institute (McRI).

Response: The department agrees and has added accreditation of all individuals who will analyze mold samples by the PAAC or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable mold samples, as new §295.317(c)(1)(C). The department also has added training by the McRI or a program deemed equivalent by the department, possession of at least a bachelor's degree in microbiology or biology, and three years of experience as a mold microscopist for all individuals who will analyze the mold samples, as new §295.317(c)(1)(D).

Comment: Concerning §295.317(c)(1), two commenters requested the department allow a dual certification for Mold Assessment Laboratory licensing:

(1) License for Viable/Non-Viable sample analysis of Air/Bulk samples, with accreditation by AIHA EMLAP for viable fungi identification; and

(2) License for Non-Viable sample analysis of Air/Bulk samples, with certification of analyst by Pan American Aerobiology Certification Board, under the direction of the Pan American Aerobiology Association.

Response: The department agrees in part. The Pan American Aerobiology Certification (PAAC) program for mold spore analysts has been added to the qualification for performing only non-viable sampling. However, the department feels laboratories with the AIHA's EMPAT accreditation would have sufficient training to perform spore analyses without additional certification or accreditation.

Comment: Concerning §295.317(c)(1), one commenter noted that only about five labs will meet the requirements as proposed.

Response: The department disagrees. Section 295.317(c)(1)(B) allows for the department to approve other accreditation or certification programs and it has added Pan

American Aerobiology Certification program for mold spore analysts. No change was made as a result of this comment.

Comment: Concerning §295.317(c)(1), one commenter stated that EMLAP and other accreditations are not applicable because most mold analysis labs are doing work covered in the definition of "mold analysis" in §295.302, not just "culturing" mold.

Response: The department agrees in part with the commenter and has added alternative qualifications for licensing as a laboratory analyzing only non-culturable samples, including accreditation of individual analysts by the Pan-American Aerobiology Certification Board. Although EMLAP focuses on culturable mold, the training and other requirements for EMLAP accreditation will also qualify the laboratory for analyzing non-culturable samples under §295.317(c)(1).

Comment: Concerning §295.317(c)(1), one commenter requested that the department should require a written and documented QA/QC program consistent with national standards (like ISO/IEC 17025:1999).

Response: The department disagrees. This change would require the department to establish its own monitoring and compliance program to determine compliance with the national standard, which would add additional and unnecessary cost to the licensees. No change was made as a result of this comment.

Comment: Concerning §295.317(c)(1)(B), one commenter suggested that this subsection should read, "accredited or certified by a program for the preparation and analysis of bio-aerosols."

Response: The department agrees in part. This language was added to this subparagraph, except the word "mold" replaced "bio-aerosols" to be more specific and accurate.

Comment: Concerning §295.317(c)(1)(B), one commenter felt that the requirements under subparagraph (A) are the industry standard and that subparagraph (B) should be deleted.

Response: The department disagrees. Other accreditations are appropriate for laboratories that do not perform analysis of culturable mold samples and for which EMLAP accreditation is not relevant. However, the department has specified acceptable alternatives to EMLAP accreditation for clarity.

Comment: Concerning §295.317(c)(1)(B), two commenters recommended that programs recognized by the National Cooperation on Laboratory Accreditation (NACLA) be "deemed equivalent by the department."

Response: The department disagrees. Accreditation by the NACLA does not require proficiency that is specific to some types of mold analyses that the department thinks is necessary. No change was made as a result of this comment.

Comment: Concerning §295.317(c)(2), several commenters requested that work experience be allowed as a substitute for an advanced degree.

Response: The department agrees. The language of this paragraph was changed to add a work experience option.

Comment: Concerning §295.317(c)(2), one commenter noted that an advanced academic degree in any field should be allowed.

Response: The department clarifies that the advanced academic degree required under §295.317(c)(2) is not limited to the fields of mycology and microbiology. No change was made as a result of this comment.

Comment: Concerning §295.317(e)(1), one commenter felt that "person" should be changed to "individual."

Response: The department disagrees. The TOC, §1958.155(c), indicates that "person" and "individual" are not equivalent. No change was made as a result of this comment.

Comment: Concerning §295.317(e)(2), one commenter stated that this sentence should read: "evidence of laboratory accreditation and the most recently available results of proficiency analytical testing in accordance with subsection (c)(1)(A)."

Response: The department agrees and changed the wording to "require evidence that the laboratory meets one of the qualification requirements under §295.317(c)(1)."

Comment: Concerning §295.317(f)(6), one commenter wanted language clarifying that a mold assessment company with an in-house mold laboratory is not required to have a separate general liability insurance policy for its analysis activities.

Response: The department clarifies that a company is not required to maintain separate insurance policies for different assessment activities under §§295.309, 295.313, or 295.317. No change was made as a result of this comment.

Comment: Concerning §295.318(b)(2)(A), one commenter requested the words "area of licensure" replace the word "discipline."

Response: The department agrees. The word "discipline" throughout the rules has been changed to "area of licensure," "license," or the appropriate equivalent.

Comment: Concerning §295.318(b)(2)(A), two commenters requested that sections in the training courses for assessors and remediators that are similar be combined to allow schools and government agencies a cost-effective means of licensing their employees.

Response: The department disagrees. The department reviewed the training requirements for each license category and believes that completely independent courses, as proposed, are appropriate to ensure proper training for licensees. Although topics for the various licenses appear to be the same, the amount of time and specific approach to cover the "same" topic will vary with each particular license. No change was made as a result of these comments.

Comment: Concerning §295.318(b)(3), two commenters requested this paragraph be deleted because it puts an unnecessary burden on the business.

Response: The department disagrees. Advance notice of course scheduling and cancellation is necessary so the department can schedule compliance audits of training courses. No change was made as a result of this comment.

Comment: Concerning §295.318(b)(4), one commenter objected to limiting training courses to eight hours a day because meeting the companies' schedule should be permitted to save time and money for the client.

Response: The department disagrees. The department believes the requirements as proposed ensure quality training for licensees. No change was made as a result of this comment.

Comment: Concerning §295.318(b)(7), one commenter requested changing the total number of students allowed in a class to a multiple of 15.

Response: The department disagrees. The student-to-teacher ratio was determined by the department to be appropriate based on discussions with professional instructors and trainers in similar training and educational settings. No change was made as a result of this comment.

Comment: Concerning §295.318(d)(1), one commenter questioned the need for both one-year and two-year accreditations and requested this paragraph be deleted.

Response: The department disagrees. The THSC, §12.0112, requires the two-year licenses to be issued as of January 1, 2005, so both fees are listed. No change was made as a result of this comment.

Comment: Concerning §295.318(d)(1) and (2), one commenter requested reducing the fees by 50%.

Response: The department disagrees. Both TOC, §1958.055(a), and THSC, §12.0111(b), requires the license fees to be sufficient to cover the cost of the program. The department has established the fee rates to meet this requirement. No change was made as a result of this comment.

Comment: Concerning §295.318(f)(7)(B) and (C), one commenter suggested fingerprints of students be taken rather than photographs.

Response: The department disagrees. The department believes that photographs can help in verifying on-site identification of licensees and registrants. No change was made as a result of this comment.

Comment: Concerning §295.318(f)(7)(C), two commenters recommended this subparagraph be deleted as a superfluous burden on training providers.

Response: The department disagrees. The department believes the requirement for a group photograph is effective to prevent licensing or training fraud. No change was made as a result of these comments.

Comment: Concerning §295.318(f)(8) and §295.319(c)(8), one commenter believed the required information cannot fit onto the limited space of a certificate.

Response: The department disagrees. The department reviewed the course certificate requirements in §295.318(f)(8) and §295.319(c)(8) and determined all the required information is necessary. The department did not specify a size for the certificate; thus the provider can make it as large as necessary. No change was made as a result of this comment.

Comment: Concerning §295.319, one commenter felt that significant revisions should be made to this section and §295.320(b) - (d). The commenter felt that static training requirements should not be included in the rules due to the evolving nature of the industry.

Response: The department disagrees. It is necessary for the department to require all training providers to cover the same topics in accredited training courses to ensure uniformity. The rules as proposed do not prohibit teaching new facts or processes. No change was made as a result of this comment.

Comment: Concerning §295.319, one commenter expressed concern that the rules do not include criteria for approving or rejecting applications.

Response: The department disagrees. Section 295.319(c) addresses authorization and conditions pertaining to approval of training courses. No change was made as a result of this comment.

Comment: Concerning §295.319, one commenter believed that the requirements of this section are excessive and requested that the department reduce them.

Response: The department disagrees. The department reviewed the section and believes the requirements as proposed are necessary and appropriate to ensure equitable and quality training for licensees. No changes were made as a result of this comment.

Comment: Concerning §295.319(c)(3) and (7), one commenter felt that these two paragraphs are a duplication of §295.319(e).

Response: The department agrees in part. Section 295.319(c) describes qualifications for approval of training courses, while §295.319(e) relates to approval of individual instructors. The department has, however, removed the requirement concerning instructor qualifications from §295.319(c)(3).

Comment: Concerning §295.319(c)(3), (4) and (6), one commenter recommended that these paragraphs be deleted to simplify the information that must be provided in an application.

Response: The department disagrees. The department believes this information is needed to ensure the course meets the requirements of content and format. No change was made as a result of this comment.

Comment: Concerning §295.319(c)(5), one commenter recommended the phrase "(written documentation of the proportion of test questions devoted to each major topic in the course)" be deleted.

Response: The department disagrees. This language is intended for clarification of the term "blueprint." No change was made as a result of this comment.

Comment: Concerning §295.319(d), one commenter suggested the word "significant" be inserted after the words "approval for."

Response: The department disagrees. The department believes such an addition would be inappropriate, as it would create many questions as to what changes are considered significant or insignificant. No change was made as a result of this comment.

Comment: Concerning §295.319(e)(1)(C), one commenter requested this paragraph include the requirement for hands-on experience.

Response: The department agrees and added the language "with one year's hands-on experience in mold related activities" to §295.319(e)(1)(C).

Comment: Concerning §295.319(e)(1)(A) - (D), one commenter requested that class instructors be required to have had some training in mycology.

Response: The department disagrees. Instructors who meet any of the requirements in §295.319(e)(1)(A) - (D) will be able to comprehend and teach the information related to mycology that is required in the various courses. No change was made as a result of this comment.

Comment: Concerning §295.319(e)(3), one commenter suggested changing "Professional references" to "References" and requiring "at least one professional reference" rather than "three professional references." One commenter requested the paragraph be deleted.

Response: The department disagrees. The department believes that three professional references are necessary and appropriate to ensure quality instructors for the state-accredited training courses. No change was made as a result of these comments.

Comment: Concerning §295.320, one commenter remarked that while training requirements concerning mold assessment and remediation are quite detailed, this section is ambiguous concerning the amount and content of training required on the health effects of mold.

Response: The department disagrees. The department appreciates the commenter's concerns and believes potential health effects are important and need to be covered. However, the training requirements in §295.320 provide the basic content of the courses, not specific time schedules and content. Section 295.319(c)(3) requires the department's approval of the trainer's course curriculum, including the specific topics taught and the amount of time allotted for each course before they can be used. No change was made as a result of this comment.

Comment: Concerning §295.320, one commenter wanted training providers to submit their proposed course content to the department for approval rather than having this section describe in detail the required content of each course. Otherwise, the commenter felt, static requirements would be written into rules that would be difficult to change as the industry and science develop.

Response: The department disagrees. Section 295.320 provides broad topic requirements to ensure that students receive substantially equivalent training regardless of the training provider they select as well as to aid training providers in creating curricula that address all areas of this subchapter. The department does allow training providers some discretion in formulating the content of each course, as long as the over-all requirements of this subchapter are met. No change was made as a result of this comment.

Comment: Concerning §295.320, one commenter felt that applicants who have a college degree and experience in a particular licensing area should not have to complete the initial training but only refresher training.

Response: The department disagrees. A licensee under this subchapter needs current knowledge of both the technical aspects and the requirements under this subchapter regarding the practice of mold assessment or remediation. To facilitate licensing of current practitioners, before January 1, 2005, an applicant may substitute training that meets the applicable requirements under §§295.311(c)(2), 295.312(c)(2)(B), or 295.315(c)(2)(B) for an initial training course from a department-accredited training provider. No change was made as a result of this comment.

Comment: Concerning §295.320, one commenter proposed that assessment technicians be registered rather than licensed and that assessment consultants and companies be permitted to train technicians.

Response: The department disagrees. Because assessment technicians are allowed under §295.311 to perform certain duties as sole practitioners, licensing is appropriate. Section 295.311 has been changed to clarify this.

Comment: Concerning §295.320, one commenter suggested adding a new initial remediation supervisor course. The commenter also recommended making successful completion of the supervisor course a prerequisite for taking the remediation contractor course described under §295.320(e) and reducing the number of hours for the remediation contractor course from 40 to eight.

Response: The department disagrees. Because the mold remediation contractor will supervise mold remediation workers as provided under §295.315(b), a separate remediation supervisor license is not necessary. As a result, the course hours should not be reduced. No change was made as a result of this comment.

Comment: Concerning §295.320(b) and (c), two commenters requested the majority of training hours for mold assessment courses should focus on building science, moisture dynamics, and identification of moisture problems, including use of a moisture meter.

Response: The department disagrees. Although the department concurs that training in these areas is important, it should not be required as the majority of training hours, because there are many other equally important areas. No change was made as a result of these comments.

Comment: Concerning §295.320(b) - (e), several commenters felt that the department should increase the minimum number of training hours required to obtain the listed credentials.

Response: The department disagrees. The department reviewed the training requirements for these sections and believes the hours proposed are sufficient to provide the necessary training required for these credentials. No change was made as a result of these comments.

Comment: Concerning §295.320(b), one commenter stated that the required subject matter would be difficult for an individual with only a high school diploma or GED certificate to understand.

Response: The department disagrees. The subject matter may be difficult for some students, regardless of academic background. However, those that complete the course and pass the required exams should be able to perform the duties within the scope of their license. No change was made as a result of this comment.

Comment: Concerning §295.320(b), one commenter recommended reducing the number of test questions from 100 to 50 to be consistent with test requirements for 24-hour courses in the EPA asbestos and lead training curricula.

Response: The department agrees and made the requested change in §295.320(b).

Comment: Concerning §295.320(b)(2), (d)(3)(B), and (e)(2), one commenter suggested that two department representatives should review the sections of training course curricula covering health effects in consultation with two members of the Texas Medical Association.

Response: The department agrees in part with the commenter. Because the department has no authority under TOC, Chapter 1958, to compel the Texas Medical Association to select any of its members for such a task, the department instead has modified these paragraphs to indicate that training shall include potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians.

Comment: Concerning §295.320(b)(3), (c)(1), and (d)(3)(C), two commenters felt that the department should not require specific

training that does not meet the standards of the federal Occupational Safety and Health Administration (OSHA) relating to training in respiratory protection.

Response: The department disagrees. The training described in §295.320 is intended to instruct students on the requirements under this subchapter concerning licensing and work practices for mold assessment and remediation in Texas. The training is not intended to cover all areas of practice in or substitute for training required by OSHA. It will, however, introduce students to areas for which OSHA has training requirements. No change was made as a result of this comment.

Comment: Concerning §295.320(c), one commenter suggested making successful completion of the assessment technician course described in §295.320(b) a prerequisite and reducing the number of hours for the assessment consultant course from 40 to 16 and the number of test questions from 100 to 50.

Response: The department disagrees. Although there is significant overlap with the training of the assessment technician, the department believes the training for the assessment consultant should be a separate course, because the amount of time needed for the various subject areas will differ. As a result, the number of test questions will remain 100. No change was made as a result of this comment.

Comment: Concerning §295.320(c), one commenter recommended that an assessment consultant should be a graduate professional engineer, a licensed architect, or a certified industrial hygienist.

Response: The department disagrees. Not having these specific certifications does not mean an inability to perform adequately. Assessment consultants are required to have education and experience relevant to mold assessment and to pass a course and a state examination that will demonstrate their ability to perform their duties. No change was made as a result of this comment.

Comment: Concerning §295.320(c)(2) and (e)(3), one commenter wanted clarification of which aspects of medical surveillance programs involve the practice of medicine with emphasis on the importance of involving competent medical professionals.

Response: The department agrees and has modified these paragraphs to clarify that training must cover the requirements concerning components of and development of each listed plan or program.

Comment: Concerning §295.320(c)(10), one commenter suggested adding, "writing mold remediation work plans" to this paragraph.

Response: The department disagrees. The TOC, §1958.152(a), states that a license holder who intends to perform mold remediation shall prepare a work plan. No change was made as a result of this comment.

Comment: Concerning §295.320(d) and (g), one commenter suggested requiring a 50-question test for successful course completion, because the commenter felt that workers will be exposed to hazardous and life-threatening conditions associated with the construction industry.

Response: The department disagrees. The department believes the worker training requirements of §295.320(d)(3) and the requirement in §295.314(g) that the worker may only perform mold remediation under the supervision of a licensed mold remediation contractor are adequate protection without requiring a course test. No change was made as a result of this comment.

Comment: Concerning §295.320(d), several commenters requested only accredited training providers be allowed to provide worker training. Two commenters felt that allowing remediators to train their workers is a conflict of interest. One of these commenters also stated that it is not in the best interest of the workers.

Response: The department disagrees. Workers can be provided adequate training by licensed remediation contractors or companies. No change was made as a result of these comments.

Comment: Concerning §295.320(d), one commenter recommended that the department require training providers and the remediation contractor or company to adhere to the American National Standards Institute/American Society of Safety Engineers (ANSI/ASSE) standard Z490.1-2001 (Criteria for Accepted Practices in Safety, Health, and Environmental Training) in addition to other requirements. The commenter also requested that a statement should appear on the training certificate regarding adherence to this ANSI/ASSE standard.

Response: The department disagrees. The ANSI/ASSE standard is voluntary, and training providers may adopt it if they wish. In addition, it is copyrighted material that is not freely available to the public. No change was made as a result of this comment.

Comment: Concerning §295.320(d)(1), one commenter remarked that it is unfair for the department to require training providers to meet an extensive, and potentially costly, set of qualifications, while remediation contractors and companies that train their own workers are exempt from those requirements.

Response: The department disagrees. The more stringent requirements for training providers (such as notification to the department) enable the department to ensure the quality of training by, for example, auditing courses. In contrast, remediation contractors and companies must notify the department of mold remediation projects they perform, and the department will be able to evaluate the quality of training that they provide to workers during compliance inspections of the projects. No change was made as a result of this comment.

Comment: Concerning §295.320(d)(3)(A) and (B), one commenter felt a person with no training in mycology is unqualified to teach mycology.

Response: The department disagrees that the trainer will have "no training" in the topic. Extensive formal training in mycology is not a prerequisite for presenting information appropriate for this level of registration. No change was made as a result of this comment.

Comment: Concerning §295.320(d)(4) - (6), one commenter believed these paragraphs should be moved or deleted.

Response: The department disagrees. Section 295.320(d)(4) - (6) are necessary to specify recordkeeping and other requirements for persons who are not accredited training providers but train their employees. No change was made as a result of this comment.

Comment: Concerning §295.320(d)(4)(B), two commenters requested the group photo requirement be deleted.

Response: The department disagrees. Because the department will not conduct on-site audits of remediation worker classes, requiring a group photograph promotes compliance with the worker training requirements. No change was made as a result of this comment.

Comment: Concerning §295.320(e)(9), one commenter felt that remediation work plans should be prepared by an assessment consultant rather than by a remediation contractor and that training curricula should reflect this.

Response: The department disagrees. The TOC, §1958.152(a), states that a license holder who intends to perform mold remediation shall prepare a work plan. No change was made as a result of this comment.

Comment: Concerning §295.320(f), one commenter recommended that the department allow continuing education, professional development courses, and other training to substitute for an eight-hour refresher course.

Response: The department disagrees. One of the purposes of refresher training, as specified in §295.320(f), is to review state regulations related to mold assessment and remediation, components that are not necessarily included in continuing-education or professional development courses. The department believes that eight hours is needed to provide adequate refresher training for licensees. No change was made as a result of this comment.

Comment: Concerning §295.320(f), one commenter felt that four hours of refresher training for a remediation worker is not logical when the initial training is four hours. The commenter suggested that the employer be responsible for this training, cover it throughout the year as part of a safety program, and submit a statement that the workers have received appropriate training.

Response: The department disagrees. The department believes that four hours is needed to provide adequate refresher training for remediation workers, who must review state regulations related to mold remediation. In addition, piecemeal refresher training would not enable registrants to meet the application timeline in §295.314(d). No change was made as a result of this comment.

Comment: Concerning §295.320(g), one commenter felt that requiring a state examination under §295.310 is unnecessary, because training providers have to use training course tests provided or approved by the department.

Response: The department disagrees. A course test allows training providers to evaluate the immediate effectiveness of their training and the short-term mastery of that material by a student, whereas a state examination provides a uniform statewide standard by which to measure an applicant's knowledge independently of where (s)he received training. No change was made as a result of this comment.

Comment: Concerning §§295.321 - 295.324, several commenters suggested additional or alternative work practices or clearance criteria. Other commenters proposed that numerical values and specific assessment and remediation techniques be removed from the rules. One of these commenters recommended that such techniques be published separately as guidelines, while the others requested that the department reference industry standards in the rules.

Response: The department agrees in part with the commenters and has revised these sections to allow assessment consultants to use more professional judgment in specifying techniques. The department believes that its rules more precisely meet the requirements of HB 329 than broader industry standards.

Comment: Concerning §295.321, one commenter recommended that the department specify required PPE for those performing initial mold assessments.

Response: The department will defer to the professional judgment of assessors to determine if PPE is necessary during an assessment and, if it is, to supply the PPE and ensure that employees are trained to use it properly. This responsibility, which was already present in §295.313(f)(4), has been added as new §295.312(f)(5) and §295.321(c).

Comment: Concerning §295.321(c), one commenter requested that the department require an assessment consultant to specify the analytical methods and tools appropriate for the project at the beginning of the project and to use only these methods and tools for the duration of the project.

Response: The department understands the commenter's concern for consistent methods of sampling and analysis throughout a project. However, certain circumstances, such as unexpected discovery of additional mold contamination, might dictate the use of other analytical methods. No change was made as a result of this comment.

Comment: Concerning §295.321(c)(5), two commenters asked that the department delete this requirement.

Response: The department disagrees. The definition of "mold assessment" in TOC, §1958.001, includes "analysis of a mold sample," and TOC, §1958.101(a), states that a person may not engage in mold assessment unless the person holds a mold assessment license. It is therefore required that a lab be licensed and that an assessment consultant or technician use only a licensed laboratory for "mold analysis." No change was made as a result of this comment.

Comment: Concerning §295.321(d), one commenter said that a written mold remediation protocol is not necessary for every remediation project and should not be required in all situations.

Response: The department disagrees. The TOC, §1958.151(a), requires an assessment license holder (consultant) to prepare a work analysis (protocol) and provide it to the client before the mold remediation begins. No change was made as a result of this comment.

Comment: Concerning §295.321(d), one commenter felt that persons who prepare mold remediation protocols for commercial and institutional projects must be Texas licensed architects or Texas registered professional engineers.

Response: The department disagrees. Many mold remediation protocols will not include specifications that constitute the practice of architecture as defined under TOC, Chapter 1051, or the practice of engineering as defined under TOC, Chapter 1001. Licensees should ensure, however, that they are not engaging in activities for which they are not appropriately credentialed. No change was made as a result of this comment.

Comment: Concerning §295.321(d), one commenter felt that the development of mold remediation protocols requires higher qualifications than other assessment duties and that it should be limited to a new license category for "mold remediation planners."

Response: The department disagrees. Under §295.312(c) and (e), applicants for licensure must provide proof of training, knowledge, and experience in mold assessment sufficient to allow the development of protocols. No change was made as a result of this comment.

Comment: Concerning §295.321(d), two commenters requested that the mold remediation protocol specify the proposed personal protective equipment, including respirators.

Response: The department agrees with the commenters and has made the requested change.

Comment: Concerning §295.321(d)(2), one commenter said that the quantity of materials to be removed to remediate the mold is a rough guess at best and felt that licensees will usually have to file amended notifications in order to comply with this paragraph.

Response: The department notes that the requirements of this paragraph come from TOC, §1958.151(b)(2), and that the notification requirement of TOC, §1958.153, and §295.325 do not require the quantities of materials to be included in a notification. No amendments would be necessary for this reason. No change was made as a result of this comment.

Comment: Concerning §295.321(d)(5), one commenter said that this paragraph conflicts with §295.324(d), which establishes clearance criteria.

Response: The department agrees and has made changes to clarify these sections.

Comment: Concerning §295.321(g), one commenter suggested inserting "of the building" before "outside."

Response: The department agrees and has made the recommended change.

Comment: Concerning §295.322, one commenter said that this section does not address such things as contents remediation and how soft goods should be sampled and cleared.

Response: The department disagrees. This section does not exempt remediation of contents from its requirements if not expressly exempted under TOC, §1958.002, and §295.303. As discussed elsewhere in this preamble, changes have been made to leave specific decisions about sampling and clearance to the judgment of the assessment consultant involved. No change was made as a result of this comment.

Comment: Concerning §295.322(a), one commenter felt that assessment consultants should also assist in the development of more detailed requirements.

Response: The department agrees and has modified the language of §295.321 to reflect this suggestion. The department also notes that under §295.322(b), a remediation contractor is required to prepare the remediation work plan based upon a remediation protocol that is prepared by an assessment consultant.

Comment: Concerning §295.322(b), one commenter felt that remediation work plans should be prepared by an assessment consultant rather than by a remediation contractor.

Response: The department disagrees. The TOC, §1958.152(a), states that a license holder who intends to perform mold remediation shall prepare a work plan. No change was made as a result of this comment.

Comment: Concerning §295.322(c), one commenter felt that the department should reference Title 29, Code of Federal Regulations (CFR), §1910.134 (the Occupational Safety and Health Administration's respiratory protection standard).

Response: The department disagrees. Although all licensees must comply with these rules, 29 CFR §1910.134 does not necessarily apply to all licensees. No change was made as a result of this comment.

Comment: Concerning §295.322(c), a number of commenters felt that the minimum required PPE should be an N-95 respirator, regardless of the amount of mold present, and that assessment consultants should be allowed to use their judgment in specifying any additional PPE requirements. Other commenters stated that the department should leave the selection of PPE entirely up to the professional judgment of assessment consultants and should only recommend an N-95 respirator, because requiring a specific type of respirator subjects licensees to all of the respiratory protection program requirements of 29 CFR 1910.134. Still other commenters believed that an N-95 respirator does not sufficiently protect workers and that the minimum PPE requirements should be stronger. One commenter said that an N-95 respirator should be the maximum required PPE. Another commenter said that PPE should be required for any activity associated with mold remediation, such as erecting walk-in containment.

Response: The department has modified §295.322(c), as well as §295.321(e), to specify that the recommended PPE is an N-95 respirator when mold will be disturbed and that the assessment consultant may use professional judgment in specifying what PPE remediators are to use. Persons performing remediation are required to follow the recommendations of the assessment consultant regarding PPE.

Comment: Concerning §295.322(d), one commenter requested that this subsection be changed such that containment "must prevent the spread of mold to building areas outside the containment."

Response: The department disagrees. Releasing concentrated amounts of mold or mold-containing dust to the outside could adversely affect the health of sensitive individuals who are nearby. The containment requirements have been modified, however, to note that air in a walk-in containment can be vented to the outside if filtered through a HEPA filter. No change was made as a result of this comment.

Comment: Concerning §295.322(d), several commenters stated that an assessment consultant should be allowed to use professional judgment to determine whether containment to prevent the spread of mold is necessary for a project. Two commenters suggested that containment should be required regardless of whether or not a building is occupied, while one commenter felt that containment is not necessary in most circumstances.

Response: The department agrees concerning the use of professional judgment and has modified §295.322 to reflect this change while continuing to require some form of containment as defined in §295.302.

Comment: Concerning §295.322(d), one commenter suggested that "prevent" be changed to "control" because containment might not be able to totally prevent the release of mold to surrounding areas.

Response: The department disagrees. Although the department understands the commenter's concern, the department

thinks that "prevent" more accurately conveys the purpose of containment. No change was made as a result of this comment.

Comment: Concerning §295.322(e), one commenter recommended that the word "notice" replace the word "warning" throughout the subsection. Three commenters requested that this subsection be deleted.

Response: The department agrees and has changed the word "warning" to "notice" and has made additional changes to the signage requirement.

Comment: Concerning §295.322(f), two commenters supported having an assessment consultant provide written approval of clearance. Three commenters disagreed, saying that verbal clearance or a simple written statement is sufficient.

Response: The department agrees with those that think that written approval of clearance is appropriate. No changes were made as a result of these comments.

Comment: Concerning §295.322(f), one commenter said that requirement of a written notice conflicts with §295.327(a).

Response: The department disagrees. Section 295.322(f) concerns a written notice given by an assessment consultant to a remediation consultant or company, whereas §295.327(a), which is required under TOC, §1958.154(a), relates to a certificate of mold remediation issued by a mold remediation license holder to a property owner. No change was made as a result of this comment.

Comment: Concerning §295.322(g), two commenters requested that the department define "wood-infesting organism" and clarify the circumstances under which licensing by the Structural Pest Control Board is required.

Response: Although the department understands the commenters' desire for clarification, questions on the interpretation and applicability of TOC, Chapter 1951, should be addressed by the Structural Pest Control Board. The rule imposes no new duties but merely alerts licensees to an existing rule of another state agency. No change was made as a result of this comment.

Comment: Concerning §295.322(g), one commenter felt that this subsection should address the management and disposal of biocides and wastes.

Response: The department disagrees. The issues raised by the commenter are under the jurisdiction of the EPA, the Texas Commission on Environmental Quality, and local governments. No change was made as a result of this comment.

Comment: Concerning §295.323, one commenter urged the department to include minimum work practices for heating, ventilation, and air conditioning (HVAC) systems that included more than applying disinfectants, biocides, and/or antimicrobial coatings.

Response: The department agrees and has modified this section to indicate that all provisions of §295.321 and §295.322 apply to HVAC systems as well.

Comment: Concerning §295.323(a), one commenter requested that the department address the use of biocides and antimicrobials that are manufactured on-site (e.g. ozone) and are not regulated by the EPA.

Response: The department notes that the use of such compounds is already prohibited by this subsection, which permits a licensee to apply a disinfectant, biocide, or antimicrobial coating in a HVAC system only if it is registered by the EPA for the intended use. No change was made as a result of this comment.

Comment: Concerning §295.323(a), one commenter felt that it is not necessary to notify all building occupants concerning the use of disinfectants, biocides, or anti-microbial coatings if the HVAC system only affects a part of the building.

Response: The department agrees and added "in potentially affected areas" after "occupants."

Comment: Concerning §295.323(a) and (b), one commenter felt that these subsections are contradictory.

Response: The department disagrees. Section 295.323(a) gives the requirements for applying disinfectants, biocides and antimicrobial coatings in HVAC systems and §295.323(b) gives information on other license requirements that may be applicable for mold remediators under some circumstances. No change was made as a result of this comment.

Comment: Concerning §295.324(a)(1), two commenters recommended that the department delete the reference to wood rot.

Response: The department disagrees. The TOC, §1958.001(5), defines mold as any living or dead fungi or related products or parts, which includes wood rot. The term is used separately in the rule for clarity. No change was made as a result of this comment.

Comment: Concerning §295.324(b), two commenters said that this subsection should require verification that all identified moisture problems have been corrected, while one commenter felt that the subsection as proposed created liability for licensees in areas over which they have no control. Another commenter suggested that the department modify this subsection to more closely reflect the requirements under TOC, §1958.154(a).

Response: The department agrees and has modified this subsection to more closely reflect the requirements under TOC, §1958.154(a).

Comment: Concerning §295.324(b), one commenter recommended that "mold" be changed to "mold growth."

Response: The department disagrees. The wording in question comes from TOC, §1958.154(a). No change was made as a result of this comment.

Comment: Concerning §295.324(c), one commenter recommended that this subsection include a requirement that the sampling be conducted using the analytical methods specified in the mold remediation protocol.

Response: The department agrees and has made the requested change.

Comment: Concerning §295.324(c), one commenter stated that "if walk-in containment is used" did not make sense, because containment is required under §295.322(d).

Response: The department disagrees. The term "walk-in containment" is just one type of "containment" which can include techniques such as wall-mounted glove boxes and wrapping or overlaying contaminated materials with protective sheeting. The department has added a definition of "containment" in §295.302 for clarity.

Comment: Concerning §295.324(c), one commenter recommended that this subsection should require air filtration equipment to be operated in scrubbing mode and not to be

exhausted to the outside. The commenter also recommended the air filtration equipment not be deactivated prior to clearance testing.

Response: The department notes that these are important concerns but to employ the proper techniques most effectively for each situation requires evaluation and determination of a trained licensed professional. The department has decided that "professional judgment" is the correct approach and has made the appropriate language revisions to reflect this.

Comment: Numerous commenters were against the use of "direct microscopic examination" as an analytical method in §295.324(d). The vast majority of these same commenters were in favor of adding air sampling as an analytical method in §295.324(d).

Response: The department agrees and has deleted reference to direct microscopic examination throughout the rules. Regarding air sampling in §295.324(d), the department will not require specific analytical methods, but has changed the appropriate wording to allow the licensed mold assessment consultant to use professional judgment and prescribe the analytical evaluation and clearance requirements for each particular project.

Comment: Concerning §295.324(d), one commenter requested that use of analytical methods not be required.

Response: The department disagrees. The TOC, §1958.154(a), requires an assessment license holder to use visual, procedural, and analytical evaluation to determine whether the mold contamination identified for a project has been remediated as outlined in the mold management plan or remediation protocol. To be consistent with the statute, "analytical method" has been replaced with "analytical evaluation."

Comment: Concerning §295.324(d), one commenter suggested that assessment consultants should be required to submit any air samples taken for clearance purposes to a licensed mold analysis laboratory rather than personally analyzing the samples.

Response: The department disagrees. The department notes that this is an important concern but realizes that some licensed mold assessment consultants may obtain a mold laboratory license and so may be able to perform mold analyses on the worksite. The consultants are required to use professional judgment when doing assessments. Performing a mold analysis that the licensed consultant is unqualified to do would be considered by the department a serious violation. No change was made as a result of this comment.

Comment: Concerning §295.324(d), one commenter requested that the department develop new clearance standards to protect homeowners' interests.

Response: The department agrees with this concern, but has found no generally accepted standard to adopt. Therefore, changes have been made to allow assessment consultants to use professional judgment in setting clearance criteria for a project.

Comment: Concerning §295.324(d), one commenter expressed concern that cost-conscious consumers may not allow consultants to conduct the necessary clearance testing by limiting the number of samples that consultants can take.

Response: The department disagrees but has revised the language in §295.322 to leave the selection of clearance methods and criteria to the consultant's judgment, and in §295.324 to require the consultant to use the analytical methods and clearance criteria as specified in the remediation protocol that must be given to the client under §295.321(d). No change was made as a result of this comment.

Comment: Concerning §295.324(d), one commenter felt that a remediation project should not pass clearance if mold spores are present on remediated surfaces.

Response: The department disagrees but has revised the language in §295.322 to leave the selection of clearance methods and criteria, which might include the allowable number of spores on surfaces, to the consultant's judgment. The consultant's protocol must be submitted to the client under §295.321(d). No change was made as a result of this comment.

Comment: Concerning §295.324(d), one commenter felt that the rules do not address what should be done if a project is unable to meet the specified clearance standards.

Response: The department has modified this subsection to indicate that analytical methods and clearance criteria will be specified by the assessment consultant. A consultant who is unable to certify under §1958.154(a) and §295.327(a) that the mold contamination specified for a project has been remediated as outlined in the mold remediation protocol should not give approval to a certificate of mold remediation. Questions related to remedies for failure to comply with contractual obligations are outside the department's scope of authority.

Comment: Concerning §295.323(e), one commenter felt that requiring a passed clearance report creates a tremendous liability for the assessment consultant.

Response: The department disagrees. Issuing a passed clearance report creates no greater liability for a consultant than complying with the requirements under TOC, §1958.154(a) and §295.327(a), concerning the certificate of mold remediation. No change was made as a result of this comment.

Comment: Concerning §295.324(e)(4), one commenter requested that this section be modified to reflect TOC, §1958.154.

Response: The department agrees and has made the requested changes.

Comment: Concerning §295.324(e)(4), one commenter suggested that digital photographs and videotapes be allowed.

Response: The department agrees and clarifies that photographs include digital photographs printed in hard copy format. Videotapes may be included in the file, but are not a substitute for the required photographs. No change was made as a result of this comment.

Comment: Concerning §295.324(f), one commenter requested clarification whether this subsection applies to projects when a consultant continues to be involved.

Response: The department clarifies that this subsection applies only to projects with which a consultant ceases to be involved. No change was made as a result of this comment.

Comment: Concerning §295.325, a number of commenters expressed overall disagreement with the notification requirements and asked that they be eliminated.

Response: The department understands the commenters' concerns but notes that notifications are required under TOC, §1958.153. No change was made as a result of this comment.

Comment: Concerning §295.325(a), one commenter requested that the threshold for notification be changed from 25 contiguous square feet to 100 contiguous square feet.

Response: The department disagrees. A person not exempt under TOC, §1958.102(c), must be licensed to engage in mold remediation, and a license holder must notify the department about a remediation project under TOC, §1958.153. No change was made as a result of this comment.

Comment: Concerning §295.325, several commenters expressed concern that the start/stop-date notification requirements are too stringent. Some commenters said if the requirement for a start-date is not reduced or eliminated, emergency notification will become the default notification method. Other commenters said that there should be a grace period for changes without requiring an amendment. One commenter requested notifications be filed after a project had begun and/or ended rather than before.

Response: The department understands the commenters' concerns but notes that TOC, §1958.153, specifies many of the requirements for notifications that the rules must contain. No change was made as a result of this comment.

Comment: Concerning §295.325(a), one commenter suggested that "mold contamination" be changed to "area of mold growth."

Response: The department disagrees. The definition of "mold" in TOC, §1958.001(5), encompasses more than visible mold growth. No change was made as a result of this comment.

Comment: Concerning §295.325(a) and (f), one commenter suggested inserting "mold remediation" before "contractor or company" for clarity.

Response: The department agrees and has made the requested changes.

Comment: Concerning §295.325(e), one commenter suggested changing "contamination" to "growth."

Response: The department disagrees. The wording comes directly from TOC, §1958.153(b). No change was made as a result of this comment.

Comment: Concerning §295.325(f)(1), three commenters requested lowering notification fees. One of those said schools should be totally exempt.

Response: The department agrees in part with the commenters. The notification fee has been lowered to $25 for a remediation project in an owner-occupied dwelling unit that is part of a residential property with fewer than 10 dwelling units to not disadvantage individual homeowners from using licensed providers. The notification fee for schools remains $100.

Comment: Concerning §295.326, one commenter requested that the department reconsider the requirements under this section and delete §295.326(b)(2)(B), (D), and (E); deleting the words "and any other written contracts related to the mold remediation project between the company or contractor and any other party" from §295.326(b)(2)(C); and delete §295.326(c)(1)(C) and (D).

Response: The TOC, §1958.156(c), requires mold remediators to maintain the records listed under §295.326(b)(2)(B) - (D) for three years. The department, however, agrees with the commenter in part concerning the recordkeeping requirements and has deleted §295.326(b)(2)(E) and §295.326(c)(1)(D), (H), and (J). The department has amended §295.326(b)(2)(A) to require retention of only the remediation work plan for three years. The department also has amended §295.326(c)(2) to require retention of the listed documents only until the assessment company or consultant either issues a final status report to a customer or provides all certificates of mold remediation for a project to a remediation company or contractor.

Comment: Concerning §295.326, one commenter suggested that the rules allow the required information to be maintained in a digital format.

Response: The department agrees concerning §295.326(b)(2) and (d) and has modified these sections to allow licensees to maintain the required records in an electronic format. Remediators who do so, however, must provide hard copies of such records to a department inspector during an inspection if requested by the inspector.

Comment: Concerning §295.326(b)(2)(B), a commenter noted that photographic documentation is required as a recordkeeping responsibility although the rule contains no explicit requirements to take the photos. Further, the commenter requested clarification as to how many and what types of photographs are required.

Response: The department clarifies that the number of photographs taken and the specific areas of the remediation project documented are left to the professional judgment of the mold remediation contractor, who has a duty under TOC, §1958.156(c)(1), to take before and after photos of the scene. No change was made as a result of this comment.

Comment: Concerning §295.326(c), one commenter suggested that "companies" be changed to "contractors."

Response: The department disagrees, noting that the rules do not contain a "mold assessment contactor" license category and that mold remediation contractors and companies are regulated separately under §295.326(b). No change was made as a result of this comment.

Comment: Concerning §295.326(c)(1)(G), one commenter felt that remediation work plans should be prepared by an assessment consultant rather than by a remediation contractor and that recordkeeping requirements should reflect this.

Response: The department disagrees. The TOC, §1958.152(a), states that a license holder who intends to perform mold remediation shall prepare a work plan. No change was made as a result of this comment.

Comment: Concerning §295.326(d), one commenter suggested that the department does not license mold analysis laboratories and that this subsection should be deleted.

Response: The department disagrees. The definition of "mold assessment" in TOC, §1958.001, includes "analysis of a mold sample," and TOC, §1958.101(a), states that a person may not engage in mold assessment unless the person holds a mold assessment license. No change was made as a result of this comment.

Comment: Concerning §295.326(e)(1) and (3), one commenter believed that these paragraphs should be deleted as unnecessary because this information must be submitted to the department with an application for accreditation as a training provider.

Response: The department agrees and has made the requested changes. The department also has clarified under §295.318(f)(8) that the information a training provider is required to maintain for a course includes the names of all instructors

and guest speakers who taught the course and a roster of all students in the course.

Comment: Concerning §295.327, one commenter requested the department revise the Certificate of Mold Remediation to limit the assessor's responsibility to determine the underlying cause of the mold.

Response: The department disagrees. The TOC, §1958.154(a), specifies the requirements for the certificate and this statutory language is used in the rules. The assessor has no statutory duty to determine the underlying cause of mold. No change was made as a result of this comment.

Comment: Concerning §295.327(a) and (b), a commenter suggested that the section should be deleted on the basis that it is not within the authority of a regulatory agency to require the mold remediator or assessor to submit reports to the building owners.

Response: The department disagrees. The remediator is required under TOC, §1958.156(d), to submit photos to building owners. No change was made as a result of this comment.

Comment: Concerning §295.327(a), a commenter suggested that digital video formats should be accepted as photographic documentation.

Response: The department clarifies that photographs must be in hard-copy form. Digital or standard film formats may be used to create the required photos. Video documentation may not be substituted for the required photographs. No change was made as a result of this comment.

Comment: Concerning §295.327(b), one commenter stated obtaining laboratory results often takes more than ten days and that a remediation contractor would not be able to comply with the required time frame. The commenter asked that "10th day" be changed to "30th day."

Response: The department disagrees. The ten-day deadline specified in §295.327(b) of the rules is the tenth day after the project stop-date, which is defined in §295.302(37) as the date following the date on which final clearance is achieved, i.e., after the laboratory results are received. No change was made as a result of this comment.

Comment: Concerning §295.327(b), one commenter felt that requiring the remediation contractor or company to provide the certificate of mold remediation is a conflict of interest and suggested that an assessment consultant should provide the certificate to the property owner.

Response: The department disagrees that there is a conflict of interest. The TOC, §1958.154(a), requires that a remediation license holder provide a certificate of mold remediation to a property owner based on an evaluation by the consultant. No change was made as a result of this comment.

Comment: Concerning §295.327, several commenters suggested that the certificate of remediation form adopted by the Texas Department of Insurance (TDI) should qualify the mold assessor's statement in a manner that would prevent the assessor from incurring undue liability.

Response: The department concurs that the TDI form should be reasonable and not impose undue liability on the assessor. However, the statute in TOC, §1958.154(d), gives responsibility for the form to TDI. No change was made as a result of these comments.

Comment: Concerning §295.327(b)(2), one commenter stated that assessment and remediation personnel cannot force a building owner to repair water intrusion. The commenter felt that this paragraph creates liability for licensees in areas over which they had have no control and that it should be deleted.

Response: The department understands the commenter's concerns. This paragraph mirrors the language in TOC, §1958.154(a). There is no requirement for a certificate of remediation to include the language in §295.327(b)(2), but it must include the language in §295.327(b)(1). No change was made as a result of this comment.

Comment: Concerning §295.327(d), a commenter inquired as to the time limit a property owner would have to keep a certificate of remediation.

Response: The TOC, §1958.154(b), requires an owner who sells a property to provide to the buyer a copy of each certificate of remediation issued for the property. The statute gives no time period affecting certificates. Therefore, prudent property owners should keep the records until the property is sold. No change was made as a result of the comment.

Comment: Concerning §295.327(d), a commenter suggested that the subsection should be deleted, as it is not within the department's authority.

Response: The department disagrees. It is required under TOC, §1958.154(b). No change was made as a result of the comment.

Comment: Concerning §295.327(d), one commenter suggested that a homeowner would be in violation of the requirement to provide a certificate of remediation to a buyer if the remediation project consistently failed clearance and the owner was never issued the certificate.

Response: The department disagrees. The TOC, §1958.154(b), and §295.327(d) do not require any property owner to produce a certificate that does not exist. No change was made as a result of this comment.

Comment: Concerning §295.328, a commenter suggested that the department expand the section to include other consumer protection provisions such as requiring reference checks on licensees.

Response: The department disagrees because it has no statutory authority to require reference checks by property owners. The department will consider including such a recommendation in the public education program required under TOC, §1958.052, or the Consumer Mold Information Sheet described in §295.306(c). No change was made as a result of this comment.

Comment: Concerning §295.328, a commenter suggested that the department have procedures that ensure names of complainants are disclosed to companies subjected to a complaint investigation.

Response: The department disagrees. The department maintains that the person filing the complaint should have the option to remain anonymous to the extent allowed by law. Requests for information may be made in accordance with the Public Information Act. No change was made as a result of the comment.

Comment: Concerning §295.329, one commenter felt that a TDH inspector should be required to talk with the assessment consultant for the project before entering a containment system.

Response: The department disagrees. Imposing such a limitation on the compliance inspector could limit the ability of the inspector to perform a timely and thorough inspection of a project. No change was made as a result of this comment.

Comment: Concerning §295.331, two commenters suggested that the violations mentioned in the section have no impact on human health and safety.

Response: The department disagrees and maintains that violations involving fraud or misrepresentation of credentials may have a direct negative impact on public health and safety. No change was made as a result of the comment.

Comment: Concerning §295.331(d), one commenter suggested that the requirements for training providers are more stringent than for contractors who train their workers on the job.

Response: Contractors who train their workers on the job must meet specific criteria in §295.320(d). Failing to do so is listed as a violation in §295.331(d)(2)(D), which applies to both contractors and accredited training providers. No change was made as a result of the comment.

Comment: Concerning §295.331(d), the department received a comment to §295.309(d) requesting clarification of the amount of administrative penalty for failing to have insurance.

Response: The department has amended §295.331(d)(1), (2) and (3) to clarify that the listed violations may have an impact on public health, safety "or welfare" and has added a new penalty under §295.331(d)(1)(G) for "failing to meet the insurance requirements of §295.309."

Comment: Concerning §295.331(d), one commenter suggested that failure to isolate the remediation area during removal of mold contaminated building materials should be listed as an example of a violation in §295.331(d).

Response: The department agrees and has added relevant examples in §295.331(d)(1).

Comment: Concerning §295.331(d)(1)(E), one commenter remarked that this subparagraph conflicts with §295.320(d)(1)(A).

Response: The department agrees and has inserted the words "except as provided under §295.320(d)(1)(A) of this subchapter (relating to Training: Required Mold Training Courses)" after the word "speaker(s)."

Comment: Concerning §295.331(d)(3)(E), one commenter suggested that a $1,000 penalty under Severity Level III for course scheduling violations of training providers is excessive.

Response: The department clarifies that the penalty amounts listed in §295.331(d)(1) - (3) are maximum penalties and may be assessed at a lesser amount. Section 295.331(c) lists factors the department shall consider when assessing a penalty. Severity Level III (maximum $1000 administrative penalty per violation) is the lowest severity level. No change was made as a result of this comment.

The department is making the following change based on an amendment offered by a member of the Board of Health and adopted by the Board.

Change: Concerning the rules in general, the department changed the passing score on course tests and on state examinations from 70% correct to 80% correct.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the sections.

Change: Concerning §295.302, the department added a definition of "routine cleaning" for clarity.

Change: Concerning the definition of "allied field" in §295.302, the department changed "analysis" to "assessment" as a correction.

Change: Concerning the definition of "assessor" in §295.302, the department inserted "mold assessment" before "consultant" and before "company" for clarity.

Change: Concerning the definition of "board" in §295.302, the department deleted this definition because the term was not used in this sense in this subchapter.

Change: Concerning the definition of "commissioner" in §295.302, the department added "or his successor" because HB 2292 abolishes the Texas Department of Health. Most activity of the Texas Department of Health will be transferred to the new Department of State Health Services.

Change: Concerning the definition of "department" in §295.302, the department added "or its successor" because HB 2292 abolishes the Texas Department of Health. Most activity of the Texas Department of Health will be transferred to the new Department of State Health Services. The department also deleted "Texas Department of Health" and replaced it with "department" in the definition of "program administrator" in §295.302 and in §295.308(a)(1).

Change: Concerning the definition of "remediator" in §295.302, the department inserted "mold remediation" before "contractor" and before "company" for clarity.

Change: Concerning the definition of "residential property" in §295.302, the department inserted "or oversight" after "care" in subparagraph (B) for clarification.

Change: Concerning the definition of "survey" in §295.302, the department changed "growth" to "contamination" to more accurately reflect the language of TOC, Chapter 1958.

Change: Concerning §295.303, the department added new subsection (g) to clarify that all persons engaged in mold-related activities must be licensed, registered or accredited as outlined in this subchapter, except that those professionals currently licensed by the state in another field who provide to a mold licensee only consultation related to that other field are not required to be separately licensed under this subchapter.

In response to a comment about licensed insurance adjusters the staff also added in subsection (g) that a public insurance adjustor is not required to be licensed under this subchapter if engaging only in the performance of regulated activities of a licensed public insurance adjuster pursuant to Article 21.07-5 of the Texas Insurance Code.

Change: Concerning §§295.308(d)(2), 295.330(d), and 295.333(a), the department deleted "(relating to the Board of Health)" because under HB 2292 the Texas Department of Health will be abolished and an advisory body will replace the Board of Health.

Change: Concerning §295.309(c), the department changed "initial or renewal licenses" to "an initial or renewal license" as a correction.

Change: Concerning §295.310(a)(1), the department inserted "course" after "the required training" for consistency with the rest of the subchapter.

Change: Concerning §295.310(a)(2), the department deleted the commas after each occurrence of "2005" as a correction.

Change: Concerning §295.310(b), the department changed "licensing" to "state" for consistency with the rest of the subchapter.

Change: Concerning §295.311(c) and §295.312(c)(1)(C), the department changed "high-school" to "high school" as corrections.

Change: Concerning §295.312(a), the department changed "one" to "two" as a correction; "two" appears in a similar provision in §295.313(a) and does not require correction.

Change: Concerning §295.312(f)(15), the department changed the number "(11)" to "(13)" as a correction.

Change: Concerning §295.315(a), the department deleted the sentence, "A mold remediation company shall designate one or more individuals licensed as mold remediation contractors as its responsible person(s)" and inserted it as the last sentence in §295.316(a), as a correction.

Change: Concerning §295.315(f)(3), the department added the words "mold remediation" following the word "preparing" for clarification.

Change: Concerning §295.315(f)(4), the department deleted the word "project," and added the phrase "for the project" after the word "plan" for clarification.

Change: Concerning §295.316(e)(3), the department added the words "for the" after the word "plan" for clarification.

Change: Concerning §295.318(b)(1), the department changed the word "technician" to "worker" as a correction.

Change: Concerning §295.319(d), the department changed the number "(9)" to "(8)" as a correction.

Change: Concerning §295.319(e)(1)(B) and (D), the department changed "one year's" to "one year of" for consistency with similar usage in other portions of the subchapter.

Change: Concerning §295.320(b)(1), the department changed "sources of indoor mold and conditions necessary for indoor mold growth" to "sources of, conditions necessary for, and prevention of indoor mold growth" to more accurately reflect the intent of the statute.

Change: Concerning §295.321, new §295.321(a) was added for consistency with §295.322(a).

Change: Concerning §295.321(b), the department inserted "assessment" before "consultant" for clarity.

Change: Concerning §295.321, the department deleted proposed §295.321(b) and moved it to §295.321(e) so that it is in a more logical sequence in the section.

Change: Concerning §295.322(d), the department changed "of this subchapter" to "of this title" as a correction.

Change: Concerning §295.334, the department inserted "to" between "relating" and "Decisions" as a correction.

Change: Concerning §295.338(b), the department inserted "under" before "§295.327" for clarity.

The comments on the proposed rules received by the department during the comment period were submitted by Representative Elliott Naishtat; A & B Environmental Services, Inc.; Abbott Labs; Acute Engineering, Inc.; Advantage Environmental Solutions, LLC; Alliance for Healthy Homes; Alvin Independent School District (ISD); Amarillo ISD; American Industrial Hygiene Association; American Insurance Association; Aon Risk Services of Texas; Armstrong Forensic Laboratory; Associated General Contractors--Texas Building Branch; ATC Associates, Inc.; Austin Engineering Group; Basic Industries, Inc.; Becker Engineering, Ltd.; Boone's Restoration Technologies; Building Science Investigations, Inc.; CAM Environmental Services; Chemical Response and Remediation Contractors, Inc.; Clean Environments; Corporate Investigative Services, Inc.; Crosby ISD; Cypress-Fairbanks ISD; Dallas Area Rapid Transit; DDD Construction Management, Inc.; Dallas ISD; Dolphin Environmental Consultants; Dotson Group LLC; Eastman Chemical Company; EMI Envira; EnvirOSH Services, Inc.; EMSL Analytical; Engineering and Fire Investigations, Inc.; Engineering Consulting Services, LTD; Engineering Systems, Inc.; ENPROTEC, Inc.; EORM, Inc.; Envirochex; Environmental & Occupational Health Strategies; Envirotest; ETC Information Services, LLC; ERC, Inc.; Farmers Insurance Group; Fort Worth ISD; GHH Engineering, Inc.; Gobbell Hays Partners, Inc.; Haley and Aldrich, Inc.; Harris County Department of Education; Houston Community College; Harvard School of Public Health; HBC/Terracon; Heart of Texas Health Care Network; HNP, Inc.; HomeTeam Inspection Service; IAQ Consultants, Inc.; Independent Bankers Association of Texas; Independent Colleges and Universities of Texas; Indoor Air Quality Association; Indoor Environmental Consultants, Inc.; International Association of Mold Remediation Specialists; International Council of Shopping Centers; Jenkins Environmental Consulting, LLC; Jernberg Law Group; Katy ISD; KBR; Lauderdale Environmental Engineering; Lubbock ISD; MACTEC Engineering and Consulting; McClean Environmental Services; Medical Mycology Research Center, University of Texas Medical Branch, Galveston; Moisture Technology Corporation; Moldlab, Ltd.; Motorola; Moody Labs; Mycotech Biological, Inc.; Naismith Engineering; Nalco Energy Services; NATEC of Texas, Inc.; National Association of Industrial Office Parks--North Texas Chapter; National Center for Healthy Housing; Northside ISD; Occupational-Environmental Control, Inc.; Occupational Health Program, Baylor College of Medicine, Houston; Office of Public Insurance Council; Patriot Maritime Compliance, LLC; Powers Environmental, Inc.; Precision Analytical Lab, Inc.; Pro Check Inspection Services; The Provident Group; Region IV Education Service Center; River Road ISD; Reliant Resources; Rimkus Consulting Group, Inc; Robert J. Reda & Associates, LLC; SafeNet Environmental Services, LLC; San Antonio ISD; Service Master; SBC Communications; Specialized Adjusting, Inc.; Steamatic, Inc; Steve Moody Micro Services, Inc.; Sun City Analytical, Inc.; TEAMS of Texas, Inc; Texans for Sensible Mold Policy; Texas Affiliation of Affordable Housing Providers; Texas Apartment Association; Texas Association for Indoor Air Quality; Texas Association of Builders; Texas Association of Business; Texas Association of Realtors; Texas Association of School Boards; Texas Board of Architectural Examiners; Texas Building Owners and Managers Association; Texas Chapter of the National Association of Housing and Redevelopment Officials; Texas Department of Criminal Justice; Texas Hotel and Lodging Association; Texas Housing Association; Texas Legislative Action Committee, Community Associations Institute; Texas Mini Storage Association; Texas Petroleum Marketers

and Convenience Store Association; TMS Environmental, Austin, LLC; Triune Engineering, Inc.; University of Houston, Clear Lake; University of Texas System Environmental Advisory Committee; Unocal Corporate HES; United Services Automobile Association; University of Texas Health Science Center; University of Texas M.D. Anderson Cancer Center; University of Texas, San Antonio; William C. Hart Construction; Ysleta ISD; and ZuniBear HSE, LLC. In addition, numerous individuals submitted comments. Four commenters were against the rules in their entirety. The other commenters were neither for nor against the rules in their entirety; they expressed concerns, asked questions, and suggested recommendations for change as discussed in the summary of contents.

The new sections are adopted under the Texas Occupations Code, §1958.053, which provides the department with the authority to adopt necessary regulations to discharge the powers and duties of Chapter 1958; and Texas Health and the 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.

§295.301. General Provisions.

(a) Purpose. This subchapter implements the provisions of the Texas Occupations Code, Chapter 1958 (relating to Mold Assessors and Remediators), concerning the regulation of mold assessors and remediators conducting mold-related activities that affect indoor air quality.

(b) Scope. This subchapter contains requirements for the licensing and registration of persons performing mold assessments and mold remediation, requirements for the accreditation of mold training providers, minimum work standards for the conduct of mold assessments and remediation by licensed and registered persons, a code of ethics, and penalties.

(c) Severability. Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

(d) TexasOnline. The department is authorized to collect subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with processing applications, examinations, and notifications specified under this subchapter through TexasOnline, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of TexasOnline Project).

§295.302. Definitions.

The following words and terms within this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited training program--A training program that has been accredited by the department to provide training for persons seeking licensure or registration under this subchapter.

(2) Act--The Texas Occupations Code, Chapter 1958 (relating to Mold Assessors and Remediators).

(3) Allied field--Mold assessment, mold remediation, and any field whose principles and practices are applicable to mold assessment or mold remediation, including asbestos abatement, lead abatement, industrial hygiene, building sciences, public health, and environmental remediation.

(4) Assessor--A person who conducts mold assessment as defined in this section and who is licensed under this subchapter as a mold assessment technician, mold assessment consultant, or mold assessment company.

(5) Building sciences--The field of study covering the design, construction, management, and performance of building systems, including structures, enclosures, electrical and mechanical systems, environmental systems (such as temperature and moisture control), safety systems (such as fire suppression and alarms), lighting, acoustics, and diagnosis and correction of problems with building systems.

(6) Commissioner--The Texas Commissioner of Health or his successor.

(7) Consumer Mold Information Sheet--A document prepared and made available by the department that describes the persons who are required to be licensed under this subchapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint. A licensee under this subchapter who is overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that each client is provided a copy of the Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(8) Containment--A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad category of containment includes such sub-categories as walk-in containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).

(9) Containment area--An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.

(10) Contiguous--In close proximity; neighboring.

(11) Contiguous square feet--See "Total surface area of contiguous square feet".

(12) Credential--A license, registration, or accreditation issued under this subchapter.

(13) Department--The Texas Department of Health or its successor.

(14) Employee--An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual's work.

(15) Facility--Any institutional, commercial, public, governmental, industrial or residential structure or building.

(16) Indoor air--Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.

(17) Indoor mold--Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.

(18) License--Any license issued under this subchapter. The term "license" does not include a registration, accreditation, or approval issued under this subchapter.

(19) Mold--Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(20) Mold analysis--The examination of a sample collected during a mold assessment for the purpose of:

(A) determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;

(B) growing or attempting to grow fungi for the purposes of subparagraph (A) of this paragraph; or

(C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.

(21) Mold analysis laboratory--A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.

(22) Mold assessment--Activity that involves:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or mold remediation protocol; or

(C) the collection or analysis of a mold sample.

(23) Mold assessment report--A document, prepared by a licensed mold assessment consultant or licensed mold assessment technician for a client, that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

(24) Mold management plan--A document, prepared by a licensed mold assessment consultant for a client, that provides guidance on how to prevent and control indoor mold growth at a location.

(25) Mold-related activities--The performance of mold assessment, mold remediation or any other related activities.

(26) Mold remediation--The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.

(27) Mold remediation protocol (mold remediation work analysis)--A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.

(28) Mold remediation work plan--A document, prepared by a licensed mold remediation contractor that provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed.

(29) Office--A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.

(30) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(31) Program administrator--The administrator of the department's Mold Licensing Program.

(32) Project--All activities connected with a mold remediation work plan, including activities necessary for the preparation of the work plan and any associated mold remediation protocol(s), site preparation, and post-remediation assessment and clearance.

(33) Remediator--A person who conducts mold remediation as defined in this section and who is credentialed under this subchapter as a mold remediation worker, mold remediation contractor, or mold remediation company.

(34) Residential dwelling unit--A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

(35) Residential property--A building containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

(A) lodgings (such as hotels and motels) that rent units on a transient basis;

(B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and

(C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).

(36) Responsible person--An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.

(37) Routine cleaning--Cleaning that is ordinarily done on a regular basis and in a regular course of procedures.

(38) Start date--The date on which the actual remediation of mold begins.

(39) Stop date (completion date)--The date following the date on which final clearance is achieved following a mold remediation project.

(40) Supervise--To direct and exercise control over the activities of a person by being physically present at the job site or, if not physically present, accessible by telephone and able to be at the site within one hour of being contacted.

(41) Survey--An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

(42) Total surface area of contiguous square feet--The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.

(43) Training hours--Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.

(44) Visible--Exposed to view; capable of being seen.

(45) Work analysis--A mold remediation protocol.

(46) Work plan--A mold remediation work plan.

(47) Working days--Monday through Friday, including holidays that fall on those days.

§295.303. Exceptions and Exemptions.

(a) Exceptions. This subchapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person regulated under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control).

(b) Minimum area exemption. A person is not required to be licensed under this subchapter to perform mold remediation in an area in which the mold contamination for the project affects a total surface area of less than 25 contiguous square feet.

(c) Residential property exemption. An owner, or a managing agent or employee of an owner, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on a residential property which is owned by that person, and which has fewer than 10 residential dwelling units. This exemption applies regardless of the total surface area within the residential property that is affected by mold growth. This exemption does not apply to a managing agent or employee who engages in the business of performing mold assessment or mold remediation for the public.

(d) Facility exemption. An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

(1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;

(2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or

(3) to a person exempt under subsection (c) of this section.

(e) Construction and improvement exemption. A person is not required to be licensed under this subchapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption applies regardless of the total surface area that is affected by mold growth. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public. For purposes of this subsection, "improve" means "to build, construct, or erect a new building or structure or a new portion of a building or structure that is attached to an existing building or structure" and "improvement" means "a building or structure, or a portion of a building or structure, that was built, constructed, or erected as an attachment to an existing building or structure after the construction or erection of the existing building or structure."

(f) Supervised employee exemption. An employee of a license holder is not required to be licensed under this subchapter to perform mold assessment or mold remediation while supervised by the license holder. Such an employee must, however, be registered as provided under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements).

(g) Exceptions for licensed professionals. All persons engaged in mold-related activities must be licensed, registered or accredited as outlined in this subchapter, except that those professionals currently licensed by the state in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a mold licensee only consultation related to that other field are not required to be separately licensed under this subchapter. In such a case, the responsibility for the project or activity remains with the mold licensee. A person is not required to be licensed under this subchapter if engaging only in the performance of regulated activities of a licensed insurance adjuster pursuant to Article 21.07-4 of the Texas Insurance Code or in the performance of regulated activities of a licensed public insurance adjuster pursuant to Article 21.07-5 of the Texas Insurance Code, including the investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

(h) Loss of exemption. A person who is performing mold remediation under the licensing exemptions of subsection (b) or (d) of this section and identifies additional mold such that the total mold contamination affects a total surface area of 25 contiguous square feet or more shall:

(1) immediately cease all remediation work and implement emergency containment if necessary; and

(2) advise the person requesting the remediation that the exemption under subsection (b) or (d) of this section has been lost and that any additional mold remediation and post-remediation assessment in the area must be done by a person licensed or registered under this subchapter.

(i) Fee exemption for department employees. Employees of the department who engage in mold-related activity as a condition of

their employment shall be exempt from examination fees and credentialing fees under this subchapter. Fee-exempted credentials shall be restricted for use only in required departmental duties, and the credentials will indicate the restriction. An employee who is no longer required to possess a credential as a condition of employment shall immediately return that credential to the Mold Licensing Program for closure. An individual who terminates employment with the department shall immediately return all unexpired credentials to the Mold Licensing Program for closure. The department may impose an administrative penalty or take other disciplinary action against any employee or former employee who uses a fee-exempt credential to engage in a mold-related activity that is not a required departmental duty.

§295.304. Code of Ethics.

(a) The purpose of this section is to establish the standards of professional and ethical conduct required of all persons holding credentials or approvals issued under this subchapter.

(b) All credentialed persons or approved instructors shall, as applicable to their area of credentialing or approval:

(1) undertake to perform only services for which they are qualified by license, education, training or experience in the specific technical fields involved;

(2) meet or exceed the minimum standards for mold assessment and remediation as set forth in this subchapter;

(3) not participate in activities where a conflict of interest might arise, pursuant to §295.307 of this title (relating to Conflict of Interest and Disclosure Requirement) and disclose any known or potential conflicts of interest to any party affected or potentially affected by such conflicts;

(4) provide only necessary and desired services to a client and not sell unnecessary or unwanted products or services;

(5) to the extent required by law, keep confidential any personal information regarding a client (including medical conditions) obtained during the course of a mold-related activity;

(6) not misrepresent any professional qualifications or credentials;

(7) not provide to the department any information that is false, deceptive, or misleading;

(8) cooperate with the department by promptly furnishing required documents or information and by promptly responding to requests for information;

(9) not work if impaired as a result of drugs, alcohol, sleep deprivation or other conditions and not allow those under their supervision to work if known to be impaired;

(10) maintain knowledge and skills for continuing professional competence and participate in continuing education programs and activities;

(11) not make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding;

(12) not make a representation that is designed to take advantage of the fears or emotions of the public or a customer;

(13) provide mold-related services at costs in keeping with industry standards; and

(14) if the credentialed person is an accredited mold training provider or a licensed mold analysis laboratory, notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department:

(A) on each written contract for services; or

(B) in each bill for services provided to the client.

(c) Duty to report ethical violations. All credentialed persons:

(1) have the responsibility of promptly reporting alleged misrepresentations or violations of the Act or this subchapter to the department;

(2) are responsible for competent and efficient performance of their duties and shall report to the department incompetent, illegal or unethical conduct of any practitioner of mold assessment and/or remediation; and

(3) shall not retaliate against any person who reported in good faith to the department alleged incompetent, illegal or unethical conduct.

§295.305. Credentials: General Conditions.

(a) Licensing or registration requirement. A person must be licensed or registered in compliance with this subchapter to engage in mold assessment or mold remediation unless specifically exempted under §295.303 of this title (relating to Exceptions and Exemptions).

(b) Accreditation requirement. A person must be accredited as a mold training provider in compliance with this subchapter to offer mold training for fulfillment of specific training requirements for licensing under this subchapter.

(c) Age requirement. Each individual applying to be licensed or registered under this subchapter must be at least 18 years old at the time of application.

(d) Office requirement. A person licensed under this subchapter must maintain an office in Texas. An individual employed by a person licensed under this subchapter is considered to maintain an office in Texas through that employer.

(e) Training requirement.

(1) An applicant for an initial license under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements), or §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) must successfully complete an initial training course offered by a department-accredited training provider in that area of licensure and receive a course-completion certificate before applying for the license. This paragraph does not apply to applicants who submit complete applications to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork.

(2) Except as described under subsection (g)(3) of this section, an applicant for renewal of a license listed under paragraph (1) of this subsection must successfully complete a refresher training course offered by a department-accredited training provider in the area of licensure for which renewal is sought and receive a course-completion certificate before applying for the renewal. The applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course and no earlier than 12 months prior to the expiration date of the license.

(3) Except as described under subsection (g)(3) of this section, an applicant for an initial or renewal registration under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must successfully complete a training course as described under §295.320(d) and (f) of this title (relating to Training: Required

Mold Training Courses) and receive a course-completion certificate before applying for the registration. If a refresher course is required, the applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course and no earlier than 12 months prior to the expiration date of the registration.

(f) Examination requirement. In accordance with §295.310 of this title (relating to Licensing: State Licensing Examination), an applicant for an initial license under §§295.311, 295.312, or 295.315 of this title must pass the state licensing examination in that area of licensure with a score of at least 80% correct before applying for the license. All applicants must pass the state examination within six months of completing any training course required under subsection (e)(1) of this section in three or fewer attempts or must successfully complete a new initial training course before re-taking the state examination.

(g) Applications. Each application for a credential or approval must provide all required information. An applicant shall indicate that a question does not apply by answering "not applicable" or "N/A". Applicants must submit complete applications, including all supporting documents, for each credential or approval sought.

(1) An applicant for an initial license under §§295.311, 295.312, or 295.315 of this title must submit the complete application to the department within six months of passing the required state licensing examination, as evidenced by a postmark or shipping documents, or must successfully complete a new initial training course, receive a new training certificate, and pass a new state examination before submitting a new initial license application.

(2) An applicant for an initial or renewal registration under §295.314 of this title must submit the complete application to the department within ten calendar days (not working days) of successfully completing the required training course, as evidenced by a postmark or shipping paperwork.

(3) An applicant for a renewal of a license listed under paragraph (1) of this subsection must successfully complete a required refresher training course and receive a course-completion certificate before applying for renewal, except that this paragraph does not apply to a holder of an initial license that is valid for one year, as described under subsection (h)(1) and (2)(A) of this section. The applicant must complete the refresher course before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and no later than 24 months after completion of the previous course.

(h) Term and expiration.

(1) All credentials issued before January 1, 2005, are valid for one year and expire on the anniversary of the effective date.

(2) A credential issued between January 1, 2005, and December 31, 2005 (including renewal of a credential issued before January 1, 2005, regardless of the issue date of the renewal) is valid for:

(A) one year and expires on the anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an odd number; or

(B) two years and expires on the second anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an even number.

(3) All credentials issued on or after January 1, 2006, except as specified in paragraph (2) of this subsection, are valid for two years and expire on the second anniversary of the effective date.

(4) Fees commensurate with a two-year credential must be included with any application for a credential that will expire on the second anniversary of its effective date.

(5) A credential holder is in violation of this subchapter if the holder practices with lapsed qualifications.

(i) Condition of issuance. No credential, identification (ID) card, or approval issued under this subchapter shall be sold, assigned, or transferred. ID cards issued by the department must be present at the worksite any time an individual is engaged in mold-related activities. The department retains the right to confiscate and revoke any credential, ID card, or approval that has been altered.

(j) Credentialed persons other than individuals. A mold assessment company, mold remediation company, mold analysis laboratory, or mold training provider that has been issued a credential under this subchapter:

(1) shall designate one or more individuals as responsible persons. The credentialed person must notify the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences;

(2) shall not transfer that credential to any other person, including to any company that has bought the credentialed entity. The credentialed entity must apply for a new credential within 60 days of being bought; and

(3) must submit to the department a name-change application and a processing fee of $20 within 60 days of any change.

§295.306. Credentials: General Responsibilities.

(a) Persons who are licensed, registered, or accredited under this subchapter shall:

(1) adhere to the code of ethics prescribed by §295.304 of this title (relating to Code of Ethics);

(2) comply with work practices and procedures of this subchapter;

(3) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement);

(4) maintain any insurance required under §295.309 of this title (relating to Licensing: Insurance Requirements) while engaging in mold-related activities regulated under this subchapter;

(5) cooperate with department personnel in the discharge of their official duties, as described in §295.329 of this title (relating to Compliance: Inspections and Investigations); and

(6) notify the department of changes in mailing address and telephone number.

(b) All individuals who are required to be licensed or registered under this subchapter must have a valid department-issued identification card present at the worksite when engaged in mold-related activities, except as provided under §295.314(e) of this title (relating to Mold Remediation Worker: Registration Requirements) for applicants for registration as mold remediation workers.

(c) The license holder overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client is provided a copy of the department Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(d) A credentialed person who becomes aware of violations of this subchapter must report these violations within 24 hours to the

department if, to that person's knowledge, the responsible party has not corrected the violations within that timeframe.

(e) The individual that is designated by a licensed mold assessment company or mold remediation company as its responsible person shall not be the responsible person for another licensee with the same category of license.

(f) Credentialed persons are responsible for determining whether the mold-related activities in which they will engage require additional credentials beyond those required under this subchapter.

§295.308. Credentials: Applications and Renewals.

(a) General requirements. Applications for a license, registration or accreditation must be made on forms provided by the department and signed by the applicant. The department shall consider only complete applications. The application form must be accompanied by:

(1) a check or money order for the amount of the required fee made payable to the department, unless the application fee is paid through TexasOnline, as provided under the Texas Government Code, Chapter 2054, §2054.252 (relating to TexasOnline Project);

(2) a current one-inch by one-inch photograph of the applicant's face (or, if the application is for a company license, of the face of the individual designated as the responsible person for the company) with a white background. The photograph of the face is not required with applications for approvals. If the application is for an individual license and successful completion of a department-approved training course is being used to satisfy the training requirement, a copy of the wallet-size photo-identification card from the applicable training course as required under §295.318(f)(6)(B) of this title (relating to Mold Training Provider: Accreditation) must also be submitted; and

(3) proof that the applicant meets all other requirements for obtaining the credential being sought.

(b) Inquiries. Applicants who wish to discuss or obtain information concerning qualification requirements may call the program administrator at (512) 834-4509 or (800) 293-0753 (toll-free). Applicants may visit the Mold Licensing Program's website at www.tdh.state.tx.us/beh/mold to obtain information and download forms.

(c) Denials. The department may deny a credential to a person who fails to meet the standards established by this subchapter.

(d) Processing applications and renewals.

(1) Reimbursement of fees. The department shall refund application fees, less an administrative fee of $50 ($20 for remediation worker applications), if an applicant does not meet the requirements for the credential. The department shall refund fees paid in excess of the amounts required under this subchapter, less a $10 administrative fee. The department will not refund fees if the application was abandoned due to the applicant's failure to respond to a written request from the department for a period of 90 days.

(2) Contested case hearing. The applicant has the right to request a hearing in writing within 30 days of the date on the department's letter denying the credential. The hearing will be conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the department's formal hearing rules in Chapter 1 of this title.

(e) Renewal notices. At least 60 days before a person's license, registration, or accreditation is scheduled to expire, the department shall send a renewal notice by first-class mail to the person's last known address from the department's records. A person credentialed by the department retains full responsibility for supplying the department with a correct current address and phone number. The renewal notice will state:

(1) the type of credential requiring renewal;

(2) the time period allowed for renewal;

(3) the amount of the renewal fee; and

(4) how to obtain and submit a renewal application.

(f) Renewal requirements. A person seeking to renew a license, registration, or accreditation shall submit a renewal application no sooner than 60 days before the credential expires. The department shall renew the license, registration, or accreditation for a term as provided under §295.305(h) of this title (relating to Credentials: General Conditions) if the person:

(1) is qualified to be credentialed;

(2) pays to the department the nonrefundable renewal fee;

(3) submits to the department a renewal application on the prescribed form along with all required documentation; and

(4) has complied with all final orders resulting from any violations of this subchapter, unless an exception is granted in writing by the department and submitted with the application.

(g) Renewals and late fees. A person shall not perform any mold-related activity with an expired license, registration, or accreditation. If a person makes a timely and complete application for the renewal of a valid credential, the credential does not expire until the department has finally granted or denied the application. The department shall renew a credential that has been expired for 180 days or less if the person meets the requirements of subsection (f) of this section. A person whose credential has been expired for more than 180 days must obtain a new credential and must comply with current requirements and procedures, including any state examination requirements.

(h) Replacements. A person desiring a replacement credential or ID card shall submit a request in writing on a department-issued form with a $20 fee.

§295.309. Licensing: Insurance Requirements.

(a) Persons required to have insurance must, at a minimum, obtain policies for commercial general liability insurance in the amount of not less than $1 million per occurrence. Governmental entities that are self-insured are not required to purchase insurance under this subchapter. A non-governmental entity (business entity or individual) may be self-insured if it submits to the department for approval an affidavit signed by an authorized official of the entity or by the individual stating that it has a net worth of at least $1 million. A current financial statement indicating a net worth of at least $1 million must accompany the affidavit. A new affidavit and current financial statement must be submitted with each renewal application. An individual required to have insurance must obtain individual coverage unless covered under the policy of the individual's employer or employed by a governmental entity or a person approved by the department to be self-insured. Insurance policies required under this section must be currently in force and must be written by:

(1) an insurance company authorized to do business in Texas;

(2) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Article 1.14-2 (relating to Surplus Lines Insurance);

(3) a Texas registered risk retention group; or

(4) a Texas registered purchasing group.

(b) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Texas Department of Health, Toxic Substances Control Division, as a certificate holder. Each required policy shall be endorsed to provide the department with at least a 30-day notice of cancellation or material change for any reason.

(c) An applicant for an initial or renewal license must provide proof of insurance in one of the following forms:

(1) a copy of the required certificate of insurance;

(2) if claiming to be self-insured, a statement that it is a governmental entity, or, if a non-governmental entity, the affidavit and current financial statement described under subsection (a) of this section; or

(3) proof that the applicant is employed by a licensed mold assessment or remediation company that has the required insurance.

(d) The department may impose an administrative penalty or take other disciplinary action against any person who fails to have the insurance required under this section.

(1) If a policy is canceled or materially changed, the licensee shall notify the department in writing not later than 20 calendar days prior to the change or cancellation effective date. A licensed company may file a single notification for the company and its licensed employees.

(2) If a policy expires or is canceled or materially changed, the policy shall promptly be renewed or replaced without any lapse in coverage. If no insurance is in effect, the licensee shall cease work. Prior to resuming work, the licensee must either:

(A) provide to the department a certificate of the renewal or replacement policy; or

(B) submit to the department the affidavit and current financial statement described under subsection (a) of this section and receive departmental approval to be self-insured.

(3) If an individual licensee ceases to be covered under an employer's insurance, the individual must obtain replacement coverage either individually or through a new employer. The individual must submit the documentation required under subsection (c) of this section to the department before engaging in any mold-related activities.

§295.310. Licensing: State Licensing Examination.

(a) Examination requirements.

(1) An applicant for an initial individual license who has successfully completed the required training course from a department-accredited training provider must pass the state examination with a score of at least 80% correct prior to applying for the license. The applicant must pass the examination within six months of completing the training course.

(2) An applicant is permitted to take the state examination before January 1, 2005, without completing a training course approved under §295.319 of this title (relating to Training: Approval of Training Courses and Instructors) if the applicant has successfully completed the applicable training allowed under §295.311(c)(2) of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312(c)(2) of this title (relating to Mold Assessment Consultant: Licensing Requirements), or §295.315(c)(2) of this title (relating to Mold Remediation Contractor: Licensing Requirements). The applicant must pass the examination with a score of at least 80% correct and submit a complete application to the department before January 1, 2005 (as evidenced by a postmark or shipping paperwork). An applicant who fails to pass the examination in three or fewer attempts or to submit a complete application before January 1, 2005, must successfully complete a training course approved under §295.319 of this title and then pass a state examination with a score of at least 80% correct before re-applying for a license.

(b) Re-examination. An individual is permitted to take two re-examinations after failing an initial examination. An individual who fails both re-examinations must repeat the initial training course, submit a new application for the state examination, and provide a copy of the new training certificate.

(c) Scheduling and registration. Annually, the department shall publish a schedule of examination dates and locations. Training providers shall provide state examination schedules as a part of their instruction. Registrations must be submitted by mailing, faxing, or e-mailing a registration form to the administrator and must be received by the department no later than five working days before the examination date. Information on the examination schedule and assistance with registration is available by calling the Mold Licensing Program at (512) 834-4509 or (800) 293-0753 (toll-free in Texas). Entrance into the examination site will be allowed only upon presentation of a valid photo identification from an accredited training provider. Companies with 30 or more employees to be tested may call the department to arrange an additional examination date for a $50 per person examination fee.

(d) Fees. A fee of $25 is required for any examination or re-examination. A fee of $50 per person shall be paid for examinations administered at locations and times other than those published. The department must receive the required fees no later than five working days before the examination.

(e) Grading and reporting of examination scores. A grade of at least 80% correct must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the examination is taken. Information regarding re-examination, if necessary, will be included.

(f) Request for information concerning examination. If requested in writing by an individual who fails a licensing examination, the department shall furnish the individual with a written analysis of the individual's performance on the examination.

§295.311. Mold Assessment Technician: Licensing Requirements.

(a) Licensing requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), as of January 1, 2005, an individual must be licensed as a mold assessment technician to perform activities listed under subsection (b) of this section, except that an individual licensed under §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements) is not required to be separately licensed under this section.

(b) Scope. An individual licensed under this section is authorized to determine the location and extent of mold or suspected mold present in a facility. A mold assessment technician is licensed to:

(1) record visual observations and take on-site measurements, including temperature, humidity, and moisture levels, during an initial or post-remediation mold assessment;

(2) collect samples for mold analysis during an initial mold assessment;

(3) prepare a mold assessment report; and

(4) as directed by an on-site assessment consultant, collect samples during a post-remediation mold assessment.

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must be a high school graduate or have obtained a General Educational Development (GED) certificate. If the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, the applicant may satisfy the training requirement under §295.305(e)(1) of this title by either:

(1) successfully completing an initial mold assessment technician course offered by a department-accredited training provider and receiving a course-completion certificate; or

(2) successfully completing, within four years prior to the application date, a minimum of 24 hours of instruction in mold assessment. The applicant is not required to receive all 24 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must be offered by one of the following:

(A) a college or university accredited by an organization recognized by the Council for Higher Education Accreditation;

(B) a training provider accredited by the federal government to provide instruction on hazardous materials;

(C) a national professional organization that is administered by an active board of directors and whose criteria for full membership include minimum education and experience requirements and adherence to a published code of ethics;

(D) an organization that is administered by an active board of directors, that offers certification to individuals who fulfill minimum education and experience requirements at least equivalent to the education and experience requirements under this section, and that requires passing a certification examination with a score of at least 80% correct in order to receive the certification; or

(E) a training provider that is approved by an organization meeting the requirements under subparagraph (D) of this paragraph to offer training required by the organization.

(d) Fees. The fees for a mold assessment technician license are:

(1) $100 for a one-year license issued before January 1, 2006; and

(2) $200 for a two-year license issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following:

(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:

(A) a copy of a high school diploma or GED certificate;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) proof of successfully fulfilling the training requirement under subsection (c)(1) and (2) of this section; and

(D) proof of successfully passing the state licensing examination with a score of at least 80% correct;

(2) if the application is for an initial license and a complete application is submitted to the department on or after January 1, 2005:

(A) a copy of a high school diploma or GED certificate;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training as described in §295.320(b) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 80% correct; or

(3) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment technician shall:

(1) perform only activities allowed under subsection (b) of this section;

(2) comply with mold sampling protocols accepted as industry standards, as presented in training course materials or as required by his/her employer;

(3) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples; and

(4) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment, if the technician is not acting as an employee of a licensed mold assessment consultant or company.

§295.312. Mold Assessment Consultant: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), as of January 1, 2005, an individual must be licensed as a mold assessment consultant to perform activities listed under subsection (b) of this section. A licensed mold assessment consultant who employs two or more individuals required to be licensed under this section or §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) must be separately licensed as a mold assessment company under §295.313 of this title (relating to Mold Assessment Company: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under §295.313 of this title.

(b) Scope. An individual licensed under this section is also licensed to perform all activities of a mold assessment technician listed in §295.311(b) and (f) of this title. In addition, a licensed mold assessment consultant is licensed to:

(1) plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;

(2) conduct activities recommended in a plan developed under paragraph (1) of this subsection and describe and interpret the results of those activities;

(3) determine locations at which a licensed mold assessment technician will record observations, take measurements, or collect samples;

(4) prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis results

of samples taken by the consultant or by a licensed mold assessment technician during the mold assessment;

(5) develop a mold management plan for a building, including recommendations for periodic surveillance, response actions, and prevention and control of mold growth;

(6) prepare a mold remediation protocol, including the evaluation and selection of appropriate methods, personal protective equipment (PPE), engineering controls, project layout, post-remediation clearance evaluation methods and criteria, and preparation of plans and specifications;

(7) evaluate a mold remediation project for the purpose of certifying that mold contamination identified for the remediation project has been remediated as outlined in a mold remediation protocol;

(8) evaluate a mold remediation project for the purpose of certifying that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause; and

(9) complete appropriate sections of a mold remediation certificate as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner).

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must:

(1) meet at least one of the following education and/or experience requirements:

(A) a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences, and at least one year of experience in an allied field;

(B) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field;

(C) a high school diploma or a General Educational Development (GED) certificate and at least five years of experience in an allied field; or

(D) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience in an allied field; and

(2) if a complete application for an initial license is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:

(A) successfully completing an initial mold assessment consultant course offered by a department-accredited training provider and receiving a course-completion certificate; or

(B) successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold assessment. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(c)(2)(A) - (E) of this title.

(d) Fees. The fees for a mold assessment consultant license are:

(1) $300 for a one-year license issued before January 1, 2006; and

(2) $600 for a two-year license issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1)(A) - (D) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) proof of successfully fulfilling the training requirement under subsection (c)(2) of this section; and

(D) proof of successfully passing the state licensing examination with a score of at least 80% correct;

(2) if the application is for an initial license and a complete application is submitted to the department on or after January 1, 2005:

(A) all documentation required under paragraph (1)(A), (B), and (D) of this subsection; and

(B) a copy of a certificate of training as described in §295.320(c) of this title (relating to Training: Required Mold Training Courses); or

(3) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment consultant shall:

(1) provide adequate consultation to the client to diminish or eliminate hazards or potential hazards to building occupants caused by the presence of mold growth in buildings;

(2) provide, in accordance with a client's instructions, professional services concerning surveys, building conditions that have or might have contributed to mold growth, proper building operations and maintenance to prevent mold growth, and compliance with work practices and standards;

(3) comply with mold sampling protocols as presented in training course materials or as required by his/her employer;

(4) inquire of the client whether any hazardous materials, including lead-based paint and asbestos, are present in the project area;

(5) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(6) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title and §295.311 or §295.312 of this title, respectively;

(7) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment. If the consultant includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(8) provide to the client a mold remediation protocol before a remediation project begins;

(9) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(10) if he/she performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(f) of this title (relating to Post-Remediation Assessment and Clearance);

(11) provide a passed clearance report to the client as specified under §295.324(e) of this title and complete applicable sections of a certificate of mold remediation as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner);

(12) comply with recordkeeping responsibilities under §295.326(c) of this title (relating to Recordkeeping);

(13) sign and date each mold assessment report and each mold management plan that he/she prepares and include his/her license number and expiration date on each report and each plan;

(14) sign and date each mold remediation protocol on the cover page, including his/her license number and expiration date. The consultant must also initial the protocol on every page that addresses the scope of work and on all drawings related to the remediation work; and

(15) review and approve changes to any protocol by signing or initialing according to paragraph (14) of this subsection.

§295.313. Mold Assessment Company: Licensing Requirements.

(a) Licensing requirements. A person performing mold assessment work on or after January 1, 2005 must be licensed as a mold assessment company if the person employs two or more individuals required to be licensed under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) or §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under this section. A mold assessment company shall designate one or more individuals licensed as mold assessment consultants as its responsible person(s).

(b) Authorization and conditions. As a condition of licensure, a mold assessment company must:

(1) notify the department in writing of any changes in individual licensed mold assessment consultants as responsible persons within 10 days of such occurrences;

(2) maintain commercial general liability insurance, as described in §295.309 of this title (relating to Licensing: Insurance Requirements);

(3) refrain from mold assessment activity during any period without the active employment of at least one individual licensed mold assessment consultant designated as the responsible person for the company;

(4) notify the department in writing of any change related to a person who has an ownership interest of 10% or more (including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list) within 10 days of the change; and

(5) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement).

(c) Eligibility for licensing. To be eligible for licensing, an applicant must:

(1) employ at least one licensed mold assessment consultant; and

(2) maintain an office in Texas.

(d) Fees. The fees for a mold assessment company license are:

(1) $500 for a one-year license issued before January 1, 2006; and

(2) $1,000 for a two-year license issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) proof of compliance with the insurance requirement specified in §295.309 of this title;

(2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the company; and

(3) the name and license number of each licensed mold assessment consultant designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment company shall:

(1) follow the recordkeeping requirements, at both the Texas office and work site locations, as described in §295.326(c) of this title (relating to Recordkeeping);

(2) provide each client with a mold assessment report following an initial (pre-remediation) mold assessment. If the company includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(3) provide each client a mold remediation protocol before remediation begins;

(4) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(5) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title (relating to Training: Required Mold Training Courses) and §295.311 or §295.312 of this title, respectively;

(6) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(7) maintain commercial general liability insurance, as described in §295.309 of this title;

(8) if the company performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(f) of this title (relating to Post-Remediation Assessment and Clearance); and

(9) provide a passed clearance report to the client as specified under §295.324(e) of this title and provide a certificate of mold remediation, with applicable sections completed by a mold assessment consultant, to a mold remediation company or contractor, as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner).

§295.314. Mold Remediation Worker: Registration Requirements.

(a) Registration requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), as of January 1, 2005, an individual must be registered as a mold remediation worker to perform mold remediation, except that an individual licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) is not required to be separately registered under this section.

(b) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions), an applicant must:

(1) be employed by a licensed mold remediation contractor or company; and

(2) complete a mold remediation worker training course provided by either the applicant's employer or an accredited mold training provider, as described under §295.320(d) of this title (relating to Training: Required Mold Training Courses).

(c) Fees. The fees for a mold remediation worker registration are:

(1) $30 for a one-year registration issued before January 1, 2006; and

(2) $60 for a two-year registration issued on or after January 1, 2005.

(d) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals) and shall include a copy of the training certificate required under §295.320(d)(5)(A) of this title, unless the applicant is exempt under §295.305(g)(3) of this title. An applicant must submit an application to the department within ten calendar days of completing a worker training course, as evidenced by a postmark or shipping paperwork.

(e) Interim registration. An individual who has successfully completed remediation worker training and received a training certificate may perform mold remediation work allowed under this section for a period of not more than 30 days from the training date if:

(1) the individual has submitted an application for registration to the department as required under subsection (d) of this section;

(2) a copy of the training certificate is present at the work site at all times while the individual engages in mold remediation; and

(3) the individual is in possession of a valid government-issued photo identification at all times while performing mold remediation work.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a registered mold remediation worker shall use remediation techniques specified in the project mold remediation work plan.

(g) Prohibitions. Registered mold remediation workers are prohibited from:

(1) performing mold remediation except under the supervision, as defined in §295.303(f) of this title, of a licensed remediation contractor; and

(2) engaging in any mold-related activity requiring licensing as a remediation contractor under this subchapter.

§295.315. Mold Remediation Contractor: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), as of January 1, 2005, an individual must be licensed as a mold remediation contractor to perform activities listed under subsection (b) of this section. A licensed mold remediation contractor who employs one or more individuals required to be licensed under this section or §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must be separately licensed as a mold remediation company under §295.316 of this title (relating to Mold Remediation Company: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under §295.316 of this title.

(b) Scope. An individual licensed under this section may perform mold remediation and supervise registered mold remediation workers performing mold remediation. In addition, a licensed mold remediation contractor is licensed to provide mold remediation services including:

(1) preparing a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project; and

(2) conducting and interpreting the results of activities recommended in a work plan developed under paragraph (1) of this subsection, including any of the activities of a registered mold remediation worker under §295.314 of this title.

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must:

(1) meet at least one of the following education and/or experience requirements:

(A) a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences and at least one year of experience either in an allied field or as a general contractor in building construction;

(B) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field or as a general contractor in building construction;

(C) a high school diploma or General Educational Development (GED) certificate, plus at least five years of experience in an allied field or as a general contractor in building construction; or

(D) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year

of experience either in an allied field or as a general contractor in building construction; and

(2) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:

(A) successfully completing an initial mold remediation contractor course offered by a department-accredited training provider and receiving a course-completion certificate; or

(B) successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold remediation. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(c)(2)(A) - (E) of this title (relating to Mold Assessment Technician: Licensing Requirements).

(d) Fees. The fees for a mold remediation contractor license are:

(1) $250 for a one-year license issued before January 1, 2006; and

(2) $500 for a two-year license issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) proof of successfully fulfilling the training requirement under subsection (c)(2) of this section; and

(D) proof of successfully passing the state licensing examination with a score of at least 80% correct;

(2) if the application is for an initial license and a complete application is submitted to the department on or after January 1, 2005:

(A) verifiable evidence that the applicant meets at least one of the qualifications under subsection (c)(1) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training indicating successful completion within the past six months of an initial training course offered by a department-accredited training provider as described in §295.320(e) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination; or

(3) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation contractor shall be responsible for:

(1) accurate interpretation of field notes, drawings, and reports relating to mold assessments;

(2) advising clients about options for mold remediation;

(3) complying with standards for preparing mold remediation work plans, as presented in training course materials or as required by the mold remediation company by whom the contractor is employed;

(4) providing to a client a mold remediation work plan for the project before the mold remediation begins;

(5) inquiring of the client whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area;

(6) signing and dating each mold remediation work plan that he/she prepares on the cover page. The cover page shall also include his/her license number and expiration date. He/she must also initial the work plan on every page that addresses the scope of work and on all drawings related to the remediation work;

(7) submitting the required notification to the department, as described in §295.325 of this title (relating to Notifications), unless employed by a licensed mold remediation company;

(8) ensuring that all individuals who conduct activities specified under paragraph (4) of this subsection are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322(c) of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(9) if the mold remediation contractor is doing business as a sole proprietorship and is not required to be separately licensed as a mold remediation company under §295.316 of this title (Mold Remediation Company: Licensing Requirements):

(A) ensuring that the training, as described in §295.320 of this title (relating to Training: Required Mold Training Courses), and license of each employee who is required to be licensed under this subchapter is current;

(B) ensuring that the training, as described in §295.320 of this title, and registration of each registered employee is current;

(C) ensuring that each unregistered employee who is required to be registered under this subchapter is provided the training required under §295.320(d) of this title before performing any mold remediation work;

(D) complying with all requirements under §295.320(d) of this title if the contractor provides the training; and

(E) ensuring that a previously unregistered employee who is provided training as specified in subparagraph (C) of this paragraph:

(i) has applied to the department for registration before allowing that employee to perform any mold remediation work, except as provided under §295.314(e) of this title; and

(ii) is registered before allowing that employee to perform any mold remediation work more than 30 days after the date of the training, in accordance with §295.314(e) of this title;

(10) complying with recordkeeping responsibilities under §295.326 of this title (relating to Recordkeeping); and

(11) providing to the property owner a completed mold remediation certificate as specified under §295.327 of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner).

§295.316. Mold Remediation Company: Licensing Requirements.

(a) Licensing requirements. A person performing mold remediation work on or after January 1, 2005 must be licensed as a mold remediation company if the person employs one or more individuals required to be registered under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) or licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under this section. A mold remediation company shall designate one or more individuals licensed as mold remediation contractors as its responsible person(s).

(b) Authorization and conditions. A licensed mold remediation company is specifically authorized to employ mold remediation contractors and mold remediation workers who are currently licensed or registered under this subchapter to assist in the company's mold remediation activity. As a condition of licensure, a mold remediation company must:

(1) employ at least one licensed mold remediation contractor and refrain from mold remediation activity during any period without the active employment of at least one individual licensed mold remediation contractor designated as the responsible person for the company;

(2) notify the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences;

(3) maintain commercial general liability insurance, as described under §295.309 of this title (relating to Licensing: Insurance Requirements);

(4) notify the department in writing of any change related to a person who has an ownership interest of 10% or more (including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list) within 10 days of the change; and

(5) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement).

(c) Fees. The fees for a mold remediation company license are:

(1) $500 for a one-year license issued before January 1, 2006; and

(2) $1,000 for a two-year license issued on or after January 1, 2005.

(d) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) proof of compliance with the insurance requirement specified in §295.309 of this title;

(2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the company; and

(3) the name and license number of each licensed mold remediation contractor designated by the applicant as a responsible person.

(e) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation company shall be responsible for:

(1) complying with recordkeeping requirements, at both central office and work site locations, as described in §295.326 of this title (relating to Recordkeeping);

(2) submitting the required notification to the department, as required under §295.325 of this title (relating to Notifications);

(3) providing to each client a mold remediation work plan for the project before the mold remediation begins;

(4) ensuring that all employees who will conduct mold remediation activities are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322 of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(5) ensuring that the training, as described in §295.320 of this title (relating to Training: Required Mold Training Courses), and license of each employee who is required to be licensed under this subchapter is current;

(6) ensuring that the training, as described in §295.320 of this title, and registration of each registered employee is current;

(7) ensuring that each unregistered employee who is required to be registered under this subchapter is provided the training required under §295.320(d) of this title before performing any mold remediation work;

(8) complying with all requirements under §295.320(d) of this title if the company provides the training; and

(9) ensuring that a previously unregistered employee who is provided training as specified in paragraph (7) of this paragraph:

(A) has applied to the department for registration before allowing that employee to perform any mold remediation work, except as provided under §295.314(e) of this title; and

(B) is registered before allowing that employee to perform any mold remediation work more than 30 days after the date of the training, in accordance with §295.314(e) of this title.

§295.317. Mold Analysis Laboratory: Licensing Requirements.

(a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to engage in activities listed under subsection (b) of this section on or after January 1, 2005. Branch offices that perform mold analysis must fulfill the same equipment and operational standards as the main office that has been licensed and must be accredited in accordance with subsection (c) of this section for the types of analysis they will be performing.

(b) Scope. A person licensed under this section is authorized to analyze samples collected during mold-related activities to:

(1) determine the presence, identity, or amount of mold present;

(2) provide any other information regarding the sample that the submitter requests; or

(3) obtain any other information that the laboratory deems useful.

(c) Qualifications. Applicants must submit documentation showing that:

(1) either:

(A) the laboratory is accredited by the American Industrial Hygiene Association under the Environmental Microbiology Laboratory Accreditation Program (EMLAP);

(B) the laboratory is accredited or certified by a program deemed equivalent by the department for the preparation and analysis of mold;

(C) all individuals who will analyze mold samples are accredited by the Pan-American Aerobiology Certification Board or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable samples; or

(D) all individuals who will analyze the mold samples:

(i) have at least a bachelor's degree in microbiology or biology;

(ii) have successfully completed training in mold analysis offered by the McCrone Research Institute or by a program deemed equivalent by the department, including receiving a training certificate; and

(iii) have a least three years of experience as a mold microscopist; and

(2) mold analysis activity at the laboratory is overseen by a full-time mycologist or microbiologist with either:

(A) an advanced academic degree; or

(B) at least two years of experience in mold analysis.

(d) Fees. The fees for a mold analysis laboratory license are:

(1) $500 for a one-year license issued before January 1, 2006; and

(2) $1,000 for a two-year license issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) the name, address, and occupation of each person that has an ownership interest of 10% or more in the laboratory;

(2) evidence that the laboratory meets one of the qualification requirements under subsection (c)(1) of this section;

(3) proof of compliance with the insurance requirements specified in §295.309 of this title (relating to Licensing: Insurance Requirements); and

(4) the name of each individual designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold analysis laboratory shall be responsible for:

(1) following recordkeeping requirements as described in §295.326(d) of this title (relating to Recordkeeping);

(2) providing to a client, as applicable, details of analysis methods used, amounts (percentages) analyzed, raw counts for each genus of mold that is identified, magnification used for counting and identifying mold, and culture media and conditions used;

(3) ensuring that all employees who will conduct mold analysis are properly trained in analysis techniques;

(4) maintaining accreditation required under subsection (c) of this section. A licensed mold assessment laboratory that loses the required accreditation must:

(A) provide to the department written notification of a change in accreditation status within 10 working days of the change; and

(B) cease providing services related to the licensure until the accreditation is reinstated;

(5) notifying the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences; and

(6) maintaining commercial general liability insurance, as described in §295.309 of this title.

§295.318. Mold Training Provider: Accreditation.

(a) Accreditation requirement. A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) No person shall advertise or offer as initial or refresher training courses, for fulfillment of requirements for licensing under this subchapter, any courses that the department has not approved under §295.319 of this title (relating to Training: Approval Of Training Courses and Instructors). Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance.

(2) Accredited training providers must offer approved courses as described below.

(A) Each initial and refresher course shall address only one licensee and shall not be combined with other areas of licensure. Initial training courses shall not be combined with refresher courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(B) Each course shall be conducted in one language throughout and not combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.

(3) Each accredited training provider shall submit schedules for approved training courses to the department at least 14 calendar days prior to the start of any course on the schedule. Requests for exceptions to the 14-day rule shall be submitted in writing to the program administrator along with a written justification describing why the notice could not be submitted earlier. Approval requests for shorter notice must be received by the department 72 hours prior to the start of the course and will be granted in writing if approved. A training provider that cancels a scheduled course must notify the department in writing at least 24 hours prior to the scheduled start time of the course. The department will accept facsimiles of cancellation notices. If the training provider cannot provide written notice of cancellation at least

24 hours in advance, the training provider shall notify the department by phone not later than two hours after the scheduled class start time and provide a written explanation of the short cancellation notice within 24 hours of the phone call.

(4) Training courses must be conducted during scheduled hours as notified in accordance with paragraph (3) of this subsection. Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.

(5) A training provider must require instructors and guest speakers to present in person at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

(6) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.

(7) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.

(8) Approved training courses shall be conducted in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.

(9) Course instructors shall maintain a master attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.

(10) An accredited training provider must verify and keep a written record of any student achieving a minimum score of 80% correct on each course test. The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course. The use of the same questions for both the original and re-test is not allowed. Oral tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet. If a student fails the re-test, the student must repeat the course and pass a new test.

(11) Each training provider shall send at least one course instructor to any meeting held by the department for the purpose of ensuring quality training. The department shall hold no more than two such meetings per year.

(12) An individual instructor shall not train himself/herself to qualify for a license or a registration.

(c) Qualification. To qualify for an accreditation, each applicant:

(1) must have a written policy concerning refunds and cancellations in all languages in which training is offered. The refund and cancellation policy must be made available to students prior to payment of fees and shall include the cancellation procedures;

(2) shall employ a mold training manager who:

(A) meets at least one of the following requirements:

(i) at least two years of experience, education, or training in teaching workers or adults;

(ii) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management; or

(iii) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(B) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;

(3) shall provide for each course a qualified principal instructor who meets the requirements under §295.319 of this title; and

(4) must develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(d) Fees. The fees for mold training provider accreditation are:

(1) $500 for a one-year accreditation issued before January 1, 2006; and

(2) $1,000 for a two-year accreditation issued on or after January 1, 2005.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include:

(1) for an initial accreditation, at least one complete application for approval of a training course and at least one complete application for approval of an instructor, as described under §295.319 of this title;

(2) for a renewal accreditation, a list of all of the training provider's courses and instructors currently approved by the department; and

(3) a description of the training provider's organization, including the address of its central office, the names and business addresses of its principals, a statement of any affiliation with another mold-related company doing business in Texas, and a listing of the courses to be offered. The organization shall designate a staff member as the mold training manager who meets the qualifications of subsection (c)(2) of this section.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), an accredited mold training provider shall be responsible for:

(1) confirming, before enrolling a student in a refresher training course, that the student has successfully completed a previous training course in the same area of licensure within 24 months;

(2) maintaining the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §295.320 of this title (relating to Training: Required Mold Training Courses);

(3) maintaining the validity and integrity of the course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;

(4) furnishing appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

(5) presenting to students all course information and material approved by the department;

(6) at the conclusion of each training course, providing to each student who successfully completes the course and passes the required test:

(A) a course-completion certificate as described in §295.319(c)(8) of this title;

(B) a wallet-size photo-identification card, indicating the course completed, the effective date, and a number identifier for the student;

(C) a current one-inch square photo of the student's face on a white background taken during the course to be attached by the student to an application for licensing or registration; and

(D) a copy of the application and schedule for the state licensing examination;

(7) submitting to the department, within 10 working days of the completion date of each course:

(A) the names and number identifiers of each student who attended the course, on a form provided by the department;

(B) individual one-inch square photos of the face of each student on a white background taken during the course; and

(C) a group photo taken at the end of the course that identifies which students did and did not pass the course. Digital or scanned images will be accepted. The group photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print;

(8) documenting that each person who receives a certificate has successfully completed an initial course in accordance with §295.320 of this title (relating to Training: Required Mold Training Courses) and has achieved a passing score on the written test. The training provider must maintain a file for each course that includes the training course name, dates and area of licensure, the names of all instructors and guest speakers who taught the course, a roster of all students in the course, a copy of the course test and each student's name and graded answer sheet, the date and location where the test was administered, the name of the test proctor, the names of students receiving certificates, the certificate numbers, and the expiration date of the training. All information from the training course and test must correspond to the information on each person's course-completion certificate. All records under this section shall be available for inspection by the department immediately upon conclusion of the course and the test; and

(9) complying with all requirements under §295.320(d) of this title if the company provides training to individuals seeking registration as mold remediation workers and maintaining copies of the required training documents at a central location at its Texas office.

(g) Inspections and audits. Training providers shall permit department representatives to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this subchapter. The following criteria are grounds for suspending or withdrawing training provider accreditations or instructor approvals under §295.330 of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation) or for assessing administrative penalties under §295.331 of this title (relating to Compliance: Administrative Penalty):

(1) failure to adhere to the training standards and requirements of this subchapter;

(2) misrepresentation of the extent of approval of a training course or instructor;

(3) falsification of records or submitting false information to the department;

(4) failure to submit required information in a timely manner; or

(5) failure to comply with these regulations in a manner that demonstrates a lack of ability, capacity or fitness to perform training duties and responsibilities.

§295.319. Training: Approval Of Training Courses and Instructors.

(a) General provisions. The department must approve all training courses and instructors in advance of the course being offered except as provided under §295.318(b)(1) of this title (relating to Mold Training Provider: Accreditation). Applications for approval of courses or instructors submitted with an application for initial accreditation under §295.318 of this title will be reviewed at the same time for no additional approval fee. Each application for course or instructor approval must be made on a separate application form.

(b) Fees. The application fee for approval of each initial or refresher training course is $100 per mold training course, except as provided in subsection (a) of this section. There is no separate application fee for approval of an instructor.

(c) Application for course approval. An application must be submitted to the department in writing. Within 30 working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. The department will approve or deny the application upon receipt of the complete application. A complete application for training course approval shall include:

(1) the training program provider's name, business address and telephone number;

(2) the area of licensure and type of course (initial or refresher) for which approval is being sought, including the course length in training hours;

(3) a detailed outline of each course curriculum including the specific topics taught, the amount of time allotted to each topic, and the amount and type of hands-on training for each topic;

(4) a description of the facilities and equipment available for lecture and hands-on training;

(5) a copy of the course test blueprint (written documentation of the proportion of test questions devoted to each major topic in the course);

(6) a copy of all course materials (student manuals, instructor notebooks, handouts, and other course-related materials) in all languages taught;

(7) the names and qualifications of all course instructors. Instructors must meet the requirements under subsection (e) of this section; and

(8) a description and example of the photo identification cards and course certificates to be issued to students. Each certificate must have a unique certificate number and must include:

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

(B) the student's name;

(C) a statement that the student successfully completed the course and the name and dates of the training course completed;

(D) an expiration date two years after the date of course completion;

(E) the signature of the course instructor; and

(F) the signature of the course director or the principal officer, owner, or chief executive officer of the training provider.

(d) Changes to training courses. An accredited training provider must receive department approval for changes to any of the items in subsections (c)(1) - (8) of this section. Accredited training providers must submit requests in writing and shall not offer training courses incorporating any changes until the department has granted approval.

(e) Application for instructor approval. Only state-approved instructors are permitted to provide instruction in courses required under this subchapter, except that guest speakers are permitted to provide limited instruction as provided under subsection (f) of this section. A training provider shall submit for approval a resume or other documentation to show the qualifications of each instructor conducting mold training courses. The department must approve all instructors before they are permitted to provide instruction. The training provider will notify the department of additions and deletions to its instructor roster within 15 working days of actual occurrence. Department approval of an instructor or a guest speaker for an area of licensure applies to that area of licensure only and does not convey approval for any other area of licensure.

(1) Instructor qualifications. Instructors shall be qualified in at least one of the categories in subparagraphs (A) - (D) of this paragraph. Instructor qualifications must be fully documented and verifiable by the department. The categories include:

(A) at least two years of actual hands-on experience in mold-related activities for the subject that the instructor will teach, and a high school diploma and completion of at least one teacher education course in vocational or industrial teaching;

(B) graduation from an accredited college or university with a bachelor's degree or advanced degree in natural or physical sciences or a related field, with one year of hands-on experience in mold-related activities;

(C) at least three years teaching experience and completion of one or more teacher education courses in vocational or industrial teaching from an accredited two or four year college, with one year of hands-on experience in mold-related activities; or

(D) a vocational teacher with certification from the Texas Education Agency with one year of hands-on experience in mold-related activities.

(2) Instructor training. Each instructor shall meet the training requirements under §295.305(e)(1) and (2) of this title (relating to Credentials: General Conditions) for each area of licensure in which the instructor seeks department approval to teach. Instructors are not required to be separately licensed or registered.

(3) Professional references. Each instructor application shall include three professional references attesting to teaching experience and mold-related qualifications of the applicant. No more than two references will be accepted from an applicant's current company. References must be submitted on a form provided by the department and must be mailed directly to the department by the author.

(4) Complete applications. The department shall consider only complete applications for instructor approval including sufficient, verifiable references.

(f) Guest speakers. Training providers may utilize guest speakers to present training who have documentable and verifiable professional expertise on the subject about which they are speaking. Training providers are not required to obtain department approval for guest speakers but must maintain proof of each guest speaker's qualifications as described under §295.326 of this title (relating to Recordkeeping).

(g) Suspension and revocation of approval. The following criteria are grounds for suspending or withdrawing approval from a training course or instructor under §295.330 of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation):

(1) failure of an instructor or guest speaker to adhere to the standards and requirements of this subchapter;

(2) failure of a training course, instructor, or guest speaker to provide training that meets the requirements of the department or this subchapter;

(3) falsification or misrepresentation by an instructor of his/her qualifications;

(4) submittal by an accredited training provider to the department of false information for training course or instructor approval;

(5) misrepresentation by an accredited training provider of the extent of a department-approved training course or instructor; and

(6) violation by an approved training course instructor or a guest speaker of other mold-related activity regulations in a manner that indicates a lack of ability, capacity or fitness to perform training duties and responsibilities.

§295.320. Training: Required Mold Training Courses.

(a) General provisions. Individual applicants for licensing or renewal must submit evidence acceptable to the department of fulfillment of specific training requirements.

(b) Assessment technician training. The assessment technician course shall consist of at least 24 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 50 multiple-choice questions. The course requirements in paragraphs (3), (5) - (8), and (10) of this subsection require hands-on training as an integral part of the course. The assessment technician course shall include:

(1) sources of, conditions necessary for, and prevention of indoor mold growth;

(2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

(3) workplace hazards and safety, including personal protective equipment, and respirators;

(4) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the mold assessment technician, and the roles of other professionals (including an assessment consultant);

(5) performance of visual inspections where mold might be present and determining sources of moisture problems, including exterior spaces (including crawlspaces and attics), interior components (including windows, plumbing, walls, and ceilings) and heating, ventilation, and air-conditioning (HVAC) systems (including return air and supply ducts);

(6) utilization of physical measurement equipment and tools, including moisture meters, humidity meters, particle counters, data-logging equipment, and visual and robotic inspection equipment;

(7) biological sampling strategies and methodologies, including sampling locations and techniques, and minimizing cross-contamination;

(8) sampling methodologies, including bulk, surface (including tape, swab, and vacuum sampling), and air sampling (including the differences between culturable and particulate sampling, sampling times, calibrating pumps, selecting media for culturable samples, and sampling for fungal volatile organic compounds);

(9) state-of-the-art work practices and new technologies;

(10) proper documentation for reports, including field notes, measurement data, photographs, structural diagrams, and chain-of-custody forms;

(11) an overview of mold remediation projects and requirements, including containment and air filtration; and

(12) clearance testing and procedures, including review of mold remediation protocols, work plans, visual inspections, and sampling strategies.

(c) Assessment consultant training. The assessment consultant course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 100 multiple-choice questions. The assessment consultant course shall include:

(1) all topics listed under subsection (b) of this section, including appropriate hands-on activities;

(2) requirements concerning workplace safety, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;

(3) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the assessment consultant, the roles of other professionals, recordkeeping and notification requirements, insurance, and legal liabilities;

(4) an overview of building construction, building sciences, moisture control, and water intrusion events;

(5) prevention of indoor air quality problems, including avoiding design and construction defects and improving maintenance and housekeeping;

(6) basics of HVAC systems and their relationship to indoor air quality (including pyschrometrics, filtration, ventilation and humidity control), HVAC inspection and assessment, and remediation of HVAC systems;

(7) survey protocols for effective assessment, covering the areas described under subsection (b)(5) - (8) of this section;

(8) interpretation of data and sampling results;

(9) interviewing building occupants, minimum requirements for questionnaires, and interpreting results;

(10) writing mold management plans and mold remediation protocols, including format and contents (including structural components, HVAC systems, and building contents), defining affected areas (including floor plans), identifying and repairing moisture sources and their causes, developing a scope of work analysis, specifying containment and air filtration strategies, determining post-remediation assessment criteria, and clearance criteria;

(11) post-remediation clearance testing and procedures, including review of mold remediation plans, visual inspections, sampling strategies, and quality assurance; and

(12) case studies.

(d) Remediation worker training. Remediation worker training shall consist of at least four training hours that includes lectures, demonstrations, audio-visuals, and hands-on training. The training shall include all course information and material required under this subsection. An individual must successfully complete worker training and submit an application for registration as a mold remediation worker prior to performing any work on a mold remediation project.

(1) The training must be provided by either:

(A) the licensed mold remediation contractor or company employing the individual receiving the training; or

(B) a mold training provider accredited by the department.

(2) The principal instructor for the training must be either:

(A) a licensed mold remediation contractor; or

(B) an individual who is approved by the department under §295.319 of this title to teach mold-related courses.

(3) The training shall adequately address the following areas and shall include hands-on training in the areas described in subparagraphs (C) and (E) - (F) of this paragraph:

(A) sources of indoor mold and conditions necessary for indoor mold growth;

(B) potential health effects and symptoms from mold exposure, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

(C) workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;

(D) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the worker, and the roles of other professionals;

(E) an overview of how mold remediation projects are conducted, including containment and air filtration; and

(F) work practices for removing, cleaning, and treating mold.

(4) The person providing the training shall submit to the department, within five working days of a training session:

(A) the following items, on a form provided by the department:

(i) the name, address, telephone number, and license number of the person listed under paragraph (1) of this subsection who provided the training;

(ii) the date of the training;

(iii) the printed name, address, telephone number, number identifier, and signature of each individual who attended the training; and

(iv) the printed name and signature of the principal instructor;

(B) a group photo, taken at the end of the training, that identifies each individual who attended the training. Digital or scanned images will be accepted. The group photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print; and

(C) a statement indicating which individuals successfully completed the training and which individuals did not.

(5) The person providing the training shall provide the following to each individual who successfully completes the training:

(A) a training certificate. Each certificate must include:

(i) the name, address, telephone number, and license number of the person listed under paragraph (1) of this subsection who provided the training;

(ii) the date of the training;

(iii) the name, address, telephone number and number identifier of the individual;

(iv) the printed name and signature of the principal instructor; and

(v) a statement that the individual successfully completed the training;

(B) a current one-inch square photo of the individual's face on a white background, taken during the course, to be attached by the individual to an application for registration; and

(C) a copy of the registration application.

(6) The person providing the training must maintain a file for each training session that includes the date, the certificate numbers, and the names, addresses, and telephone numbers of students receiving training certificates. All information from the training must correspond to the information on each certificate.

(e) Remediation contractor training. The remediation contractor course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 100 multiple-choice questions. The course requirements in paragraphs (3) and (7)-(8) of this subsection require hands-on training as an integral part of the training. The course shall adequately address:

(1) sources of indoor mold and conditions necessary for indoor mold growth;

(2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

(3) requirements concerning workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;

(4) requirements concerning worker protection, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;

(5) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the mold remediation contractor, the role of the mold remediation worker, the roles of other professionals, insurance, legal liabilities, and recordkeeping and notification requirements;

(6) building sciences, moisture control, and water intrusion events;

(7) an overview of how mold remediation projects are conducted and requirements thereof, including containment, and air filtration;

(8) work practices for removing, cleaning, and treating mold, including state-of-the-art work practices and new technologies;

(9) development of a mold remediation work plan from a protocol, including writing the work plan, detailing remediation techniques for the building structure, HVAC system, and contents, delineating affected areas from floor plans, developing appropriate containment designs, determining HEPA air filtration requirements, and determining dehumidification requirements;

(10) clearance testing and procedures, including a review of typical clearance criteria, visual inspection of the work area prior to clearance, and achieving clearance;

(11) contract specifications, including estimating job costs from a protocol and determining insurance and liability issues; and

(12) protecting the public and building occupants from mold exposures.

(f) Refresher training. The refresher courses for mold assessment technicians, mold assessment consultants, and mold remediation contractors shall be at least eight training hours in length. Refresher training for mold remediation workers shall be at least four training hours in length and shall be provided by a person specified under subsection (d)(1) of this section. Refresher training shall include a review of state regulations, state-of-the-art developments, and key aspects of the initial training course. All individual licensees and registrants shall receive refresher training every two years.

(g) Course tests. Each training provider shall administer a closed-book written test to students who have completed an initial or refresher training course, except that no examination is required of students in remediation worker training. The test for assessment technician training shall consist of 50 multiple-choice questions, and the tests for assessment consultant training and remediation contractor training shall consist of 100 multiple-choice questions. Training providers may include demonstration testing as part of the test. A student must answer correctly at least 80% of the questions to receive a course-completion certificate. Training providers shall use tests provided or approved by the department.

§295.321. Minimum Work Practices and Procedures for Mold Assessment.

(a) Scope. These general work practices are minimum requirements and do not constitute complete or sufficient specifications for mold assessment. More detailed requirements developed by an assessment consultant for a particular mold remediation project shall take precedence over the provisions of this section.

(b) Purpose. The purpose of a mold assessment is to determine the sources, locations and extent of mold growth in a building, to determine the condition(s) that caused the mold growth, and to enable the assessment consultant to prepare a mold remediation protocol.

(c) Personal protective equipment for assessors. If an assessment consultant or company determines that personal protective equipment (PPE) should be used during a mold assessment project, the assessment consultant or company shall ensure that all employees who engage in assessment activities and who will be, or are anticipated to be, exposed to mold are provided with, fit tested for, and trained on the appropriate use and care of the specified PPE. The assessment consultant or company must document successful completion of the training before the employees perform regulated activities.

(d) Sampling and data collection. If samples for laboratory analysis are collected during the assessment:

(1) sampling must be performed according to nationally accepted methods;

(2) preservation methods shall be implemented for all samples where necessary;

(3) proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number must be recorded for each sample;

(4) proper chain of custody procedures must be used; and

(5) samples must be analyzed by a laboratory licensed under §295.317 of this title (relating to Mold Analysis Laboratory: Licensing Requirements).

(e) Mold remediation protocol. An assessment consultant shall prepare a mold remediation protocol for each project and provide the protocol to the client before the remediation begins. The mold remediation protocol must specify:

(1) the rooms or areas where the work will be performed;

(2) the estimated quantities of materials to be cleaned or removed;

(3) the methods to be used for each type of remediation in each type of area;

(4) the PPE to be used by remediators. A minimum of an N-95 respirator is recommended for all mold remediation projects. Using professional judgment, a consultant may specify additional or more protective PPE if he or she determines that it is warranted;

(5) the proposed types of containment, as that term is defined in §295.302(9) of this subchapter (relating to Definitions) and as described in subsection (g) of this section, to be used during the project in each type of area; and

(6) the proposed clearance procedures and criteria, as described in subsection (i) of this section, for each type of remediation in each type of area.

(f) Building occupants. A mold assessment consultant shall consider whether to recommend to a client that, before remediation begins, the client should inform building occupants of mold-related activities that will disturb or will have the potential to disturb areas of mold contamination.

(g) Containment requirements. Containment must be specified in a mold remediation protocol when the mold contamination affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if no person who is not licensed or registered under this subchapter occupies the building in which the remediation takes place at any time between the start date and stop date for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment specified in the remediation protocol must prevent the spread of mold to areas of the building outside the containment under normal conditions of use. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(h) Disinfectants, biocides and antimicrobial coatings. An assessment consultant who indicates in a remediation protocol that a disinfectant, biocide, or antimicrobial coating will be used on a mold remediation project shall indicate a specific product or brand only if it is registered by the United States Environmental Protection Agency (EPA) for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by an assessment consultant to use such products must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with such products.

(i) Clearance procedures and criteria. In the remediation protocol for the project, the assessment consultant shall specify:

(1) at least one nationally recognized analytical method for use within each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol;

(2) the criteria to be used for evaluating analytical results to determine whether the remediation project passes clearance;

(3) that post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and

(4) the procedures to be used in determining whether the underlying cause of the mold identified for the project has been remediated so that it is reasonably certain that the mold will not return from that same cause.

§295.322. Minimum Work Practices and Procedures for Mold Remediation.

(a) Scope. These general work practices are minimum requirements and do not constitute complete or sufficient specifications for a mold remediation project. More detailed requirements developed by an assessment consultant for a particular project shall take precedence over the provisions of this section.

(b) Remediation work plan. A remediation contractor shall prepare a mold remediation work plan based on a mold remediation protocol and shall provide the mold remediation work plan to the client before the mold remediation begins.

(c) Personal protective equipment (PPE) requirements. If an assessment consultant specifies in the mold remediation protocol that PPE is required for the project, the remediation contractor or company shall provide the specified PPE to all employees who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination, when the mold affects a total surface area for the project of 25 contiguous feet or more. The recommended minimum PPE is an N-95 respirator. Each employee who is provided PPE must receive training on the appropriate use and care of the provided PPE. The remediation contractor or company must document successful completion of the training before the employee performs regulated activities.

(d) Containment requirements. The containment specified in the remediation protocol must be used on a mold remediation project when the mold affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if no person who is not licensed or registered under this subchapter occupies the building in which the remediation takes place at any time between the start date and stop date for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(e) Notice signs. Signs advising that a mold remediation project is in progress shall be displayed at all entrances to remediation

areas adjacent to occupied areas of a building. The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words "NOTICE: Mold remediation project in progress" in black on a yellow background. The text of the signs must be legible from a distance of ten (10) feet.

(f) Removal of containment. No person shall remove or dismantle any walk-in containment structures or materials from a project site prior to receipt by the licensed mold remediation contractor or remediation company overseeing the project of a written notice from a licensed mold assessment consultant that the project has achieved clearance as described under §295.324 of this title (relating to Post-Remediation Assessment and Clearance).

(g) Disinfectants, biocides and antimicrobial coatings. Disinfectants, biocides and antimicrobial coatings may be used only if their use is specified in a mold remediation protocol, if they are registered by the United States Environmental Protection Agency (EPA) for the intended use and if the use is consistent with the manufacturer's labeling instructions. If a protocol specifies the use of such a product but does not specify the brand or type of product, a remediation contractor may select the brand or type of product to be used, subject to the other provisions of this subsection. A decision by an assessment consultant or remediation contractor to use such a product must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with the product. A person who applies a biocide to wood to control a wood-infesting organism must be licensed by the Texas Structural Pest Control Board as provided under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control) unless exempt under the Texas Occupations Code, Chapter 1951, Subchapter B (relating to Exemptions).

§295.323. Mold Remediation of Heating, Ventilation and Air Conditioning (HVAC) Systems.

(a) All provisions of §295.321 of this title (relating to Minimum Work Practices and Procedures for Mold Assessment) shall apply to the assessment of mold in HVAC systems.

(b) All provisions of §295.322 of this title (relating to Minimum Work Practices and Procedures for Mold Remediation) shall apply to the remediation of mold in HVAC systems.

(c) Disinfectants, biocides and antimicrobial coatings. A licensee under this subchapter may apply a disinfectant, biocide or antimicrobial coating in an HVAC system only if its use is specified in a mold remediation protocol, if it is registered by the EPA for the intended use and if the use is consistent with the manufacturer's labeling instructions. The licensee shall apply the product only after the building owner or manager has been provided a material safety data sheet for the product, has agreed to the application, and has notified building occupants in potentially affected areas prior to the application. The licensee shall follow all manufacturer's label directions when using the product.

(d) Other license requirements. Persons who perform air conditioning and refrigeration contracting (including the repair, maintenance, service, or modification of equipment or a product in an environmental air conditioning system, a commercial refrigeration system, or a process cooling or heating system) must be licensed by the Texas Department of Licensing and Registration, as provided under the Texas Occupations Code, Chapter 1302 (relating to Air Conditioning and Refrigeration Contractors). A person who performs biomedical remediation as defined under 16 TAC, §75.10(5) (relating to Definitions) must be licensed by the Texas Department of Licensing and Regulation in accordance with 16 TAC, Chapter 75 (relating to Air Conditioning and Refrigeration Contractor License Law) unless exempt under 16 TAC, §75.30 (relating to Exemptions) or 16 TAC, §75.100 (relating to Technical Requirements).

§295.324. Post-Remediation Assessment and Clearance.

(a) Clearance criteria. For a remediation project to achieve clearance, a licensed mold assessment consultant shall conduct a post-remediation assessment using visual, procedural, and analytical methods. If walk-in containment is used at a project site, the post-remediation assessment shall be conducted while the walk-in containment is in place. The post-remediation assessment shall determine whether:

(1) the work area is free from all visible mold and wood rot; and

(2) all work has been completed in compliance with the remediation protocol and remediation work plan and meets clearance criteria specified in the protocol.

(b) Underlying cause of mold. Post-remediation assessment shall, to the extent feasible, determine that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause.

(c) Analytical methods.

(1) The assessment consultant shall perform a visual, procedural, and analytical evaluation in each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol.

(2) The consultant shall use only the analytical methods and the criteria for evaluating analytical results that were specified in the remediation protocol, unless circumstances beyond the control of the consultant and the remediation contractor or company necessitate alternative analytical methods or criteria. The consultant shall provide to the client written documentation of the need for any deviation from the remediation protocol and the alternative analytical methods and criteria selected, and shall obtain approval from the client for their use, before proceeding with the post-remediation assessment.

(3) Where visual inspection reveals deficiencies sufficient to fail clearance, analytical methods need not be used.

(d) Passed clearance report. An assessment consultant who determines that remediation has been successful shall issue a written passed clearance report to the client at the conclusion of each mold remediation project. The report must include the following:

(1) a description of relevant worksite observations;

(2) the type and location of all measurements made and samples collected at the worksite;

(3) all data obtained at the worksite, including temperature, humidity, and material moisture readings;

(4) the results of analytical evaluation of the samples collected at the worksite;

(5) copies of all photographs the consultant took; and

(6) a clear statement that the project has passed clearance.

(e) Final status report. If the mold assessment consultant determines that remediation has not been successful and ceases to be involved with the project before the project passes clearance, the consultant shall issue a written final status report to the client and to the remediation contractor or company performing the project. The status report must include the items listed in subsections (d)(1) - (5) of this section and any conclusions that the consultant has drawn.

§295.325. Notifications.

(a) General provision. A mold remediation contractor or company shall notify the department of a mold remediation project when mold contamination affects a total surface area of 25 contiguous square feet or more. Notification shall be received by the department no less than five working days (not calendar days) prior to the anticipated start date of the activity and shall be submitted by United States Postal Service, commercial delivery service, hand-delivery, electronic mail (E-mail), or facsimile on a form specified by the department. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A". The designation of "N/A" will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, or start and stop dates. A signature of the responsible person is required on each notification form. The contractor or company shall retain a confirmation that the notification was received by the department.

(b) Start-date change to later date. When mold remediation activity begins later than the date contained in the notice, the department shall be notified by telephone as soon as possible but prior to the original start date. A written amended notification is required immediately following the telephone notification and shall be faxed or overnight mailed to the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the department shall be provided with written notice of the new start date at least five working days before the start of work unless the provisions of subsection (e) of this section apply. The licensee shall confirm that the notice is received five working days before the start of work.

(d) Start-date/stop-date (completion date) requirement. In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e) of this section. Amendments to start date changes must be submitted as required in subsections (b) and (c) of this section. An amendment is required for any stop dates that change by more than one workday for each week (seven calendar day period). The contractor or company shall provide schedule changes to the department no less than 24 hours prior to the new stop date. Changes less than five days in advance shall be confirmed with the appropriate department regional office by telephone, facsimile, or e-mail and followed up in writing to the department's central office at 1100 West 49th Street, Austin, Texas, 78756.

(e) Provision for emergency. In an emergency, notification to the department shall be made as soon as practicable but not later than the following business day after the license holder identifies the emergency. Initial notification shall be made to the department's central office either immediately by telephone, followed by formal notification on the department's notification form, or immediately by facsimile on the department's notification form. The contractor or company shall retain a confirmation that the notification was received by the department. Emergencies shall be documented. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(f) Notification fees.

(1) For each initial notification of a mold remediation project, the mold remediation contractor or company shall remit to the department a fee of $100, except that the fee shall be $25 for a remediation project in an owner-occupied residential dwelling unit. Amendments to a notification shall not require a separate fee.

(2) The department shall send an invoice for the required fee to the contractor or company after the department has received the notification. Payment must be remitted in the manner instructed on the invoice no later than 60 working days following the date on the notification invoice. Failure to pay the required fee after an invoice has been sent is a violation, and the department may seek administrative penalties as listed in §295.331 of this title (relating to Compliance: Administrative Penalty).

§295.326. Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for a period of three years from the date of project completion unless otherwise stated. Such records and documents shall be made available for inspection by the department or any law enforcement agency immediately upon request. Licensees and accredited training providers who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum three-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 days of their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the company and the records listed in paragraph (3) of this subsection for each remediation worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the contractor and the records listed in paragraph (3) of this subsection for each remediation worker training session provided by the mold remediation contractor.

(1) A licensed mold remediation contractor shall maintain the following records and documents on-site at a project for its duration:

(A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and

(B) a listing of the names and license/registration numbers of all individuals working on the remediation project.

(2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:

(A) a copy of the mold remediation work plan specified under subparagraph (1)(A) of this subsection;

(B) photographs of the scene of the mold remediation taken before and after the remediation;

(C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;

(D) all invoices issued regarding the mold remediation; and

(E) copies of all certificates of mold remediation issued by the company or contractor.

(3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) of this subsection in an electronic format rather than as paper documents. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

(4) A licensed mold remediation contractor or remediation company who trains employees to meet the requirements under §295.320(d) of this title (relating to Training: Required Mold Training Courses) shall maintain copies of the required training documents at a central location at its Texas office.

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) of this subsection for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) of this subsection for each project that the contractor performs:

(A) the name and mold certificate number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) the written contract between the mold assessment company or consultant and the client;

(C) all invoices issued regarding the mold assessment;

(D) copies of all laboratory reports and sample analyses;

(E) copies of all photographs required under §295.324 of this title (relating to Post-Remediation Assessment and Clearance);

(F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and

(G) copies of all passed clearance reports issued by the company or consultant.

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) of this subsection until:

(A) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project;

(B) the company or consultant issues the final status report to the client, if a final status report is issued; or

(C) the company or consultant provides the signed certificate of mold remediation to a mold remediation contractor or company, if a certificate of mold remediation is provided.

(d) Mold analysis laboratories. A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.

(e) Training providers. Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department.

(1) Training records. The training provider shall maintain records for at least three years from the date of the class in accordance with §295.318(f)(8) and (9) of this title (relating to Mold Training Provider: Accreditation).

(2) A training provider may maintain the records required under paragraph (1) of this subsection in an electronic format rather than as paper documents. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

§295.330. Compliance: Reprimand, Suspension, Revocation, Probation.

(a) After notice of the opportunity for a hearing in accordance with subsection (d) of this section, the department may take any of the disciplinary actions outlined in subsection (c) of this section. If the department suspends a credential on an emergency basis, the department shall provide an opportunity for a hearing in accordance with subsection (d) of this section within 20 days.

(b) A person who is denied a credential for failure to meet the qualifications under this subchapter is ineligible to reapply until all qualifications are met. A suspension shall be for a period of not more than two years. A person whose application or credential has been revoked shall be ineligible to reapply for any mold-related credential for up to three years.

(c) The department may issue an administrative penalty as described in §295.331 of this title (relating to Compliance: Administrative Penalty), deny an application, suspend, suspend on an emergency basis, suspend with probationary terms, or revoke a credential of a person who:

(1) fails to comply with this subchapter;

(2) has fraudulently or deceptively obtained or attempted to obtain the credential, ID card or approval, including engaging in misconduct or dishonesty during the state licensing examination, such as cheating or having another person take or attempt to take the examination for that person;

(3) duplicates or allows another person to duplicate a credential, ID card or approval;

(4) uses a credential issued to another person or allows any other person to use a credential, ID card or approval not issued to that other person;

(5) falsifies records for mold-related activities that the department requires the person to create, submit, or maintain; or

(6) is convicted of a felony or misdemeanor arising from mold-related activity.

(d) The contested-case hearing provisions of the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the formal hearing procedures of the department in Chapter 1 of this title shall apply to any enforcement action under this section. A person charged with a violation shall be notified of the alleged violation, the grounds upon which any disciplinary action is based, the proposed penalty, and the opportunity to request a hearing.

§295.331. Compliance: Administrative Penalty.

(a) If a person violates the Act, this subchapter or an order, the department may assess an administrative penalty.

(b) The penalty shall not exceed $5,000 per violation except as indicated. Each day a violation continues will be considered a separate violation for violations listed in subsections (d)(1)(A) - (B) and

(d)(2)(A) - (B) of this section. The department may reduce or enhance penalties as warranted.

(c) In assessing administrative penalties, including reductions or enhancements, the department shall consider:

(1) whether the violation was committed knowingly, intentionally, or fraudulently;

(2) the seriousness of the violation;

(3) any hazard created to the public health and safety;

(4) the person's history of previous violations; and

(5) any other matter that justice may require, including demonstrated good faith.

(d) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level I violations have or may have a direct negative impact on public health, safety, or welfare. This category includes fraud and misrepresentation. The penalty for a Level I violation may be up to $5,000 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to $5,000 per violation per day. Examples include but are not limited to:

(A) working without a valid credential, ID card or approval or with a credential or ID card that has been expired for more than one month;

(B) engaging in a conflict of interest as described in §295.307(a)(1) and (2) of this title (relating to Conflict of Interest);

(C) engaging in misconduct or dishonesty during the state licensing examination;

(D) submitting a forged or altered training certificate;

(E) offering training required under this subchapter without valid department approval of the course, instructor(s) or guest speaker(s), except as provided under §295.320(d)(1)(A) of this subchapter (relating to Training: Required Mold Training Courses);

(F) providing training certificates for a course required by the department to persons who have not successfully completed the course;

(G) failing to meet the insurance requirements of §295.309 of this title (relating to Licensing: Insurance Requirements);

(H) failure of an assessment consultant to specify containment in a mold remediation protocol; and

(I) failure of a remediator to use the containment specified in the mold remediation protocol for the project.

(2) Serious violation. Severity Level II violations could compromise public health, safety, or welfare. The maximum penalty for Level II violations is $2,500 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to $2,500 per violation per day. Examples include but are not limited to:

(A) working with a credential or ID card that has been expired for one month or less;

(B) failing to disclose an ownership interest as required in §295.307(b) of this title;

(C) failing to submit a timely notification;

(D) failure to conduct a training course as specified under §295.320 of this title (relating to Training: Required Mold Training Courses); and

(E) failure of a credentialed person to maintain current required training.

(3) Significant violation. Severity Level III violations, while not having a direct negative impact on health, safety, or welfare, could lead to more serious circumstances. The maximum penalty for Level III violations is $1,000 per violation. Examples include but are not limited to:

(A) failure to provide the department Consumer Mold Information Sheet as required under §295.306 of this title (relating to Credentials: General Responsibilities);

(B) failure to have a department-issued identification card at a job site;

(C) submitting an incorrect or improper notification;

(D) failure of a training provider to submit information to the department regarding training course schedules or to notify the department of cancellations within the specified time periods;

(E) failure of a training provider to submit course completion information within the time period specified in §295.319(f)(7) of this title (relating to Mold Training Provider: Accreditation);

(F) failure of a remediation company, remediation contractor, or training provider to submit worker training information within the time period specified in §295.320(d) of this title (relating to Mold Training Provider: Accreditation); and

(G) failure of a training provider to maintain the required trainee-instructor ratio in a training course.

§295.333. Compliance: Notice; Opportunity for Hearing; Order.

(a) The commissioner shall impose an administrative penalty under this subchapter only after a person is given written notice of the opportunity for a hearing conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the department's formal hearing procedures in Chapter 1 of this title.

(b) The written notice of violation must state the facts that constitute the alleged violation, the law or rule that has been violated, the proposed penalty, and the opportunity for a hearing.

(c) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of any penalty that is warranted.

(d) If a person fails to exercise the opportunity for a hearing, the commissioner, after determining that a violation occurred and the amount of penalty warranted, is authorized to impose a penalty and issue an order requiring the person to pay.

(e) Not later than the 30th day after the date the commissioner issues an order, the commissioner shall inform the person of the amount of any penalty imposed.

(f) The commissioner is authorized to consolidate a hearing under this section with another proceeding.

§295.334. Compliance: Options Following Administrative Order.

(a) Not later than the 30th day after the date the commissioner's decision or order concerning an administrative penalty assessed under §295.331 of this title (relating to Compliance: Administrative Penalty) becomes final as provided by the Texas Government Code, Chapter 2001, §2001.144, (relating to Decisions; When Final) to the person against whom the penalty is assessed either shall pay the administrative penalty or shall file a petition for judicial review.

(b) A person who files a petition for judicial review can stay enforcement of the penalty either by paying the penalty to the commissioner for placement in an escrow account or by giving the commissioner a bond, in a form approved by the commissioner, that is for the amount of the penalty and that is effective until judicial review of the commissioner's decision or order is final.

§295.338. Civil Liability Exemption for Certain Property Owners or Governmental Entities.

(a) A property owner is not liable for damages related to mold remediation on a property if a certificate of mold remediation has been issued under §295.327 of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner) for that property and the damages accrued on or before the date of the issuance of the certificate.

(b) A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if a certificate of mold remediation has been issued under §295.327 of this title for the property, the property is owned or occupied by a governmental entity, including a school, and the decision was made by the owner, the occupier, or any person authorized by the owner or occupier to make the decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2004.

TRD-200402751
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: May 16, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.1

The Texas Water Development Board (the board) adopts amendments to 31 TAC §354.1 concerning the Memoranda of Understanding without changes to the proposed text as published in the October 31, 2003 issue of the *Texas Register* (28 TexReg 9418) and will not be republished. The amendments are adopted for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendment to §354.1, memorandum of understanding between the board and the Texas Antiquities Committee, to update the name of the Texas Antiquities Committee to the Texas Historical Commission and to update several statutory provisions which have been re-codified. In addition, the deadline for a board archeologist to send a survey report to the Texas Historical Commission is extended from 30 days to 45 days of the date of completion of the survey, in response to the complexity of sites that board archeologists have surveyed in recent years.

There were no comments received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the amendments is Texas Water Code, Chapter 6 and Texas Water Code, §16.342.

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 April 21, 2004.

TRD-200402665
Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-2052

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CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER K. SMALL COMMUNITY HARDSHIP PROGRAM

31 TAC §§363.1101 - 363.1107

The Texas Water Development Board (board) adopts amendments to 31 TAC Chapter 363, concerning Financial Assistance Programs to create a new subchapter, Subchapter K, relating to the Small Community Hardship Program, and adopts new 31 TAC §§363.1101 - 363.1107 without changes to the proposed text as published in the February 6, 2004 issue of the *Texas Register* (29 TexReg 1160) and will not be republished. New 31 TAC §§363.1101 - 363.1107 creates a new program by which the board may provide political subdivisions with grants for projects that provide adequate water and sewer service to economically distressed areas.

The board adopts new §363.1101, Scope and Purpose of Subchapter, to identify the purpose of the new rules. This new section also identifies the source of funds for the program because the use of payments from the Texas Water Resources Finance Authority creates limitations in the use of these funds.

The board adopts new §363.1102, Definitions of Terms, which provides definitions applicable to this new subchapter. It first uses definitions in Water Code Chapters 15, 16 and 17, unless expressly defined in this new section. New §363.1102(1) defines adjusted median household income as household income identified in the most recent U.S. Census multiplied by the current

Texas Consumer Price Index divided by the most recent decennial Texas Consumer Price Index. Annual median household income directly relates to the economic conditions of potential applicants and its ability to repay loans. The board is using a household income as the economic factor to identify areas as economically distressed and therefore eligible for assistance under this new subchapter because it is common and easily identifiable by using the federal census data and accurately reflects the current economics of the area. The board requires that the median household income that is identified by the latest federal census be adjusted using the current Consumer Price Index, so that the census figures reflect present levels of income. This will more closely reflect the applicant's current economic situation when comparing current rates to income level. New §363.1102(2) defines applicant as a political subdivision that requests financial assistance from the board so that the rule will easily identify the requirements of the new subchapter as applicable only to those entities that request funding. New §363.1102(3) and (4) defines the term average yearly sewer and water bill, respectively, which are used in defining disadvantaged community. The average yearly water bill is calculated by applying the community's rate structure to the average number of gallons of water used in-house per year by the average occupied household. Identification of the rate on a per gallon basis accounts for the different usage rates between water systems thereby creating a common measure when analyzing the percentage of the water or combined water and sewer bill to the adjusted median household income. The number identified as the average gallons used in an individual residence for sewer and water in new §363.1102(3) and (4) is the estimated state-wide average of domestic water that enters a household and returns via the sewer system, based on data submitted by political subdivisions and compiled by the Texas Commission on Environmental Quality (TCEQ). These new subsections also includes taxes, surcharges or other fees as part of the annual bill by including the average annual amount per household of the fee in calculating the average yearly sewer or water bill if such fees are used to subsidize the sewer or water service systems. New §363.1102(5) and (8) define combined household cost factor and household cost factor, respectively. Household affordability factors are used in new §363.1102(6) to define disadvantaged area because these factors measure whether a project is affordable to the customers of the system. The household affordability factors indicate the capacity of the customers to support the cost of water and/or sewer service, including debt service, through user charges. If the water or combined water and sewer bill exceeds a certain percentage of the adjusted median household income, then the project would not be affordable to the community without assistance from this program. The percentage of the average water or combined water and sewer bill to annual median household income, which is defined in new §363.1102(1) is a methodology used in other board programs and by other states in developing affordability guidelines as well as the federal government in determining affordability of projects. The 1.0% for water rates used in new §363.1102(6)(B)(i) is the percentage used by the Environmental Protection Agency in its User Manual for the Municipality's Ability to Pay Computer Model. The 2.0% for water and sewer rates in new §363.1102(6)(B)(ii) was used because it is recognized that the additional cost of sewer services impacts the ability of customers to pay for a new project and is used by the board in other programs as well as another state in developing its affordability guidelines. New §363.1102(5) defines combined household cost factor as a combination of the average yearly water bill with the average yearly sewer bill and divides the total by the average median household income while new §363.1102(8) defines household cost factor as the number that is derived by dividing the average yearly water bill by the adjusted median household income. New §363.1102(6) uses three criteria to define a disadvantaged community: permanent residential population; adjusted median household income; and household affordability factors. Population is used because the board believes that the smaller the service population for a utility provider, the harder it is to obtain the capital necessary to complete infrastructure projects. A population of less than 5,000 is used because 93% of the 616 Texas communities identified as lacking adequate water or sewer service have a population of 5,000 or less. The adjusted median household income is a measure of the income levels of residents of the area. Similar income criteria are used in the Drinking Water State Revolving Fund (DWSRF) and the Economically Distressed Areas Program (EDAP), both of which are administered by the board, so that its use fosters consistency between board programs. The board is using an income threshold of 75% of the median state household income because it is the measure already used by the board to establish eligibility for the EDAP as required by Water Code §16.341(1). The household cost factors are discussed in the preceding paragraph. Relying on the definition of a disadvantaged area, economically distressed area is defined in new §363.1102(7) as an area that not only lacks financial resources as identified in the definition of disadvantaged area but also as an area with inadequate water or wastewater service. In this manner, the board has defined an economically distressed area consistent with the statutory intent to direct this grant assistance to areas not meeting the statewide standard for service and that also lack the financial resources to address that need. New §363.1102(9) and (10) define inadequate water service and inadequate sewer services, respectively, by relying on TCEQ regulations because these standards set statewide standards for adequate sewer and water services. New §363.1102(11) defines political subdivision as defined in Water Code §15.001 but excludes an interstate compact commission since that would not be a viable potential service provider.

The board adopts new §363.1103(a) to state that the board may provide grants to a political subdivision for projects that provide adequate water or sewer service to areas that do not currently have adequate service. The board is providing grants because there have been indications that some small communities have difficulty accessing board loan programs due to the interest costs associated with a loan. Further, due to federal tax law, it is advisable to use the funds provided for this program by the Texas Water Resources Finance Authority in this manner. The board adopts new §363.1103(b) to identify eligible uses of the fund as the planning, designing, or construction of a new water or sewer service system or improvements to an existing system in an economically distressed area, the purchase of a inadequate system so that it can be consolidated with another system that can provide adequate service, reduction of the interest rates loans or reduction or elimination of outstanding indebtedness to finance a project identified in new paragraphs (1), (2), or (3) of this subsection, provided however that the loan is not from the board or other state agency. The board may not use these funds for interest rate reduction or refinancing of state indebtedness due to federal tax considerations. The board adopts new §363.1103(c) to identify that the board may provide assistance through a written agreement with the political subdivision.

The board adopts new §363.1104 to identify the information that must be provided in an application for assistance under this new

subchapter. The elements identified in this new section are either required by Water Code §15.103 or are similar to the requirements for applications in other board programs and have proven to be the essential elements for the board to consider prior to providing assistance. New §363.1104(1) provides that an application must include a resolution from the applicant's governing body requesting assistance, stating the amount of the request, and designating a representative as the point of contact for the application. New §363.1104(2) requires that the designated representative provide an affidavit that states the decision to request financial assistance was made in an open meeting, states the information in the application is true and correct, warrants compliance with the application representations, and states the applicant will comply with all applicable federal and state laws. New §363.1104(3) requires copies of the consultant services contracts be provided with the application. New §363.1104(4) requires that the application provide the citation to the legal authority of the applicant. New §363.1104(5) requires data from the federal census or a survey of the residents to establish the eligibility of the area as disadvantaged. New §363.1104(6), (7) and (8) requires an engineering feasibility report that includes that the water or sewer service for the area is inadequate, a preliminary environmental information, and a water conservation plan, respectively, all of which comply with referenced rules of the board applicable to other board programs. New §363.1104(9) provides that if an applicant is receiving or providing water or sewer service to another entity then a copy of the service agreement must be provided with the application.

The board adopts new §363.1105 to identify the considerations and findings that the board must make prior to approving an application as required by Water Code §15.105. New §363.1105(a) provides that prior to application approval, the board shall consider the needs of and benefits to the project area in relation to other areas in the state, revenue available to the applicant for project costs, overall statewide needs, the applicant's ability to pay for the project without this assistance; and the county's efforts to control the construction of subdivisions that lack basic utility services. New §363.1105(b) provides that after considering these factors, the board can approve the application if it finds that the public interest requires state participation in the project and the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision. These considerations and findings are required by statute. New §363.1105(c) acknowledges that the resolution approving the application may include any condition that the board deems appropriate including a requirement that the applicant adopt a water conservation plan in compliance with board rules and state statute.

The board adopts new §363.1106 to identify the amount of the grant assistance that will be provided. New §363.1106(a)(1) provides that when the adjusted median household income for the project area is between 75% and 60% of the median state household income, the grant will be 50% of the amount of the financial assistance requested in the application. New §363.1106(a)(2) provides that when the adjusted median household is less than or equal to 60% but greater than 50% of the median state household income, the grant will be 75% of the amount of the financial assistance requested in the application. New §363.1106(a)(3) provides that when the adjusted median household income is less than or equal to 50% of the median state household income, the grant will be for 90% of the amount of the financial assistance requested in the application. The graduated scale of grant assistance is intended to create a means to direct the largest grants to the communities most in need based on an analysis of the residents' ability to pay. New §363.1106(b) provides that the amount of the financial assistance requested in the application that is not provided as a grant shall be provided by a loan from another board program. By this new subsection, the board requires that a grant recipient under this new subchapter also receive a board loan. In this manner, the board is assured that the community is contributing to the long-term success of the project. This new subsection also provides the board the means to monitor the ongoing viability of the utility and insure the best use of these limited funds. New §363.1106(c) provides that the maximum amount of grant funds made available to a single applicant is $1 million. The board adopts this subsection in order to insure that multiple communities may access these limited funds. New §363.1106(d) provides that if the applicant will be providing the remaining portion of the project costs from sources other than board programs, then the availability of the additional funds must be established prior to the release of funds provided under this new subchapter.

The board adopts new §363.1107 to provide that the release of funds, the construction phase, and the post-construction responsibilities for projects funded under this new subchapter will be governed by the provisions of Division 4, Division 5, Division 6 of Subchapter A of this chapter. In this manner, the board will manage the expenditure of these funds in the same manner as other board programs.

There were four written comments in support and 0 comments in opposition to the rules.

Comments on the proposed new sections were received from Mr. Mark Lowry, P.E. from Turner Collie & Braden Inc. First, Mr. Lowery comments that the Board should consider including the use funds for planning and design in a manner than conditions release of the design funds upon the submission of a viable plan. Second, Mr. Lowery concurs with the proposed use of area surveys in the event that U. S. Census Bureau information is inadequate. Finally, Mr. Lowery requests that the Board consider increasing the amount of grant funds available for an individual project from one million dollars to four million dollars.

BOARD RESPONSE: In response to the first comment, the rule explicitly includes planning costs as an eligible expense. Proposed §363.1103(b)(1) states that the board may provide assistance to "plan, design, and construct" new water or sewer systems. Proposed §363.1103(b)(2) states that the Board may provide assistance to "plan, design, and construct" improvements to existing water or sewer systems. The rules provide the Board the discretion to condition the release of the design funds as proposed by the comment, but does not mandate that the Board always release funds in this manner. In response to the last comment, the Board stated in the preamble to the proposed rule that the purpose of limiting the amount of funds available for any one project is to insure that multiple communities will benefit from the limited funds currently available for this program.

Comments on the proposed new sections were received from Mr. John Blunt, P.E. from Harris County, Public Infrastructure Department. Substantially identical comments were received from Mr. Robert Stokes, Director, from a new non-profit Organization called "Texas Safe and Affordable Water and Wastewater, Inc." The first comment is a request that the rule be amended to allow a community to receive pre-design funding for planning. The second comment is a request that the one million dollar limitation

be raised to four million dollars since in some cases the communities are relatively large and need significant funding above one million dollars.

BOARD RESPONSE: In response to the first comment, the rule explicitly includes planning costs as an eligible expense as noted above and may release the design funds separately. In response to the last comment, the Board stated in the preamble to the proposed rule that the purpose of limiting the amount of funds available for any one project is to insure that multiple communities will benefit from the limited funds currently available for this program.

Comments on the proposed new sections were received from Ms. Tracy D. Hester and Ms. Rebecca J. Rentz, from the law firm of Bracewell & Patterson, L.L.P. The first comment is support for the decision to base funding on need and not on geographic area. The second comment is that grant program should allow funding in excess of one million dollars.

BOARD RESPONSE: The response to the second comment would be the same as in the immediately preceding response.

Statutory authority: Water Code, §§6.101, 15.001(11), 15.011, and 15.103.

Cross reference to statute: Water Code, Chapter 15, Subchapter C.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2004.

TRD-200402666
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 11, 2004
Proposal publication date: February 6, 2004
For further information, please call: (512) 475-2052

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CHAPTER 370. COLONIA PLUMBING LOAN PROGRAM

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 370, §370.26 and §370.41, concerning the Colonia Plumbing Loan Program without changes to the proposed text as published in the March 5, 2004 issue of the *Texas Register* (29 TexReg 2259) and will not be republished. The amendments include an explicit requirement that the applicants to the program enforce the model subdivision rules and the change references to the Texas Commission on Environmental Quality. The amendments are adopted for clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendment to §370.26(a) that currently requires applicants to the program to have adopted the model subdivision rules promulgated by the board pursuant to Water Code §16.343. The board amends this provision to include the phrase "and is enforcing" after "adopted" in order to insure that applicants are informed that the requirement to adopt the model subdivision rules includes the requirement to enforce the model subdivision rules.

The board also adopts amendments to §370.26(b) and §370.41(11) to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission because it has changed its name.

No comments were received on the proposed amendments.

SUBCHAPTER B. POLICY DECLARATIONS

31 TAC §370.26

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Water Code, §15.737, which authorizes the board to adopt rules for the Colonia Plumbing Loan Program.

The statutory provisions affected by the amendments are Texas Water Code, §15.731, et seq.

Cross-reference to statute: Water Code, Chapter 15, Subchapter L.

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 April 21, 2004.

TRD-200402662
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 11, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 475-3073

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SUBCHAPTER C. APPLICATIONS TO THE BOARD

31 TAC §370.41

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Water Code, §15.737, which authorizes the board to adopt rules for the Colonia Plumbing Loan Program.

The statutory provisions affected by the amendments are Texas Water Code, §15.731, et seq.

Cross-reference to statute: Water Code, Chapter 15, Subchapter L.

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 April 21, 2004.

TRD-200402663

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 11, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 475-3073

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CHAPTER 384. RURAL WATER ASSISTANCE FUND

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §384.3

The Texas Water Development Board (board) adopts amendments to 31 TAC §384.3 concerning the Rural Water Assistance Fund without changes to the proposed text as published in the February 6, 2004 issue of the *Texas Register* (29 TexReg 1165) and will not be republished.

Amendments to §384.3, Use of Funds, are adopted to implement recent legislative changes to the Water Code that facilitate the use of the Rural Water Assistance Fund for wastewater projects. The rules closely track the language of the legislative changes to accurately reflect changes to the program enacted by the 78th Texas Legislature.

There were no comments received on the proposed amendments.

Statutory authority: Water Code, §6.101 and Chapter 15, Subchapter P.

Cross reference to statute: Water Code, Chapter 15, Subchapter P.

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 April 21, 2004.

TRD-200402661
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 11, 2004
Proposal publication date: February 6, 2004
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.5

The Comptroller of Public Accounts adopts an amendment to §3.5, concerning waiver of penalty or interest, without changes to the proposed text as published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2602).

Subsection (b)(8) is added to state that if Revenue Accounting Division denies waiver request for penalty, the standard of review in a resulting contested proceeding will be based on the factors considered by Revenue Accounting Division in its denial. This change is necessary to eliminate the conflict that currently exists. The proposed amendment to subsection (c) makes conforming change consistent with new subsection (b)(8), and all other proposed amendments are made for clarity and reflect existing agency policies.

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, §111.103.

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 April 22, 2004.

TRD-200402689
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: May 12, 2004
Proposal publication date: March 12, 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 69. CONTRACT ADMINISTRATION

The Texas Department of Human Services (DHS) adopts the repeals of §§69.201- 69.212, 69.220, 69.266, and 69.275-69.279; and adopts new §§69.1-69.4, 69.11-69.19, 69.31-69.40, 69.51-69.55, 69.71-69.73, 69.81, 69.91-69.93, 69.101-69.103, 69.111-69.118, 69.131-69.139, 69.151-69.160, and 69.171-69.186 without changes to the proposed text published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2270).

DHS is adopting the repeals and new sections as part of an agency-wide initiative to reorganize and rewrite its rules in plain English to make them easier for the public to navigate and understand. During the course of the rewrite, DHS determined that §69.212, concerning Year 2000 responsibilities, was obsolete and could be removed from the rule base. DHS is repealing §69.204, concerning required disclosure of current or previous employment at DHS, in deference to its existing contracting ethics rule at §79.1806.

DHS consulted with internal and external stakeholders throughout the rewrite process. There was some concern among internal stakeholders that a contractor's entering a subcontract without prior written approval should be grounds for contract termination and that the rules should state that DHS does not resolve disputes between a contractor and its subcontractors. New §§69.51, 69.54, and §69.103 thus make these provisions.

DHS is adopting new §69.4, concerning written inquiries from contractors, to be in compliance with Human Resources Code, §22.019, which requires DHS to have a rule that it will respond in writing to each written inquiry from a contractor no later than the 14th day after receiving the inquiry. To align DHS's definition of a solicitation package with that of the Texas Health and Human Services Commission, DHS is adopting new §69.17. DHS is adopting new §69.101, regarding actions DHS can take against a contractor in the case of a dispute, to reflect language in Office of Management and Budget (OMB) Circular A-102 §__.43(a). New §69.131 and §69.132 clarify that DHS can use both recoupment and restitution to recover improper payments, which brings the rules up to date with current practice. DHS is adopting new §§69.151-69.154 and §69.160 to provide safeguards to restrict the use or disclosure of client data by a contractor, as required by Human Resources Code, §21.012. New §69.155 and §69.156 are adopted so that DHS will be in compliance with the Government Code, §2262.003, which was added by the 78th Texas Legislature in Senate Bill 19, requiring state agencies to include a provision in their contracts giving the state auditor access to contractors' and subcontractors' records. New §69.172(2) changes the period of debarment from a maximum of six years, unless a longer time is mandated by other requirements, to a length of time commensurate with the severity of the contractor's or potential contractor's actions to allow for circumstances in which it may be improper for DHS to initiate a contract with an entity or individual even after six years of debarment (for example, if the entity or individual is still fulfilling court sanctions or is unable to pass background checks). The new rules also delineate between vendors and subrecipients as required by OMB Circular A-133 §__.210.

DHS received no comments regarding adoption of the repeals or new sections.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§69.1 - 69.4

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402608
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER B. PURCHASE OF GOODS AND SERVICES AND AWARD OF SUBGRANTS

40 TAC §§69.11 - 69.19

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402609
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROCUREMENT PROTESTS

40 TAC §§69.31 - 69.40

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402610
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER D. SUBGRANTS AND SUBCONTRACTS

40 TAC §§69.51 - 69.55

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402611
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER E. COST PRINCIPLES

40 TAC §§69.71 - 69.73

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402612
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER F. NONRENEWAL OR REDUCTION OF BLOCK GRANT FUNDS

40 TAC §69.81

The new section is adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new section implements the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402613
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER G. CONTRACT RENEWAL AND TERMINATION

40 TAC §§69.91 - 69.93

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402614
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER H. DISPUTES

40 TAC §§69.101 - 69.103

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402615
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER I. AUDITS

40 TAC §§69.111 - 69.118

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402616
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER J. RECOVERY OF IMPROPER PAYMENTS

40 TAC §§69.131 - 69.139

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402617
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER K. INFORMATION AND RECORDS

40 TAC §§69.151 - 69.160

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402618
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER L. DEBARMENT AND SUSPENSION

40 TAC §§69.171 - 69.186

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402619
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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CHAPTER 69. CONTRACTED SERVICES

SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §§69.201 - 69.212, 69.220, 69.266, 69.275 - 69.279

The repeals are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.040.

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 April 20, 2004.

TRD-200402620
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: May 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission proposes to review Chapter 117, Support Services Division.

Chapter 117 relates to the operation of support services including mail and messenger services, business machine repair service, the central supply store, and printing.

TBPC finds that the basis for the original adoption of Chapter 117 continues to exist. The rules remain valid and applicable.

Comments on the proposals may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to cynthia.deroch@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

TRD-200402703
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: April 22, 2004

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In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission proposes to review Chapter 123, Facilities Construction and Space Management Division.

Chapter 123 relates to the acquisition of real property, both through negotiations and condemnation, and the administration of construction projects.

TBPC finds that the basis for the original adoption of each rule in Chapter 123 continues to exist. The rules remain valid and applicable.

Comments on the proposals may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to cynthia.deroch@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

TRD-200402704
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: April 22, 2004

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In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission proposes to review Chapter 125, Support Services Division-Travel and Vehicle.

Chapter 125 relates to the Travel Management Services, State Vehicle Fleet Management, and the Texas Alternative Fuel Program.

TBPC finds that the basis for the original adoption of each rule in Chapter 125 continues to exist. The rules remain valid and applicable.

Comments on the proposals may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to cynthia.deroch@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

TRD-200402705
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: April 22, 2004

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Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review its rules in 13 TAC Chapter 4 concerning school library programs pursuant to the requirements of the Government Code, §2001.039.

The rules were adopted pursuant to the Education Code, §33.021 that requires the Texas State Library and Archives Commission to adopt standards regarding school library programs. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment of standards for school library programs.

Comments on the commission's review of its rules in Chapter 4 may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas. 78711-2927. For further information or

questions concerning this proposal, please contact Ms. Littrell at (512) 463-5456 or at deborah.littrell@tsl.state.tx.us.

TRD-200402710
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: April 22, 2004

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Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) proposes to review Chapter 535 (§§535.92 - 535.403) in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continues to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations, whether the rules reflect current TREC procedures, that no changes to a rule as currently in effect are necessary, or that a rule is not longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us within 30 days of publication.

TRD-200402694
Loretta DeHay
General Counsel
Texas Real Estate Commission
Filed: April 22, 2004

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review: In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 1, Management, and Chapter 11, Design.

The department 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.

Comment or questions regarding this rule review may be submitted in writing to Bob Jackson, Deputy General Counsel, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200402805
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 28, 2004

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts without changes the rule review proposed for Title 4, Texas Administrative Code, Part 1, Chapter 13, concerning Grain Warehouse Regulation, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Title 4, Part 1, Chapter 13 by the department at this time indicates that Chapter 13 should be repealed in its entirety and replaced with a new Chapter 13, which contains new grain warehouse regulations §§13.1-13.20. These new regulations have been updated and provide more comprehensive requirements and procedures for licensing of persons as grain warehouse operators. Accordingly, as part of the review process the department has adopted the repeal of §§13.1-13.4 and new §§13.1-13.20. These were published in the proposed rule section of the March 26, 2004, issue of the *Texas Register* (29 TexReg 3008). One comment was received on the proposal and is addressed in the adoption preamble for the new sections. No comments were received on the proposed review.

TRD-200402790
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: April 27, 2004

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Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts the review of Chapter 21 concerning Student Services. The proposed notice of review was published in the February 20, 2004, issue of the *Texas Register* (29 TexReg 1677). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

As part of the review process but in a separate proposal, the Texas Higher Education Coordinating Board has proposed the following rule changes: amendments to Subchapter B, §§21.26; amendments to Subchapter E §§21.124 - 21.127 and §21.129; amendments to Subchapter G §21.174; amendments to Subchapter J §21.256; the repeal of Subchapter K, §§21.281 - 21.288; and new §§21.281 - 21.287; the repeal of Subchapter M, §§21.401 - 21.410; and new §§21.401 - 21.408; amendments to Subchapter R, §21.560; amendments to Subchapter W, §§21.710, 21.711, 21.714, and 21.717 - 21.722; the repeal of Subchapter X, §§21.740 - 21.749; the repeal of Subchapter Y, §§21.770 - 21.779; the repeal of Subchapter CC, §§21.950 - 21.960; and new §§21.950 - 21.960; the repeal of Subchapter EE, §§21.990 - 21.999; and new §§21.990 - 21.994; the repeal of Subchapter II, §§21.1080 - 21.1089; and new §§21.1080 - 21.1089; amendments to Subchapter JJ, §§21.2001, 21.2003, 21.2004, 21.2006 - 21.2008; new Subchapter

MM, §§21.2080 - 21.2089 which have been filed simultaneously with this rule review and readoption.

This concludes the Board's review of Chapter 21 as required by the Texas Government Code, §2001.039.

TRD-200402816

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: April 28, 2004

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §1.201(a)

Table 1. Initial and Final Review Periods for Permits Issued by the Railroad Commission of Texas, For Which Median Permit Processing Time Exceeds Seven Days

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§3.6 (SWR 6), Application for Multiple Completion–**Multiple Completion Authorization**	Oil and Gas Division, Permitting/ Production Services Section	W-4; W-4A; W-5; W-6	Yes	None	60	10
§3.8 (SWR 8), Water Protection–**Non-Commercial, Non-Centralized Pit Permit**	Oil and Gas Division, Environmental Services Section	H-11	Yes	None	30	30
§3.8 (SWR 8), Water Protection–**Commercial or Centralized Pit Permit**	Oil and Gas Division, Environmental Services Section	H-11 and Supplemental Information Sheet for Commercial Facilities	Yes	None	45	45
§3.8 (SWR 8), Water Protection–**Non-Commercial, Non-Centralized Land Spreading**	Oil and Gas Division, Environmental Services Section	Application Information for Land Spreading Permit (Water Based Drilling Fluid and Associated Cuttings Only)	Yes	None	30	30
§3.8 (SWR 8), Water Protection–**Non-Commercial, Non-Centralized Land Treatment Permit**	Oil and Gas Division, Environmental Services Section	Application Information for Land Treatment	Yes	None	30	30
§3.8 (SWR 8), Water Protection–**Commercial or Centralized Land Spreading**	Oil and Gas Division, Environmental Services Section	Application Information for Land Spreading Permit (Water Based Drilling Fluid and Associated Cuttings Only)	Yes	None	45	45
§3.8 (SWR 8), Water Protection–**Commercial or Centralized or Land Treatment Permit**	Oil and Gas Division, Environmental Services Section	Application Information for Land Treatment	Yes	None	45	45
§3.8 (SWR 8), Water Protection–**Waste Hauler Permit**	Oil and Gas Division, Environmental Services Section	WH-1 WH-2 WH-3	Yes	$100	30	15

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§3.8 (SWR 8), Water Protection–**Hydrostatic Test Discharge Permit**	Oil and Gas Division, Environmental Services Section	Permit Application for Discharge of Hydrostatic Test Water	Yes	$300[1] (see fn. 1)	15	15
§3.8 (SWR 8), Water Protection–All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Produced Water to Inland Waters	Yes	$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection–All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Produced Water to the Gulf of Mexico from a Non-Land Based Facility	Yes	$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection–All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Gas Plant Effluent	Yes	$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection–**Minor Permit for One-Time Annular Disposal of Drilling Fluid**	Oil and Gas Division, Field Operations Section	Written request	Yes	None	16	15
§3.9 (SWR 9), Disposal Wells–**Disposal Well Permits**	Oil and Gas Division, Environmental Services Section	W-14	Yes	$100; $150 per exception	30	15
§3.10 (SWR 10), Restriction of Production of Oil and Gas from Different Strata–**Authority to Commingle**	Oil and Gas Division, Permitting/ Production Services Section	Rule 10 Exception Data Sheet	Yes	$50	14	21
§3.23 (SWR 23), Vacuum Pumps–**Authorization to Use Vacuum Pump**	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	21
§3.38 (SWR 38), Well Densities–**Density Exception**	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	$200	7	21
§3.41 (SWR 41), Application for New Oil or Gas Field Designation and/or Allowable–**New Oil or Gas Field Designation and/or Allowable**	Oil and Gas Division, Permitting/ Production Services Section	P-7	Yes	None	14	7

[1] For discharges to waters of the state.

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§3.43 (SWR 43), Application for Temporary Field Rules– **Temporary Field Rules**	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	30
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs– **Injection Permit**	Oil and Gas Division, Environmental Services Section	H-1 H-1A	Yes	$200 per well; $150 per exception	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs– **Injection Permit with Authorization to Inject Fresh Water**	Oil and Gas Division, Environmental Services Section	H-7	Yes	None	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs–**Area Permit**	Oil and Gas Division, Environmental Services Section	H-1S	Yes	$200 per well; $150 per exception	45	45
§3.48 (SWR 48), Capacity Oil Allowables for Secondary or Tertiary Recovery Projects– **Capacity Oil Allowables**	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	21
§3.50 (SWR 50), Enhanced Oil Recovery Projects– Approval and Certification for Tax Incentive–**Certificate for Recovered Oil Tax Rate**	Oil and Gas Division, Permitting/ Production Services Section	H-12	Yes	None	7	25
§3.50 (SWR 50) Enhanced Oil Recovery Projects – Approval and Certification for Tax Incentive–**Approval Concurrent With Recovered Oil Tax Rate**	Oil and Gas Division, Permitting/ Production Services Section	H-12	Yes	None	7	25
§3.50 (SWR 50), Enhanced Oil Recovery Projects – Approval and Certification for Tax Incentive–**Positive Production Response Certificate**	Oil and Gas Division, Permitting/ Production Services Section	H-13	Yes	None	7	25
§§3.57 (SWR 57), Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials, and 3.78 (SWR 78), Fees, Performance Bonds and Alternate Forms of Financial Security Required to Be Filed– **Reclamation Plant Permit and Associated Financial Assurance**	Oil and Gas Division, Permitting/ Production Services Section	R-9	Yes	None	30	90

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§3.70 (SWR 70), Pipeline Permits Required–**Permit to Operate a Pipeline**	Gas Services Division, License and Permit Section	Form T-4	Yes	None	21	15
§3.81 (SWR 81), Brine Mining Injection Wells–**Brine Mining Injection Permit**	Oil and Gas Division, Environmental Services Section	H-2	Yes	$200 per well	30	30
§3.78 (SWR 78), Fees, Performance Bonds and Alternate Forms of Financial Security Required to Be Filed–**Financial Assurance for Commercial Facility Permitted Under Rule 8**	Oil and Gas Division, Environmental Services Section	None	Yes	None	45	45
§3.83 (SWR 83), Tax Exemption for Two-and Three-year Inactive Wells–**Certification of Inactivity**	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	20	45
§3.93 (SWR 93), Water Quality Certification–**401 Certification**	Oil and Gas Division, Environmental Services Section	None. Application made pursuant to requirements of federal permitting entity.	Yes	None	30	15
§3.95 (SWR 95), Underground Storage of Liquid or Liquified Hydrocarbons in a Salt Formation–**Permit to Create, Operate, and Maintain an Underground Hydrocarbon Storage Facility**	Oil and Gas Division, Environmental Services Section	H-4	Yes	$200 per well	45	45
§3.96 (SWR 96), Underground Storage of Gas in Production or Depleted Reservoirs–**Permit to Operate a Gas Storage Project**	Oil and Gas Division, Environmental Services Section	H-1 H-4	Yes	$200 per well	45	45
§3.97 (SWR 97), Underground Storage of Gas in Salt Formations–**Permit to Create, Operate, and Maintain an Underground Gas Storage Facility**	Oil and Gas Division, Environmental Services Section	H-4	Yes	$200 per well	45	45
§3.101 (SWR 101), Certification for Severance Tax Exemption for Gas Produced from High-Cost Gas Wells–**Area Designation**	Oil and Gas Division, Permitting/ Production Services Section	Written Request	Yes	None	7	45
§9.10, Rules Examination–**LPG Employee Exam**	Gas Services Division, License and Permit Section	LPG Form 16	No	$20 per employee exam; $50 per management exam	30	N/A

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§9.27, Application for an Exception to a Safety Rule–**LPG Rule Exception**	Rail/LP-Gas/Pipeline Safety Division	LPG Form 25	No	Original–$50; re-submission–$30	21	21
§9.54, Commission–Approved Outside Instructors–**LPG Outside Instructor Application**	Alternative Fuels Research and Education Division	Written request	No	$300	14	10
§9.101, Filings Required for Stationary LP-Gas Installations–**LPG Plan Review**	Rail/LP-Gas/Pipeline Safety Division	LPG Form 500	No	Original–$50; re-submission–$30	21	21
§11.93, Elements of Permit Application–**New Permit Application**	Surface Mining and Reclamation Division	SMRD Form 1U	No	$200	120	30
§11.97, Renewal–**Permit Renewal**	Surface Mining and Reclamation Division	SMRD Form 1U	No	None	60	30
§11.98, Transfer–**Permit Transfer**	Surface Mining and Reclamation Division	SMRD Form 2U	No	None	60	30
§11.114, Revision on Motion or with Consent–**Permit Revision**	Surface Mining and Reclamation Division	SMRD Form 1U	No	$200	120	30
§§11.131-11.137, Notice of Exploration Through Overburden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit–**Uranium Exploration**	Surface Mining and Reclamation Division	SMRD Form 3U	No	None	30	30
§§11.138 and 11.139, Reclamation and Plugging Requirements; Reporting–**Test-Hole Transfer**	Surface Mining and Reclamation Division	SMRD Form 36U	No	None	30	30
§§11.205, 11.206, Changes in Coverage; Release or Reduction of Bonds–**Bond Adjustment**	Surface Mining and Reclamation Division	SMRD Form 42U, 43U, 44U, 46U	No	None	60	30
§12.110, General Requirements: Exploration of less than 250 Tons–**Coal Exploration < 250 Tons**	Surface Mining and Reclamation Division	SMRD-3C	No	None	30	30
§12.111, General Requirements: Exploration of More than 250 Tons–**Coal Exploration > 250 Tons**	Surface Mining and Reclamation Division	SMRD-4C	No	None	120	30
§12.148, Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments–**Design Plans**	Surface Mining and Reclamation Division	None	No	None	60	30

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§12.205, In Situ Processing Activities–**In Situ Coal Gasification**	Surface Mining and Reclamation Division	SMRD-5C	No	None	120	30
§12.216, Criteria for Permit Approval or Denial–**New Mine Permit**	Surface Mining and Reclamation Division	SMRD-1C	No	$5000	120	30
§12.226, Permit Revisions–**Permit Revision-Administrative**	Surface Mining and Reclamation Division	SMRD-2C SMRD-1C	No	$500	60	30
§12.226, Permit Revisions–**Permit Revision–Significant**	Surface Mining and Reclamation Division	SMRD-1C	No	$500	120	30
§§12.227-12.230, Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial–**Permit Renewal**	Surface Mining and Reclamation Division	SMRD-1C	No	$3000	60	30
§§12.227-12.230, Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial–**Permit Renewal/Revision**	Surface Mining and Reclamation Division	SMRD-1C	No	$3000	120	30
§§12.231-12.233, Transfer, Assignment, or Sale of Permit Rights: General Requirements; Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; Requirements for New Permits for Persons Succeeding to Rights Granted under a Permit–**Permit Transfer**	Surface Mining and Reclamation Division	SMRD-1C	No	$500	60	30
§12.307, Adjustment of Amount–**Bond Adjustment**	Surface Mining and Reclamation Division	SMRD-42(C), 43(C), 44(C), 45(C), 46(C), 47(C)	No	None	60	30
§12.351, Hydrologic Balance: Transfer of Wells–**Test-Hole Transfer**	Surface Mining and Reclamation Division	SMRD-36C	No	None	30	30
§12.707, Certification–**Blaster Certification**	Surface Mining and Reclamation Division	Blaster Certificate Application	No	None	60	30
§13.35, Application for an Exception to a Safety Rule–**CNG Rule Exception**	Rail/LP-Gas/Pipeline Safety Division	CNG Form 1025	No	Original–$50; re-submission–$30	21	21

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Application Form Title or Number**	**Form P-5 Required?**	**Fee**	**Initial Review Period**	**Final Review Period**
§13.70, Examination Requirements and Renewals–**CNG Employee Exam**	Gas Services Division, License and Permit Section	CNG Form 1016	No	$20 per employee exam; $50 for management exam	10	N/A
§14.2019, Certification Requirements–**LNG Employee Exam**	Gas Services Division, License and Permit Section	LNG Form 2016	No	$20 per employee exam; $50 for management exam	10	N/A
§14.2040, Filings and Notice Requirements for Stationary LNG Installations–**LNG Plan Review**	Rail/LP-Gas/Pipeline Safety Division	LNG Form 2500	No	Original–$50; re-submission–$30	21	21
§14.2052, Application for an Exception to a Safety Rule–**LNG Rule Exception**	Rail/LP-Gas/Pipeline Safety Division	LNG Form 2025	No	Original–$50; re-submission–$30	21	21
Tex. Rev. Civ. Stat. Ann. art. 6559f–**Clearance Deviation Authorization**	Rail/LP-Gas/Pipeline Safety Division	Application for Authorization to Deviate from Terms of the Texas Clearance Laws	No	$25	30	30

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit [~~Bond Form~~]	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
PR	Monthly Production Report	02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling / Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	07/01/04	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form [~~Notification of Regulated Waste Activity~~] (not an RRC form but required)	01/04 [~~12/99~~]	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 16 TAC §8.245(d)

Table 1. Typical Penalties.

Rule	Guideline Penalty Amount
16 TAC §3.70 - Pipeline Permits Required	$1,000
16 TAC §8.1 - General Applicability and Standards	$5,000
16 TAC §8.51 - Organization Report	$1,000
16 TAC §8.101 - Pipeline Integrity Assessment and Management Plans	$5,000
16 TAC §8.105 - Records	$5,000
16 TAC §8.110 - Operations and Maintenance Procedures	$5,000
16 TAC §8.115 - Construction Commencement Report	$5,000
16 TAC §8.201 - Pipeline Safety Program Fees	10% of amount due
16 TAC §8.203 - Supplemental Regulations	$5,000
16 TAC §8.205 - Written Procedure for Handling Natural Gas Leak Complaints	$1,000
16 TAC §8.210 - Reports	$5,000
16 TAC §8.215 - Odorization of Gas	$5,000
16 TAC §8.220 - Master Metered Systems	$5,000
16 TAC §8.225 - Plastic Pipe Requirements	$5,000
16 TAC §8.230 - School Piping Testing	$1,000
16 TAC §8.235 - Natural Gas Pipelines Public Education and Liaison	$5,000
16 TAC §8.240 - Discontinuance of Service	$10,000
49 CFR §192.613 - Continuing surveillance	$5,000
49 CFR §192.619 - Maximum allowable operating pressure	$5,000
49 CFR §192.625 - Odorization of gas	$5,000
49 CFR Part 192 - Transportation of Natural and Other Gas by Pipeline	$1,000
49 CFR Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards	$1,000
49 CFR Part 199 - Drug and Alcohol Testing	$ 500

Figure: 16 TAC §8.245(e)

Table 2. Penalty Enhancements.

For violations that involve	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person changed with violation
Bay, estuary, or marine habitat	$5,000 to $25,000		
Impact to a residential or public area		$1,000 to $15,000	
Hazardous material release		$2,000 to $25,000	
Reportable incident or accident		$5,000 to $25,000	
Exceeding pressure control limits		$5,000 to $20,000	
Affected area exceeds 100 square feet			$10 per square foot
Time out of compliance			$100 to $2,000 for each month
A person with a history of violations within seven years prior to the current enforcement action (See details in Tables 3 and 4)			$1,000 to $10,000, based on either the number of prior violations or the total amount of previous administrative penalties
Reckless conduct of person charged			up to double the total penalty
Intentional conduct of person charged			up to triple the total penalty

Figure 1: 16 TAC §8.245(f)

Table 3. Penalty enhancements based on number of prior violations.

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §8.245(f)

Table 4. Penalty enhancements based on total amount of prior penalties.

Total administrative penalties assessed in the seven years prior to action	**Enhancement amount**
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §8.245(i)

Table 5. Penalty calculation worksheet.

Typical penalties from Table 1		
1. 16 TAC §3.70 - Pipeline Permits Required	$1,000	$
2. 16 TAC §8.1 - General Applicability and Standards	$5,000	$
3. 16 TAC §8.51 - Organization Report	$1,000	$
4. 16 TAC §8.101 - Pipeline Integrity Assessment and Management Plans	$5,000	$
5. 16 TAC §8.105 - Records	$5,000	$
6. 16 TAC §8.110 - Operations and Maintenance Procedures	$5,000	$
7. 16 TAC §8.115 - Construction Commencement Report	$5,000	$
8. 16 TAC §8.201 - Pipeline Safety Program Fees	10% of amount due	$
9. 16 TAC §8.203 - Supplemental Regulations	$5,000	$
10. 16 TAC §8.205 - Written Procedure for Handling Natural Gas Leak Complaints	$1,000	$
11. 16 TAC §8.210 - Reports	$5,000	$
12. 16 TAC §8.215 - Odorization of Gas	$5,000	$
13. 16 TAC §8.220 - Master Metered Systems	$5,000	$
14. 16 TAC §8.225 - Plastic Pipe Requirements	$5,000	$
15. 16 TAC §8.230 - School Piping Testing	$1,000	$
16. 16 TAC §8.235 - Natural Gas Pipelines Public Education and Liaison	$5,000	$
17. 16 TAC §8.240 - Discontinuance of Service	$10,000	$
18. 49 CFR §192.613 - Continuing surveillance	$5,000	$
19. 49 CFR §192.619 - Maximum allowable operating pressure	$5,000	$
20. 49 CFR §192.625 - Odorization of gas	$5,000	$
21. 49 CFR Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards	$1,000	$
22. 49 CFR Part 193 - Liquefied Natural Gas Facilities	$1,000	$
23. 49 CFR Part 199 - Drug and Alcohol Testing	$ 500	$
24. Subtotal of typical penalty amounts from Table 1 (lines 1 - 23, inclusive)		**$**
25. Reduction for settlement before hearing: up to 50% of line 24 amt.	%	$
26. Subtotal: amount shown on line 24 less applicable settlement reduction (line 25)		**$**
Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2		
27. Bay, estuary, or marine habitat	$5,000 - $25,000	$
28. Impact to a residential or public area	$1,000 - $15,000	$
29. Hazardous material release	$2,000 - $25,000	$
30. Reportable incident or accident	$5,000 - $25,000	$
31. Exceeding pressure control limits	$5,000 - $20,000	$

Penalty enhancements for severity of violation from Table 2		
32. Affected area exceeds 100 square feet	$10 / square foot	$
33. Time out of compliance	$100-$2,000 / mo.	$
34. Subtotal: amount on line 26 plus all amounts on lines 27 through 33, inclusive		**$**
Penalty enhancements for culpability of person charged from Table 2		
35. Reckless conduct of person charged	double line 34 amt.	$
36. Intentional conduct of person charged	triple line 34 amt.	$
Penalty enhancements for number of prior violations within past five years from Table 3		
37. One	$1,000	$
38. Two	$2,000	$
39. Three	$3,000	$
40. Four	$4,000	$
41. Five or more	$5,000	$
Penalty enhancements for amount of penalties within past five years from Table 4		
42. Less than $10,000	$1,000	$
43. Between $10,000 and $25,000	$2,500	$
44. Between $25,000 and $50,000	$5,000	$
45. Between $50,000 and $100,000	$10,000	$
46. Over $100,000	10% of total amount	$
47. Subtotal: line 34 plus amounts on lines 35 and/or 36 plus the amount shown on any one line from 37 through 36, inclusive		**$**
48. Reduction for demonstrated good faith of person charged		$
TOTAL PENALTY AMOUNT: amount on line 47 less any amount shown on line 48		**$**

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.

Texas Department of Agriculture

Request for Proposals: Urban Schools Grant Program

Pursuant to the Texas Agriculture Code, §§46.001-46.005 and 4 Texas Administrative Code §§1.800 - 1.804, relating to agricultural projects in certain urban schools, the Texas Department of Agriculture (the department) hereby requests proposals for demonstration agricultural projects, or other projects designed to foster an understanding and awareness of agriculture, for the period of January 1, 2005, through December 31, 2005, from certain Texas urban school districts. A total amount of up to $2,500 may be awarded to an eligible elementary school in a grant cycle.

Eligibility. Proposals must be submitted by a Texas public elementary school from an urban school district with an enrollment of at least 49,000 students. According to the Texas Education Agency's (TEA) 2003-2004 records, the eligible school districts are:

(1) Houston Independent School District;

(2) Dallas Independent School District;

(3) Fort Worth Independent School District;

(4) Austin Independent School District;

(5) Cypress-Fairbanks Independent School District;

(6) Northside Independent School District;

(7) El Paso Independent School District;

(8) Arlington Independent School District;

(9) San Antonio Independent School District;

(10) Fort Bend Independent School District;

(11) Aldine Independent School District;

(12) North East Independent School District;

(13) Garland Independent School District; and

(14) Plano Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000, you will need to attach TEA verification of enrollment in addition to your application.

Proposal Requirements. Each proposal must include the following: a description of the proposed project; including a project title; a detailed schedule of anticipated costs for the project; a statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture; and contact information that includes the name of school district, name of the elementary school, both the principal's and project coordinator's names, telephone and fax numbers. The entire proposal may not exceed six pages, including cover letter and attachments. Please send one original with ten additional copies.

Proposals should be submitted to: Carol Funderburgh, Texas Department of Agriculture, 1700 North Congress Ave., 11th Floor, Austin, Texas 78701. The department must receive applications no later than 5:00 p.m. Central Standard Time, October 1, 2004.

Proposal Evaluations. Proposals will be evaluated, based on the requirements set forth above, by a panel appointed by the Commissioner of the Texas Department of Agriculture. The panel will review the proposals and make funding recommendations to the Commissioner. The panel will consist of representatives from the following: the Texas Department of Agriculture, education, livestock industry, specialty crop industry, row crop industry, horticulture industry, and the Texas Cooperative Extension.

Approved Projects. The announcement of the grant awards will be made by December 2004. All approved projects will have a start date of January 1, 2005 and must be completed by December 31, 2005. Upon completion of the project, a project summary of the educational results of the project and photographs to document such results will be due within six weeks. All awards will be subject to audit and periodic reporting requirements.

Additional Information. Ms. Funderburgh may be contacted by telephone at (512) 463-8536 or by e-mail at carol.funderburgh@agr.state.tx.us for additional information.

TRD-200402815
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: April 28, 2004

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 16, 2004, through April 22, 2004. The public comment period for these projects will close at 5:00 p.m. on May 28, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Harris County Flood Control District; Location: The project is located in adjacent wetlands to Armand Bayou, immediately north of the intersection with Fairmont Parkway, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates: Zone 15;

Easting: 293673; Northing: 3281948. Project Description: The applicant proposes to construct two regional flood control detention basins in a 45-acre project area within the Armand Bayou watershed to provide flood control relief to residences. The basins will have plunge pools and associated features to assist in providing water quality functions. The project will require a discharge of riprap for stabilization of the outfall, impacting 0.02 acre of open water in Armand Bayou. Additionally, approximately 0.9 acre of jurisdictional wetlands will be excavated to construct the 7-foot-deep detention ponds. The applicant proposes to compensate for impacts to 0.92 acre of jurisdictional waters by withdrawing credits at the Greens Bayou Mitigation Bank. CCC Project No.: 04-0121-F1; Type of Application: U.S.A.C.E. permit application #23170 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A §1251-1387).

Applicant: The Dow Chemical Company; Location: The project is located in wetlands adjacent to Oyster Creek, east of the City of Lake Jackson, west of FM 523, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oyster Creek, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 270561; Northing: 3213962. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for an oil and gas monitoring well and an access road. Fill for the access road and pad site will permanently impact 0.13-acres of wetlands (0.03-acre forested and 0.10-acre herbaceous) and temporarily impact 0.23-acres of wetlands (conversion of 0.07-acre of forested wetlands and temporary fill of 0.16-acre of herbaceous wetlands). The applicant proposes to mitigate onsite with the restoration of the temporarily disturbed wetlands, removal of 0.34-acre of Chinese tallow from wetlands, and planting of trees. Furthermore, the applicant proposes to designate one acre from Dow's prior contribution to the Texas Parks and Wildlife Department's Peach Point Wildlife Management Area as compensation for unavoidable impacts of the proposed project. CCC Project No.: 04-0144-F1; Type of Application: U.S.A.C.E. permit application #23362 is being evaluated under §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.

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-200402806
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 28, 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, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/03/04 -- 05/09/04 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/03/04 -- 05/09/04 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 05/01/04 -- 05/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 05/01/04 -- 05/31/04 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.

[3] For variable rate commercial transactions only.

TRD-200402776
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 27, 2004

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Texas Council for Developmental Disabilities

Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to establish one project to develop and provide Self-Determination information, training, technical assistance and consultation (i.e. direct hands-on help and support) in Texas. The project will also identify systems and policy barriers that make it difficult for Texas services and programs to support Self-Determination. This project must demonstrate cultural competency at all stages of the project.

Funding up to $270,000 is available for the first year and funding up to $225,000 per year is available for years two and three of the project. TCDD reserves the right to evaluate project activities and to provide funding for an additional two year if successful. Non-federal matching funds of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this request for proposal or more information about TCDD may be obtained through TCDD's web site at http://www.txddc.state.tx.us. All questions pertaining to this RFP should be directed to Joanna Cordry, email Joanna.Cordry@txddc.state.tx.us or phone (512) 437-5410 (voice), (512) 437-5431 (TDD).

The application packet may be obtained on TCDD's website, by mail, fax or E-mail. Requests may be mailed to Barbara Booker, Grants Management Technician, Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, Texas, 78761-7509; faxed to (512) 437-5434; or Emailed to Barbara.Booker@txddc.state.tx.us.

Deadline: Two hard copies, one with the original signatures, must be submitted. All proposals must be received by TCDD not later than 4:00 PM, Central Standard Time, July 9, 2004, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to the attention of Barbara Booker at 6201 East Oltorf, Suite 600, Austin, Texas, 78741-7509. Faxed proposals cannot be accepted.

TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to Barbara.Booker@txddc.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct at least one workshop to help potential applicants understand the grant application process. In addition, answers to frequently asked questions will be posted on the website. For more information on the Grant Proposers' Workshops and the scheduled locations, see our website at http://www.txddc.state.tx.us.

TRD-200402840
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: April 28, 2004

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Education Service Center, Region XIV

Request for Proposals

Eligible Proposers. Region 14 Education Service Center (ESC) is requesting proposals from Local Education Agencies (LEAs) that serve suspended and/or expelled students in Disciplinary Alternative Education Programs (DAEPs) established by §37.008 of the Texas Education Code (TEC); from county juvenile boards that oversee Juvenile Justice AEPs (JJAEPs) established by TEC §37.011; and from nonprofit, for-profit, educational, judicial, and faith-based organizations that propose to operate programs for expelled students only in those counties that do not operate JJAEPs authorized by TEC §37.011. All proposers must provide opportunities for equitable participation of private school children and teachers in the design and implementation of the proposal.

Description. Contractual activities are for pilot and model initiatives to engage students who have been suspended or expelled per the provisions of TEC Chapter 37 (excluding in-school suspension programs) in community service activities that help the students practice skills and behaviors they need to transition back to their regular classrooms and be productive citizens. These "service-learning" activities must combine meaningful community service with thoughtful learning objectives to support academic goals, meet real community needs, and help reduce suspension and expulsion rates. The focus of the service is not punitive but rather rehabilitative and educational. Region 14 ESC will issue contracts to eligible applicants to: (1) engage students who are suspended and/or expelled in community service activities as a structured element of an instructional program; (2) focus service activities to address key district and/or campus goals such as reduced recidivism (i.e., lower suspension, expulsion, and arrest rates), improved attendance and behavior, enhanced personal responsibility and civic-mindedness, and strengthened job skills; (3) use service as a strategy to meet real community needs; (4) focus service activities to help students practice skills and behaviors they will need to be successful in the regular classroom; (5) develop meaningful partnerships with organizations and individuals (including parents and family members, as appropriate) to implement the project successfully and sustain service-learning as a regular instructional practice; (6) collect information about successful or model efforts for the purpose of project replication, adoption, and adaptation; and (7) ensure participation in all required trainings and meetings by at least two individuals who are responsible for the implementation of the program.

Contractors must meet the following evaluation requirements for the proposed program: (a) Collect and report individual attendance data for student participants; (Data will be collected separately for overall time in the facility as well as time spent actively participating in service-learning activities.); (b) collect and report data equivalent to PEIMS 425 records (These data may be reported using existing records maintained by the district. Statewide program evaluators will work with JJAEPs to collect and report these data.); (c) collect and report individual grades and credits earned by participating students; (d) evaluate their programs in accordance with the evaluation activities described in the Contractor's Proposal; and (e) participate in site visits of the project and other evaluation activities as requested by regional education service centers, the Texas Center for Service-Learning (TxCSL), and the program evaluators. TxCSL understands that each program is unique and that all evaluation components may not be applicable. Each contractor is, however, expected to work with TxCSL and evaluation staff to provide sufficient data to evaluate the overall project.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. The starting date will be no earlier than September 1, 2004, with an ending date of May 30, 2005. Programs that propose summer activities may request a contract extension with an ending date no later than July 30, 2005. Additional funding for this program is not anticipated beyond the 2004-2005 program year.

Project Amount. A range of contracts will be awarded to allow for a variety of models in small, medium, and large districts. Larger contracts are required to involve more students, have more significant contributions, and have strong ties with district goals and policies. All contracts must ensure that proposed funding is reasonable and is directly related to the goals of this program. Previous contracts have averaged $65,000 a year. Approximately $533,000 is available for project contracts for the 2004-2005 program year. This project is funded 100% from USDOE federal funds from the U.S. Department of Education.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. Region 14 ESC will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. Special consideration will be given to ensure geographic and organizational diversity among proposers. Region 14 ESC reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

Region 14 ESC is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit Region 14 ESC to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate Region 14 ESC to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of the RFP may be obtained by writing the Texas Center for Service-Learning, 2538 S. Congress Avenue, Suite 300, Austin, Texas 78704; by calling 1-877-441-1147 or (512) 441-1147; or by downloading the application from the Texas Center website at www.txcsl.org.

Further Information. For clarifying information about the RFP, contact TxCSL program staff members Wanda Holland (wholland@txcsl.org) or Susan Sneller (ssneller@txcsl.org) at 1-877-441-1147 or (512) 441-1147. Information on additional opportunities for technical assistance such as conference calls will be posted on the TxCSL website at www.txcsl.org.

Deadline for Receipt of Proposals. Proposals must be received by mail or delivery service at the Texas Center for Service-Learning by 5:00 p.m. (Central Standard Time), Wednesday, June 30, 2004, to be considered. Facsimile and e-mail copies will not be accepted.

TRD-200402849

Ronnie Kincaid
Executive Director
Education Service Center, Region XIV
Filed: April 28, 2004

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Texas Commission on Environmental Quality

Enforcement Orders

An order was entered regarding Bill & Beth Corporation, Docket No. 1999-1312-MLM-E on April 7, 2004 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pareo Calvin dba Pareo Dairy, Docket No. 2001-0412- AGR-E on April 14, 2004 assessing $4,000 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.

A default order was entered regarding C. J. Yun, Inc. dba Ace Mart, Docket No. 2003-0129- PST-E on April 14, 2004 assessing $1,050 in administrative penalties.

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.

A default order was entered regarding Pyarali Hooda dba Howdy Doody #15, Docket No. 2002- 0849-PST-E on April 14, 2004 assessing $1,050 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 City Of Stockdale, Docket No. 2002-1426-MWD-E on April 14, 2004 assessing $5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny Dutton and Fay Dutton dba Paradise Grill & Grocery, Docket No. 2003-0774-PST-E on April 14, 2004 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. F. A. Oil Company dba Regency Car Wash, Docket No. 2003-0841-PST-E on April 14, 2004 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Waste Services of Texas, Ltd., Docket No. 2003-1136-AIR-E on April 14, 2004 assessing $770 in administrative penalties with $154 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilgrims Pride, G.P., Docket No. 2003-0046-AGR-E on April 14, 2004 assessing $200,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney at 512/239-3424, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S.R. Company, Docket No. 2003-1148-PST-E on April 14, 2004 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold Shepherd dba Harold's Mobil Mart and Restaurant, Docket No. 2003-0970-PST-E on April 14, 2004 assessing $4,875 in administrative penalties with $975 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T & F Agri-Service & Construction, Inc., Docket No. 2003-0785-PST-E on April 14, 2004 assessing $475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200402784
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 27, 2004

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Notice of District Petition

Notices mailed April 16, 2004

TCEQ Internal Control No. 03172004-D04; Scarsdale, Ltd and Meador Partners, Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 410 (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 is only one lienholder, Lennar Homes of Texas Land and

Construction, Ltd., on the property to be included in the proposed District; (3) the proposed District will contain approximately 278.6 acres located within Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Houston, Texas, and is not 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 Lennar Homes of Texas Land and Construction, Ltd. to the creation of the proposed District. By Ordinance No. 2003-1111, effective November 25, 2003, the City of Houston, Texas, gave its consent to the creation of the proposed District. 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; 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) purchase, 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. 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 $15,000,000.

TCEQ Internal Control No. 03312004-D05; Ashton Southern Trails Joint Venture, (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 34 (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 is only one lienholder, Larelnor Developments, Inc., on the property to be included in the proposed District; (3) the proposed District will contain approximately 477.63 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate limits of the City of Pearland, Texas, and is not 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 Larelnor Developments, Inc. to the creation of the proposed District. By Ordinance No. 1135, effective November 24, 2003, the City of Pearland gave its consent to the creation of the proposed District. 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 Petitioner estimates that the cost of the project will be approximately $35,000,000.

TCEQ Internal Control No. 03032004-D03; RH of Texas Limited Partnership (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 411 (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 no lienholders on the land to be included in the proposed District; (3) the proposed District will contain approximately 110.549 acres located within Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-1202, effective December 16, 2003, the City of Houston, Texas, gave its consent to the creation of the proposed District. 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; 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) purchase, 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. 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 $4,900,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a 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 a petition 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-200402692

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 22, 2004

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Notice of District Petition

Notices mailed April 21, 2004

TCEQ Internal Control No. 02262004-D02; Elan Development, L.P., (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No.147 (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 no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 103.279 acres located within Fort Bend County, Texas; and (4) the proposed District is within the corporate limits of the City of Rosenberg, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-64, effective November 18, 2003, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) purchase, construct, acquire, provide, improve, extend, repair, maintain, and operate a waterworks and sanitary sewer system for residential, municipal, industrial and commercial purposes; (2) gather, conduct, divert, abate, amend and control local storm waters or other harmful excesses of water; and (3) purchase, construct, acquire, provide, repair, 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, 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 $6,000,000.

TCEQ Internal Control No. 04092004-D03; 2920 Venture, Ltd. and Willow Creek Development Company, Limited (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 401 (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 is no lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 440.9016 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. By Ordinance No. 2004-157, effective March 16, 2004, the City of Houston, Texas gave its consent to the creation of the proposed District. 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 further 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 $40,000,000.

TCEQ Internal Control No. 03192004-D01; Land Barons XX Conroe 538, J.A. Ltd. and Texas Investment and Development Company, Inc. (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 92 (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) Land Barons XX Conroe 538, J.A. Ltd. is 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 519.577 acres located within Montgomery County, Texas; and (4) the proposed District is within the corporate limits of the City of Conroe, Texas and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2701-03, effective March 31, 2003, the City of Conroe, Texas gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, 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; 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. 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 $15,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a 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 a petition 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-200402783

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 27, 2004

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Notice of Water Rights Application

Notices mailed April 13, 2004 through April 15, 2004.

APPLICATION NO. 5780; Ashton-Dallas Residential, LLC, 13800 Montfort Drive, Ste. 100, Dallas, Texas 75240, applicant, seeks a Water Use Permit pursuant to Texas Water Code (TWC) 11.121, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks to construct and maintain a reservoir on an unnamed tributary of Hickory Creek, tributary of the Trinity River, Trinity River Basin, in Denton County, for in-place recreation purposes. The proposed lake will have a surface area of 7.04 acres and impound 72.59 acre-feet of water and will be a retention pond/amenity in a residential development in Denton County, Texas. The centerline of the dam will be at Latitude 33.153 N, Longitude 97.105 W also described as bearing S 31.838 W, 1479.94 feet from the southwest corner of the Eli Pickett Survey, Abstract No. 1018, approximately 4.7 miles SSE of Denton, Texas. Applicant has indicated that the reservoir will be maintained at the normal operating level using ground water. No diversions are requested. The application was received on March 19, 2002. The Executive Director reviewed the application and determined it to be administratively complete on May 28, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

TEMPORARY APPLICATION NO. 5835; Intercontinental Terminals Company, 1943 Battleground Road, Deer Park, Texas, 77536, seeks a temporary Water Use Permit pursuant to Texas Water Code (TWC)11.138 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Intercontinental Terminals Company has applied for a temporary permit for authorization to divert 80 acre-feet of water at a maximum of 3.342 cfs (1,500 gpm) from the Houston Ship Channel, San Jacinto River Basin for hydrostatic testing in Harris County within a period of three years. Applicant seeks to divert from Segment 1005, located 15 miles east from Harris, and northeast from Deer Park, Texas, a nearby town. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the San Jacinto River Basin. The application was received on February 25, 2004 and additional information and fees were received on April 1, 2004. The application was accepted for filing and declared administratively complete on April 5, 2004. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by May 6, 2004.

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-200402691

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 22, 2004

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Proposal for Decision for Enviro Save Oil Recovery Company of America

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 21, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Enviro Save Oil Recovery Company of America; SOAH Docket No. 582-04-3547; TCEQ Docket No. 2002- 0887-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Enviro Save Oil Recovery Company of America 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) 239-3300.

TRD-200402786
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 27, 2004

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Proposal for Decision for Majic Market, Inc. Brown Trail Fina

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 21, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Majic Market, Inc. dba Brown Trail Fina; SOAH Docket No. 582-04-1397; TCEQ Docket No. 2003-0227-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Majic Market, Inc. dba Brown Trail Fina 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) 239-3300.

TRD-200402785
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 27, 2004

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 7, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 7, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Albertson's Inc. dba Albertson's Express 936; DOCKET NUMBER: 2004- 0055-AIR-E; IDENTIFIER: Regulated Entity Identification Number RN102988730; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to prevent the transfer of gasoline which may be used as a motor fuel in the El Paso County area with a Reid vapor pressure (RVP) greater than 7.0 pounds per square inch absolute (psia); PENALTY: $816; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: City of Arp; DOCKET NUMBER: 2003-1346-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10511-001, Regulated Entity Identification Number RN101720498; LOCATION: Arp, Smith County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10511-001, and the Code, §26.121(a), by failing to comply with the effluent limitations and monitoring requirements; PENALTY: $3,584; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: BASF Corporation; DOCKET NUMBER: 2003-0222-AIR-E; IDENTIFIER: Air Account Number BL-0021-O; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 8074A, and THSC, §382.085(a) and (b), by failing to prevent the release of unauthorized and excessive emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Bella Firma Development Inc. dba Granbury Mobile Home Park; DOCKET NUMBER: 2002-1356-MLM-E; IDENTIFIER: Public Water Supply (PWS) Number 1110086; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: mobile home park with on-site sewage (Facility A) and PWS (Facility B); RULE VIOLATED: 30 TAC §312.145(a), by failing to keep trip tickets for all loads of septage leaving Facility A; the Code, §26.121(a), by failing to prevent unauthorized discharges at Facility A; the Code, §26.039, by failing to report unauthorized discharges at Facility A; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at Facility B; 30 TAC §290.42(k), by failing to compile and maintain a plant operations manual at Facility B; 30 TAC §290.43(d)(3), by failing to equip air lines with filters or other devices to prevent compressor lubricants from entering the pressure tank at Facility B; 30 TAC §290.43(c)(2), by failing to maintain the roof hatch in a locked position at all times at Facility B; and 30 TAC §290.41(c)(3)(A), by failing to provide a well diggers log for review at Facility B; PENALTY: $600; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588- 5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Broaddus Enterprises, Inc.; DOCKET NUMBER: 2003-1189-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Numbers 28634, 4266, and 45113, Regulated Entity Reference Numbers RN101488708, RN100609361, and RN101494862; LOCATION: Austin, Travis County, Texas; TYPE

OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew its TCEQ delivery certificate in a timely manner at Picky's Pantry, Tarrytown Chevron, and Bee Caves Chevron; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467, by failing to make available to a common carrier a valid, current delivery certificate prior to accepting a regulated substance into the underground storage tanks (USTs) at Picky's Pantry, Tarrytown Chevron, and Bee Caves Chevron; 30 TAC §334.49(e)(2)(B)(ii) and the Code, §26.3475(d), by failing to record and maintain the results of all tests and inspections of any impressed current cathodic protection system conducted at Tarrytown Chevron; 30 TAC §34.50(b)(1)(A) and the Code, §26.3475, by failing to monitor a UST in a manner that will detect a release at a frequency of at least once every month, not to exceed 35 days between each monitoring, at Tarrytown Chevron; 30 TAC §334.7(a)(1) and the Code, §26.346, by failing to register a UST with the TCEQ at Tarrytown Chevron; 30 TAC §334.49(a) and (b) and the Code, §26.3475, by failing to provide corrosion protection for a UST containing waste oil at Bee Caves Chevron; 30 TAC §334.49(c)(4) and the Code, §26.3475, by failing to inspect or test the UST corrosion protection system within three - six months after installation and at a subsequent frequency of at least every three years; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to provide a method of release protection for a UST containing waste oil; PENALTY: $25,200; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2004-0036-PST-E; IDENTIFIER: PST Facility Identification Number 12999; LOCATION: near Alvin, Brazoria County, Texas; TYPE OF FACILITY: PSTs; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and the Code, §26.346(a), by failing to ensure the renewal of a previously issued UST delivery certificate; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid and current delivery certificate before accepting the delivery of a regulated substance into the UST system; PENALTY: $1,856; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Beverly Henson dba Circle H Muffler; DOCKET NUMBER: 2003-0581-AIR- E; IDENTIFIER: Regulated Entity Number RN102938024; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: vehicle muffler repair; RULE VIOLATED: 30 TAC §114.50(d)(2) and THSC, §382.085(b), by issuing or allowing the issuance of emission certificates without performing any of the emission tests; PENALTY: $5,063; ENFORCEMENT COORDINATOR: Rick Ciampi, (512) 239-3119; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: The City of Corpus Christi; DOCKET NUMBER: 2003-1347-MWD-E; IDENTIFIER: TPDES Permit Number 10401-005; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10401-005, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the collection system into, or adjacent to, waters in the state, and by failing to meet the permitted limit for the daily maximum two-hour peak flow for the months of September and October 2002; PENALTY: $66,125; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412-5503, (361) 825-3100.

(9) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2003-1507-AIR-E; IDENTIFIER: Air Account Number HG0769O; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §113.130 and §115.356, 40 Code of Federal Regulations (CFR) §63.181(d), and THSC, §382.085(b), by failing to maintain fugitive emission records that contained the minimum information required; and 30 TAC §116.115(c) and Air Permit Number 19921, by failing to perform quarterly ammonia sampling on the inlet wastewater flow to the wastewater treatment facility; PENALTY: $12,535; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Duke Energy Field Services LLC; DOCKET NUMBER: 2003-1232-AIR-E; IDENTIFIER: Air Account Number JE-0769-P, Regulated Entity Identification Number RN100542349; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §106.512(2)(C)(i) - (iii) and THSC, §382.085(b), by failing to replace the oxygen sensors, failing to record measurements of oxides of nitrogen (NO_x) and carbon monoxide (CO) emissions as soon as practicable but no later than seven days following the replacement of the oxygen sensors, and by failing to conduct NO_x and CO performance testing for the compressor engine within 60 days of initial startup and biennially thereafter; 30 TAC §101.20(1) and 40 CFR §60.487(c)(2)(i), by failing to report fugitive leaks and a plant shutdown in the semi-annual reports for the period from January 1, 2001 - December 31, 2003; 30 TAC §§122.143(4), 122.145(2)(A), and 122.511(b)(1) and (b)(2) and Federal Operating Permit O-02128, by failing to include the deviation reports for the periods from January 1, 2001 - December 31, 2002, the unreported fugitive monitoring leaks for the period from February 1, 2001 - July 31, 2002 and for the period from January 1, 2001 - June 30, 2001, and an unreported shutdown occurring on June 18, 2001; and 30 TAC §§101.27(c)(1), 290.51(a)(3), 334.128(a), and 335.323, by failing to pay annual facility fees; PENALTY: $28,875; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: City of Duncanville; DOCKET NUMBER: 2003-1174-PST-E; IDENTIFIER: PST Facility Identification Number 45773, Regulated Entity Identification Number RN102849718; LOCATION: Duncanville, Dallas County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii) and the Code, §26.346(a), by failing to ensure that a delivery certificate is renewed in a timely and proper manner by the submission of a new UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to ensure that a valid TCEQ delivery certificate was posted before accepting delivery into the USTs; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Rick Ciampi, (512) 239-3119; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Eli Sasson; DOCKET NUMBER: 2003-1174-PST-E; IDENTIFIER: TPDES Permit Number 0011414-002, Regulated Entity Identification Number RN101525137; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0011414-002, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids (TSS), total nitrogen ammonia (NH_3-N), and flow; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2003-1234-AIR-E; IDENTIFIER: Air Account Number JE-0149-F,

Regulated Entity Identification Number RN102553336; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: tank farm; RULE VIOLATED: 30 TAC §116.115(b)(1), Permit Number 99, General Condition Number 7F, and THSC, §382.085(b), by failing to monitor 74 components in volatile organic compounds service on a quarterly basis; 30 TAC §113.230 and §116.814(a) and Voluntary Emission Reduction Permit Number 49131, by failing to conduct monthly visual, audible, and/or olfactory inspections within the operating area and on all equipment in gasoline service; and 30 TAC §122.145(2)(A), by failing to submit a deviation report to document the failure to conduct monthly visual, audible, and/or olfactory inspections within the operating area and on all equipment in gasoline service; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2002-0722-AIR-E; IDENTIFIER: Air Account Number JE-0067-I, Air Permit Numbers 19566/PSD-TX-768M1, 18277/PSD-TX-802, 18276, 1202, and 655; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical refining; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 113.340, and 116.115(c), 40 CFR §§60.592(a), 60.482-7(d)(1), and 63.648(a), Air Permit Number 19566/PSD-TX-768M1, and THSC, §382.085(b), by failing to repair valve 3005 while the hydrocracker facility was shutdown; 30 TAC §115.354(2)(C) and 40 CFR §60.482-7(a), by failing to perform monthly monitoring of accessible valves following installation or discovery in order to establish two consecutive months of leak-free operation; 40 CFR §60.487(c)(2)(i), by failing to report valve 5922 in the semi-annual equipment leaks report for the period from July 1, 2000 - December 31, 2000; 30 TAC §111.111(a)(4)(A)(ii), by failing to record daily notations for 24 days in the flare log for process flares from January 1, 2001 - December 31, 2001; 30 TAC §116.115(b)(2)(G) and (c) and maximum allowable emission rate (MAER), by failing to limit sulphur dioxide (SO_2) emissions, by failing to limit emissions of CO, particulate matter of ten microns or greater, and NO_x, failing to limit the hourly CO emissions from the hydrocracker stabilizer reboiler heater H-3304 stack during an event which occurred December 12, 2001, and by failing to limit the hydrocracker's fuel gas concentration of hydrogen sulfide to less than 150 parts per million by volume; Air Permit Numbers 18277/PSD-TX-802 and 18276, by failing to limit the SO_2 emissions from 14 emission points during events which occurred July 22 and December 20, 2001 and January 21, 2002; Air Permit Number 1202, by failing to limit SO_2 emissions from boiler 22 to the applicable permitted MAER limits during an event which occurred June 15, 2001; 30 TAC §115.354(4), by failing to monitor a pressure relief valve within 24 hours after it vented to the atmosphere; 30 TAC §115.352(2), by failing to repair valves within 15 days after leaks were detected; Air Permit Number 655, by failing to provide a carbon absorption system; and 40 CFR §60.482-9(a), by failing to repair a valve when the emissions of purged material resulting from immediate repair are not greater than the fugitive emissions likely to result from the delay of repair; PENALTY: $150,462; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Georgia-Pacific Corporation; DOCKET NUMBER: 2003-1356-AIR-E; IDENTIFIER: Air Account Number LH-0026-B, Regulated Entity Identification Number RN100217967; LOCATION: Cleveland, Liberty County, Texas; TYPE OF FACILITY: plywood and lumber manufacturing; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit Form ECT-1, Annual Compliance Report, in a timely manner; and 30 TAC §334.22(a), by failing to pay outstanding tank fees; PENALTY: $2,320; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: GEUS; DOCKET NUMBER: 2003-1583-AIR-E; IDENTIFIER: Air Account Number HV0023K; LOCATION: Greenville, Hunt County, Texas; TYPE OF FACILITY: steam power plant; RULE VIOLATED: 30 TAC §122.146(1) and (2) and Permit Number O-00001, by failing to submit in a timely manner the annual compliance certification for the reporting periods of October 5, 1999 - October 4, 2000, October 5, 2001 - October 4, 2002, and October 5, 2002 - October 4, 2003; and 30 TAC §122.145(2)(B) and (C), by failing to submit in a timely manner a semi- annual deviation report that covers six months only; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Gilbert Food Stores, Inc. dba Northend Grocery; DOCKET NUMBER: 2004- 0010-PST-E; IDENTIFIER: PST Facility Identification Number 04196, Regulated Entity Reference Number RN101752517; LOCATION: Princeton, Collin County, Texas; TYPE OF FACILITY: convenience store with sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii) and the Code, §26.346(a), by failing to ensure that a delivery certificate is renewed in a timely and proper manner; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to have a copy of a valid, current TCEQ delivery certificate before accepting delivery of the regulated substance into the UST; PENALTY: $1,632; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Girl Scouts of South Texas Council dba Camp Wind A Mere; DOCKET NUMBER: 2003-1197-PWS-E; IDENTIFIER: PWS Identification Number 0840142; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(f), (c)(3), and (g), by failing to comply with the maximum contaminate level for total coliform, by failing to take repeat samples following a positive coliform sample, and by failing to provide public notification for sampling deficiencies; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Walter Lassen, (512) 239-0513; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Gorham Pet Rest Cremation Services, Inc., formerly Pet Rest Cremation Services; DOCKET NUMBER: 2003-1385-AIR-E; IDENTIFIER: Air Account Number TH-0746-V; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: pathological cremation service; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 42846, and THSC, §382.085(b), by failing to post the manufacturer's recommended operating instructions near the incinerator, failing to certify the continuous emissions monitoring system within 180 days of startup of the incinerator; failing to calibrate, maintain, and operate the stack temperature, oxygen (O_2), and CO monitors in accordance with the manufacturer's instructions and recommendations; failing to maintain continuous temperature, O_2, and CO recorder charts; and by failing to submit a log of occurrences of noncomplying conditions on a quarterly basis; PENALTY: $924; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: Hill Country Bible Church Inc.; DOCKET NUMBER: 2003-1550-EAQ-E; IDENTIFIER: Edwards Aquifer File Number 11-02060607B; LOCATION: near Austin, Williamson County, Texas; TYPE OF FACILITY: church; RULE VIOLATED: 30 TAC §213.4(k), the Code, §26.121(a), and Edwards Aquifer Protection Plan File Number 11-02060607B, by failing to prevent

the unauthorized discharge of sediment-laden water to a tributary of Buttercup Creek, within the Edwards Aquifer recharge zone; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(21) COMPANY: I.B.D. Corp. dba Jamies Food Store 1; DOCKET NUMBER: 2004-0015- PST-E; IDENTIFIER: PST Registration Number 49421; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail gasoline sales; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to submit to the TCEQ a UST registration and self- certification form to renew the previously issued delivery certificate before the expiration date; and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to the common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into a UST; PENALTY: $1,632; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: KMCO, L.P.; DOCKET NUMBER: 2004-0202-AIR-E; IDENTIFIER: Air Account Number HG-0426-B; LOCATION: Crosby, Harris County, Texas; TYPE OF FACILITY: industrial chemicals manufacturing; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit Form ECT-1, Annual Compliance Report, in a timely manner; PENALTY: $2,860; ENFORCEMENT COORDINATOR: Christina McLaughlin, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Matagorda County Water Control and Improvement District No. 5; DOCKET NUMBER: 2003-0061-MWD-E; IDENTIFIER: TPDES Permit Number 10217-001; LOCATION: Blessing, Matagorda County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number 10217-001 and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Mesquite Landfill TX, LP; DOCKET NUMBER: 2003-1478-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Disposal Permit Number 556, Regulated Entity Reference Number RN100217942; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.134, by failing to prevent ponding of water on Tract A; 30 TAC §330.133(b), (f), and (g) and THSC, §361.013(d), by failing to provide intermediate cover, failing to promptly repair erosion by restoring the intermediate cover material on Tract B, and failing to maintain an intermediate cover application log; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Mohammad Frotan dba Mos Exxon; DOCKET NUMBER: 2004-0063-PST-E; IDENTIFIER: PST Facility Identification Number 73447, Regulated Entity Reference Number RN101545770; LOCATION: Lavon, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that the UST is properly identified on the facility's registration and self-certification form; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate in a timely and proper manner by submitting a new UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(I) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate before delivery of a regulated substance into the USTs; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: City of Pampa; DOCKET NUMBER: 2003-1312-AIR-E; IDENTIFIER: Air Account Number GH0055U, Regulated Entity Reference Number RN100211416; LOCATION: near Pampa, Gray County, Texas; TYPE OF FACILITY: MSW landfill; RULE VIOLATED: 30 TAC §122.130(b)(1), 40 CFR §60.752(c)(1), and THSC, §382.054, by failing to submit a Title V Federal Operating Permit application in a timely manner; and 30 TAC §101.20(1) and 40 CFR §60.757(a)(1)(i) and (2), by failing to submit a complete design capacity report in a timely manner; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: Gilbert Reyes dba Party Time; DOCKET NUMBER: 2004-0067-AIR-E; IDENTIFIER: Air Account Number EE-0812-T, Regulated Entity Reference Number RN100810449; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to prevent the transfer of gasoline from a storage vessel which may be used in a motor vehicle in the El Paso area with a RVP greater than 7.0 psia; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(28) COMPANY: Pete Gallegos Paving Inc.; DOCKET NUMBER: 2003-0515-LII-E; IDENTIFIER: unlicensed irrigator; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §344.4(a) and the Code, §34.007(a), by failing to obtain a certificate of registration prior to installing a landscape irrigation system; PENALTY: $500; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(29) COMPANY: Ranco, Inc.; DOCKET NUMBER: 2003-1423-MLM-E; IDENTIFIER: Solid Waste Registration (SWR) Number 38665, Regional Storm Water Identification Number R15STW0031, Regulated Entity Reference Number RN100687086; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: automatic climate control manufacturing; RULE VIOLATED: 30 TAC §335.62 and 40 CFR §262.11, by failing to complete a hazardous waste determination for oily water and degreasing water wastes; 30 TAC §335.6(c), by failing to provide written notification within 90 days of any changes or additional information; 30 TAC §335.10(d)(3), by failing to retain a copy of the waste manifest at the time of waste transfer; and 30 TAC §281.25(a)(4) and 40 CFR §122.26, by failing to obtain a multi-sector general permit for authorization to discharge storm water; PENALTY: $3,990; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Schenectady International, Inc.; DOCKET NUMBER: 2002-0971-IWD-E; IDENTIFIER: TPDES Permit Number 01961-000; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: alkyl phenol petrochemical facility with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 01961-000, and the Code, §26.121, by failing to comply with permitted effluent limits for pH, phenol, and biochemical oxygen demand (BOD); PENALTY: $10,500; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: SET Environmental, Inc.; DOCKET NUMBER: 2003-1548-WQ-E; IDENTIFIER: TPDES Permit Number 04123; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: industrial wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04123, and the Code, §26.121(a), by failing to comply with permitted effluent limits for chemical oxygen demand and oil and grease; and 30 TAC §335.323(a), §335.324(a), and THSC, §361.134(c) and §361.135(c), by failing to pay fees for Fiscal Year 2004; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Christina McLaughlin, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Southwest Milam Water Supply Corporation; DOCKET NUMBER: 2003- 1527-PWS-E; IDENTIFIER: PWS Identification Number 1660015, Regulated Entity Identification Number RN101452837; LOCATION: Rockdale, Milam County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(h) and the Code, §26.121(a), by failing to obtain a TCEQ permit for discharging wastes from water treatment processes; and 30 TAC §290.41(c)(1)(D), by failing to prevent livestock in pastures within 50 feet of water supply wells; PENALTY: $600; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: Southwest Shipyard, L.P.; DOCKET NUMBER: 2003-1450-IHW-E; IDENTIFIER: SWR Number 31208; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: barge cleaning and repair; RULE VIOLATED: 30 TAC §335.2(b), by allegedly disposing of hazardous waste at an unauthorized disposal facility and placing four 55-gallon drums of hazardous waste in a trash compactor used for class 1 plant trash; PENALTY: $17,040; ENFORCEMENT COORDINATOR: Kim Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Spring West Municipal Utility District; DOCKET NUMBER: 2003-1532- MWD-E; IDENTIFIER: TPDES Permit Number 12579-001; LOCATION: near Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), the Code, §26.121(a), and TPDES Permit Number 12579-001, by failing to comply with permitted effluent limits for NH_3-N, TSS, five-day BOD, flow, and chlorine; PENALTY: $6,160; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Town of Pecos City; DOCKET NUMBER: 2002-0806-MSW-E; IDENTIFIER: MSW Unauthorized Facility Numbers 455070007, 455070009, 455070010; LOCATION: in or near the Town of Pecos City, Reeves County, Texas; TYPE OF FACILITY: unauthorized MSW disposal facilities; RULE VIOLATED: 30 TAC §330.5(a), by allegedly disposing of MSW at three unauthorized facilities; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-4795.

(36) COMPANY: Universal Forest Products Texas Limited Partnership; DOCKET NUMBER: 2003-0083-IHW-E; IDENTIFIER: SWR Number 32209, Regulated Entity Identification Number RN101042950; LOCATION: Schertz, Comal County, Texas; TYPE OF FACILITY: wood preserving; RULE VIOLATED: 30 TAC §335.2(b), by failing to dispose of class 1 industrial solid waste at an authorized facility; and 30 TAC §335.10(a)(1), by failing to prepare a Texas State Manifest prior to consigning class 1 industrial solid waste to an off-site facility; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(37) COMPANY: Upper Leon River Municipal Water District; DOCKET NUMBER: 2002- 0962-MWD-E; IDENTIFIER: Sludge Registration Number 710710; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: beneficial land use; RULE VIOLATED: 30 TAC §312.83(b)(6) and Sludge Registration Number 710710, by failing to meet the vector attraction reduction criteria for the selected alternative; 30 TAC §305.125(1), by failing to analyze wastewater treatment plant sludge in Fiscal Years 1999 and 2000 for arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc, by failing to ensure that the total aggregate amount of any metal in the wastewater treatment plant sludge does not reach the cumulative level in Fiscal Years 1999, 2000, and 2002, and by failing to provide a facility operating plan for distribution of food chain crops for animal feed produced from facility land receiving water treatment sludge; and 30 TAC §312.47(a)(4)(B)(ii) and (iii), by failing to provide, in Fiscal Years 1999 and 2000 annual sludge reports, a description of how management practices are met for the facility and how site restrictions are met for the facility on which wastewater treatment plant sludge is applied; PENALTY: $10,304; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(38) COMPANY: Sharon K. Williams dba Williams Feed & Grocery; DOCKET NUMBER: 2003-0919-PST-E; IDENTIFIER: PST Facility Identification Number 0065791, Regulated Entity Reference Number RN101433696; LOCATION: Kountze, Hardin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(39) COMPANY: City of Wortham; DOCKET NUMBER: 2003-0579-PWS-E; IDENTIFIER: PWS Identification Number 0810003; LOCATION: Wortham, Freestone County, Texas; TYPE OF FACILITY: surface water treatment; RULE VIOLATED: 30 TAC §290.44(d) and (h)(1) and (4), by failing to properly install the air vent on the automatic air release valves on the treated water transmission/distribution line, failing to have all backflow prevention assemblies tested annually by a certified backflow prevention assembly tester and certified to be operating within specifications, and failing to provide adequate backflow protection; 30 TAC §290.46(j) and (t), by failing to have an established customer services inspection program, failing to conduct a customer service inspection, failing to complete a customer service inspection certificate prior to providing continuous water service, and failing to post a system ownership sign at the raw water production facilities that includes an emergency telephone number; 30 TAC §290.42(d)(2) and §290.46(m)(4), by failing to maintain all water plant facilities; 30 TAC §290.43(c)(2), by failing to provide the roof hatch with a gasket that was sufficient to form a positive seal; 30 TAC §290.46(f)(3)(B)(v) and (s) by failing to properly conduct calibration checks; 30 TAC §290.42(d)(7)(A), by failing to provide each chemical feeder with an operational standby or reserve unit; 30 TAC §290.42(k) and §290.46(f)(3), by failing to update the plant operations manual; and 30 TAC §290.41(e)(2)(C), by failing to establish and mark a restricted zone of a 200-foot radius from the raw water intake works at New Wortham Lake that prohibits all recreational activities and trespassing in the area; PENALTY: $3,956; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(40) COMPANY: Young Brothers, Inc. Contractors; DOCKET NUMBER: 2003-0569-AIR-E; IDENTIFIER: Air Account Number MB0283F, Regulated Entity Identification Number RN102311875; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: material unloading operation; RULE VIOLATED: 30 TAC §116.110(a) and §106.148 and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions of a permit by rule prior to constructing or modifying a facility which may emit contaminants into the air; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200402775

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 27, 2004

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Request for Comments and Notice of Proposed Concentrated Animal Feeding Operations (CAFO) General Permit

General Permit No. TXG920000; The Texas Commission on Environmental Quality (TCEQ) proposes a general permit (Proposed General Permit No. TXG920000) authorizing the discharge of manure, litter, and wastewater under specific circumstances from concentrated animal feeding operations (CAFOs) into and adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code and in accordance with 30 Texas Administrative Code Chapter 205.

The Executive Director has prepared a general permit that provides requirements, standards, and conditions for the proper construction, operation, and maintenance of CAFOs. If issued, the general permit will authorize the discharge of manure, litter and wastewater from concentrated animal feeding operations (CAFOs) under specific circumstances. The proposed general permit states that certain CAFOs in specific areas of the state may not be authorized under it, but must obtain an individual permit from the TCEQ. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The Executive Director proposes to require permittees to submit a Notice of Intent to obtain authorization for all discharges. A requirement for public participation has been included that will serve to notify the public of new or significant expansions in CAFO facilities.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet is available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at http://www.tnrcc.state.tx.us/permitting/waterperm/wwperm/tpdesgen.html.

You may submit public comments about this general permit. Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711- 3087 within 30 days from the date this notice is published. After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at: www.tceq.state.tx.us. Further information may also be obtained by calling Darrell Williams at (512) 239-5551.

TRD-200402808

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 28, 2004

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Request for Comments on the April 2004 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2004 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft April 2004 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 7, 2004. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@TCEQ.state.tx.us.

TRD-200402693

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 22, 2004

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Office of the Governor

Request for Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications from regional Councils of Governments (COGs) for projects that establish and maintain training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime.

Purpose: The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funding is authorized under the Department of Justice Authorization Act 2003 for Fiscal Year 2003 Appropriations Act, Public Law 107-273. All grants awarded from this fund source must comply with the requirements contained in the Act and the guidelines and regulations applicable to this funding source. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R. §31, which is hereby adopted by reference. Funding for this announcement is part of a federally established seventy-five percent (75%) set-aside for local or regional projects.

Required Match: Grantees must provide matching funds of at least ten percent (10%) of total project expenditures. This requirement must be met through cash contributions only.

Standards: Grantees must comply with grant management standards adopted under the Texas Administrative Code (TAC), §3.19, which are hereby adopted by reference.

Prohibitions: Grant funds may not be used for the following activities:

(1) medical services;

(2) fund raising activities;

(3) lobbying activities;

(4) purchasing of weapons, ammunition, explosives, or military vehicles;

(5) admission fees to any amusement park, recreational activities or sporting events or promotional gifts;

(6) government officials salary;

(7) vehicle purchases for government agencies for government agency use;

(8) overtime;

(9) transportation, (lodging, per diem, or any related costs for participants when grant funds are use to develop and conduct trainings);

(10) food, meals, beverages, or other refreshments unless the expense is for a working event where participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way; and

(11) membership dues for individuals, any expense or service that is readily available at not cost to the grant project or that is provided by other federal, state or local funds.

Eligible Applicants: Councils of governments.

Requirements: Projects must address *JABG Purpose Area 6*: Establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime.

Project Period: Grand-funded projects must begin on or after August 1, 2004, and will expire on or before July 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to those applicants that can demonstrate needs using verifiable data; establishing an overall goal; implementing research-based or promising approaches/activities; and establishing appropriate and obtainable outcome measures through an evaluation plan.

Closing Date for Receipt of Applications: All applications must be submitted electronically directly to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before June 15, 2004. Applicants must also submit the Grant Application Certification Form signed by the Authorized Official via facsimile at (512) 475-2440 to the Office of the Governor, Criminal Justice Division on or before June 15, 2004.

Selection Process: Applications are reviewed by CJD for eligibility. A Determine Eligibility Form is included with the application kit and must be completed in its entirety in order to be considered for funding.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or at (512) 463-1919.

TRD-200402787
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: April 27, 2004

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Texas Health and Human Services Commission

Notice of Public Hearing

Public Hearing on Proposed Medicaid Estate Recovery Program Rules

Brown-Heatly

Public Hearing Room 1400

4900 North Lamar Boulevard

Austin, Texas 78751

Thursday, May 27, 2004

3:00 p.m. - 6:00 p.m.

On Thursday, May 27, 2004, the Health and Human Services Commission (HHSC) will hold a public hearing on the proposed Medicaid estate recovery program rules. The proposed rules appeared in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4038). The rules are intended to be effective as of September 1, 2004.

Section 531.077, Government Code (as added by §2.17, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003), requires HHSC to establish a Medicaid Estate Recovery Program (MERP) in order to comply with the provisions of the applicable federal law found at 42 U.S.C. §1396p(b)(1). The purpose of the Medicaid Estate Recovery Program is to seek recovery of the costs of Medicaid long-term care benefits received by certain Medicaid recipients.

Written comments on the proposed rules may be submitted in writing to Frank Genco, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247, or by e-mail to Frank.Genco@hhsc.state.tx.us. Hand deliveries will be accepted at HHSC, 4900 North Lamar Boulevard, Austin, Texas 78751. Comments also may be faxed to (512) 424-6665. Comments will be accepted until close of business on May 30, 2004.

Persons requiring further information, special assistance, or accommodations for the public hearing should contact Becky Medina at (512) 424-6509.

TRD-200402721
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: April 23, 2004

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Texas Higher Education Coordinating Board

2nd Call: Request for Proposals

2004 - 2005 Teacher Quality Grants--Type B, Under Title II Teacher Quality Grants, of the No Child Left Behind Act of 2001 (P.L. 107-110)

Approximately $3.6 million has been made available in Type A grants to support the development of uniform teacher training modules in mathematics and science for teachers of grades 6- 12, during 2004-2005. Approximately $7.6 million will be available in Type B grants to support the use of uniform teacher training modules developed under Type A awards, with mathematics and science teachers of grades 6 -12.

Funds are competitively distributed in Texas through the Teacher Quality Grants Program, and through joint efforts of the Texas Higher Education Coordinating Board and the Texas Education Agency. The Teacher Quality Grants Program was most recently reauthorized in 2001 as Title II of the NO CHILD LEFT BEHIND ACT. Proposals for funding for Teacher Quality-Type A awards were submitted to the Texas Higher Education Coordinating Board in December 2003, and successful applicants were announced at the January 2004 meeting of the Coordinating Board.

The Teacher Quality Grants-Type A are designed to support the development and implementation of 12 uniform and comprehensive teacher training modules which are aligned with the Texas Essential Knowledge and Skills and can be used for professional development of teachers of grades 6- 12. The 12 modules include: Middle School Math, Part I; Middle School Math, Part II; Middle School Science, Part I; Middle School Science, Part II; Algebra I; Geometry; Algebra II; Pre-calculus; Biology; Chemistry; Physics; and Integrated Physics and Chemistry (IPC). Twelve grants awards were made to support the development of these modules. The Teacher Quality -Type B grants are awarded for 2004- 2005 to support the use of the uniform teacher training modules in summer institutes around the state (and for academic year follow-up) for teachers of math and science grades 6- 12. A Second Call for proposals for Teacher Quality -Type B grants of up to $80,000 each will be forthcoming on the Coordinating Board website during (or following) the week of April 26, 2004 with an (anticipated) closing date of June 18, 2004.

The Board approved a total of 74 new 2004-2005 Type B awards at its April 24-25, 2004 meeting. An additional 21 new 2004-2005 Type B awards will be recommended for approval at the Coordinating Board meeting on July 15, 2004. The highest priority in the 2nd call for additional Teacher Quality- Type B proposals is for science proposals; within that priority for science, the priority order is Biology, Chemistry, Physics, Middle School Science (Part II), and Integrated Physics and Chemistry. A secondary priority for additional Type B proposals is for additional mathematics proposals, in the priority order of Geometry, Algebra II, and Pre-calculus.

All public and private colleges and universities, in partnership with high-needs school districts and other appropriate eligible non-profit partners, are eligible to apply for Type B grants under the Teacher Quality Grants Program. For information, contact the Teacher Quality Grants office at (512) 427-6318.

TRD-200402802
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: April 27, 2004

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Texas Department of Housing and Community Affairs

Notice of Funding Availability

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund (HTF) announces the release of approximately $400,000 for Housing Trust Fund's Capacity Building Program. The purpose of the Capacity Building Program is to assist non-profit organizations to improve their ability to provide safe, decent, and affordable housing in their communities. The Housing Trust Fund Capacity Building program is governed by 10 TAC §51.2 and the Texas Government Code at Chapter 2306, Subchapter I.

Eligible Activities

Eligible Activities under this application include the hiring of staff, technical assistance providers, consultants, and the cost of certification programs, which will have a direct impact on the applicant's ability to increase the production of, and increase access to affordable housing in the community. The following is a list of eligible activities under this NOFA:

Hiring of staff or a consultant to develop an Architectural Barrier Removal/Universal Design program for persons with disabilities.

Hiring of staff or a consultant to assist the organization with the development of a comprehensive strategic plan to improve internal operations, increase production, and strengthen organizational sustainability.

Hiring of staff or a consultant to provide construction management services for a proposed low income housing development.

Hiring of staff or a consultant to improve the energy efficiency of an existing housing plan, or introduce alternative building methods that will increase production and lower housing costs.

Hiring of staff or a consultant to develop a new line of affordable housing services or production in which the organization has not previously been involved.

Hiring of a technical assistance provider, or covering the cost of a certification program for staff that will have a direct impact on the organization's ability to produce affordable housing.

TDHCA reserves the right to limit the use of funds for activities that TDHCA does not believe meet the goals and intent of the Capacity Building program.

Applicants may not use funds to support the current activities of an existing employee, unless the staff person was hired by a HTF Capacity Building grant from the previous year, or the staff person will be

responsible for the creation of a new program or housing activity in which the organization has not previously been involved. Applicants will be required to provide financial statements for fiscal year 2003 and an approved budget for fiscal year 2004. Applicants are also limited from receiving Capacity Building funds for more than two consecutive years. If an applicant has not met the goals and performance measures agreed to in a previous Capacity Building award, they will not be eligible for a new award.

Available Funding

Approximately $400,000 is available through this NOFA. Funds will be allocated evenly between the 13 Uniform State Service Regions, resulting in regional awards of approximately $30,000. If regional requests do not commit the full amount of available funding, or no qualified applications are received in a region, funds may be distributed to other regions in an effort to maximize the impact of the Capacity Building program.

Application Procedures

Respondents will complete an application that includes, but is not limited to, a detail of the type of staff needed for improving the organization's housing development capacity, or the type of training to be provided through the use of a qualified technical assistance consultant. The application will also include a detailed breakdown of all costs associated with the staffing or provision of technical assistance associated with these funds. Applicants must provide a copy of an active IRS determination letter which states that the organization is exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code, as well as the articles of incorporation for the nonprofit organization which specifically states that the development of affordable housing is one of the entity's purposes.

Scoring criteria will be based on a number of quantitative and qualitative measures. These measures, as further described in the Capacity Building Program Application and Manual will include, but are not limited to proven community support for the organization's purpose, affordable housing needs scoring for the targeted community, service to rural communities and persons with special needs, targeting of very low income individuals or families, and the applicant's proven commitment to produce affordable housing. In the case of a tie between two applicants, the applicant that will realize the largest percentage increase in operating funds by receiving the capacity building funds, based on the previous years operating statement, will be awarded funds.

Applications must be received at TDHCA by 5:00 p.m. on June 9th, 2004. No faxed applications will be accepted at any time. Applications that are late will not be accepted.

The Housing Trust Fund plans to select a diverse group of applications that will serve nonprofit housing development organizations throughout the state. Further detail on the application submission and selection criteria will be outlined in the application guidelines. Awards will be made as grants. TDHCA's Board of Directors reserves the right to change the award amount, or to award less than the requested amount. Awards will be disbursed on a quarterly or one time basis in a manner to be determined by TDHCA after the time of award. No funds will be disbursed until the Applicant has submitted a letter certifying the hiring of a staff person or consultant, and a resume of the person or consultant hired. Applicants will also be required to file quarterly progress reports with TDHCA, attend at least two approved affordable housing training sessions and attend a final conference to provide feedback and input for the future of the Capacity Building program. If it is determined that the goals stated in the application were not satisfied, the organization will not be eligible for funds in the following year.

All interested parties with a workable plan are encouraged to participate in the program. Applicants are required to have a pre-application conference with the Housing Trust Fund Program Administrator David Danenfelzer, prior to submitting an application. To schedule a conference please call 512.475.3865 or email at david.danenfelzer@tdhca.state.tx.us. For more information or to request an application, please contact the Multifamily Finance Production Division at 512.475.3340, or e-mail emily.price@tdhca.state.tx.us. Please direct your proposal to:

Texas Department of Housing and Community Affairs

Multifamily Finance Production Division

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address

507 Sabine, Suite 400

TRD-200402844
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 28, 2004

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Texas Department of Insurance

Company Licensing

Application to change the name of MONTGOMERY WARD INSURANCE COMPANY to HERITAGE CASUALTY INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in Schaumburg, Illinois.

Application to change the name of CONSECO ANNUITY ASSURANCE COMPANY to CONSECO INSURANCE COMPANY a foreign life, accident and/or health company. The home office is in Chicago, Illinois.

Application for a new organization applying for a certificate of authority in the State of Texas by U. S. GUARANTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Hempstead, Texas.

Application for admission to the State of Texas by SEQUOIA INSURANCE COMPANY, a foreign fire and /or casualty company. The home office is in Monterey, California.

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-200402848
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 28, 2004

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2592 on May 26, 2004 at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of a reinsurance program to operate in concert with the catastrophe reserve trust fund established under

Article 21.49, §8(i), Insurance Code. Article 21.49, §8(h)(17) provides that, with the approval of the Texas Department of Insurance, TWIA may establish a reinsurance program that operates in addition to or in concert with the catastrophe reserve trust fund.

The current reinsurance program, which was approved by the Commissioner in Commissioner's Order No. 03-0434 (May 27, 2003), expires on May 31, 2004. The new program is proposed to be effective on June 1, 2004.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstrom Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the approval of the proposed reinsurance program.

Copies of the TWIA petition and proposed reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies of the petition and sample reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0404-04).

TRD-200402801
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 27, 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 EMPLOYEE BENEFIT SERVICES OF LOUISIANA, INC., a foreign third party administrator. The home office is SHREVEPORT, LOUISIANA.

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-200402813
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 28, 2004

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Texas Lottery Commission

Instant Game Number 447 "Super Deuces"

1.0. Name and Style of Game.

A. The name of Instant Game Number 447 is "SUPER DEUCES." The play style is "key symbol match with doubler."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 447 shall be $2.00 per ticket.

1.2. Definitions in Instant Game Number 447.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $200, $2,000 and $21,000. The possible red play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3 and 2.

D. Play Symbol Caption--the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 447 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
2 (red)	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$21,000	21 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 447 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize--A prize of $40.00 or $200.

I. High-Tier Prize--A prize of $2,000 or $21,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three

digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (447), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 447-0000001-000.

L. Pack--A pack of "SUPER DEUCES" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000 and 001 will be on the top page; tickets 002 and 003 on the next page; etc.; and tickets 248 and 249 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "SUPER DEUCES" Instant Game Number 447 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER DEUCES" Instant Game is determined once the latex on the ticket is scratched off to expose 20 Play Symbols. Find a black "deuce" symbol, win the prize shown for that symbol. Find a red Super "deuce" symbol, win double the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols of any color on a ticket.

C. No more than one pair of duplicate non-winning prize symbols on a ticket.

D. There will be at least three non-winning red symbols on a ticket.

E. The red Super "deuce" doubler symbol will only appear on winning tickets as dictated by the prize structure.

2.3. Procedure for Claiming Prizes.

A. To claim a "SUPER DEUCES" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not,

in some cases, required to pay a $40.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER DEUCES" Instant Game prize of $2,000 or $21,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER DEUCES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUPER DEUCES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SUPER DEUCES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7. Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game Number 447. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 447 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,143,000	7.87
$4	621,000	14.49
$5	108,000	83.33
$10	117,000	76.92
$20	36,000	250.00
$40	36,000	250.00
$200	13,875	648.65
$2,000	43	209,302.33
$21,000	18	500,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 447 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 447, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200402711
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 23, 2004

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Instant Game Number 468 "Magic Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 468 is "MAGIC NUMBERS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 468 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 468.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $500, $2,000, $14,000, and RABBIT SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 468 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
RABBIT SYMBOL	RBT
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$500	FIVE HUN
$2,000	TWO THOU
$14,000	14THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 468 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
TEN	$10.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize- A prize of $2,000 or $14,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (468), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 468-0000001-000.

L. Pack - A pack of "MAGIC NUMBERS" Instant Game tickets contains 250 tickets, which are packed in plastic shrink-wrapping and fan-folded in pages of two (2). Tickets 000 and 001 will be shown on the front of the pack; the backs of tickets 248 and 249 will show. Every other book will be opposite. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGIC NUMBERS" Instant Game No. 468 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGIC NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 21 (twenty-one) play symbols. Match any of YOUR NUMBERS to the WINNING NUMBER, win the prize shown for that number. Find a RABBIT SYMBOL and win the prize for that number automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly twenty one (21) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each Play Symbol must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each Play Symbol must be present in its entirety and be fully legible;

4. Each Play Symbol must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 21 (twenty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 21 (twenty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 21 (twenty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Tickets can win up to ten (10) times.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. Your Number will never equal the corresponding prize symbol.

E. The instant win symbol will only appear on winning tickets.

F. The instant win symbol will never appear as a Winning Number.

G. No duplicate non-winning Your Number play symbols on a ticket.

H. No prize symbol will appear more than 2 times on a non-winning ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGIC NUMBERS" Instant Game prize of $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, or $200, claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAGIC NUMBERS" Instant Game prize of $2,000 or $14,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAGIC NUMBERS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAGIC NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MAGIC NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited

2.8 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An instant ticket game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,920,000 tickets in the Instant Game No. 468. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 468 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	604,800	11.90
$4	460,800	15.63
$6	345,600	20.83
$10	172,800	41.67
$20	43,200	166.67
$50	19,440	370.37
$200	3,480	2,068.97
$2,000	60	120,000.00
$14,000	10	720,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 468 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 468, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200402779
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 27, 2004

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, June 2, 2004, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Sandra S. Valdez dba South Texas Manufactured Homes to hear alleged violations of Sections 7(b) and (c) (currently found at Sections 1201.101(b) and (c) of the Occupations Code) of the Act and Section 80.123(b) of the Rules by selling or offering to sell two or more manufactured homes within a twelve month period without obtaining, maintaining, or possessing a valid retailer's and/or broker's license. SOAH 332-04-5093. Department MHD2004000538-UR & MHD2004000795-UR.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200402695
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: April 22, 2004

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Panhandle Regional Planning Commission

Invitation for Bids

The Panhandle Regional Planning Commission (PRPC) is soliciting bids for a contract to purchase MS Windows 2003 Terminal server hardware, software and related equipment according to the following specifications:

Quantity (1): 1400 VA rack-mount UPS, 8-port Keyboard-Video-Mouse switch.

Quantity (2): 1U+ rack-mount form factor, dual XEON 3.0+ GHZ processors, 2GB+ system memory, 140GB+ (10K+ RPM) SCSI RAID-5 array, 1GB Network Interface Card, redundant power supply, 1.44MB Diskette drive, standard CD-ROM drive, Windows Server 2003 Enterprise Edition operating system, 3+ years warranty with next-day parts.

Quantity (40): MS Office Pro 2003 CALs, Windows 2003 Server CALs.

Bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Mark Dubina, IT Manager, at (806) 372-3381 or mdubina@prpc.cog.tx.us.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., May 14, 2004. Bids received after the indicated date and time will not be accepted or considered for award.

PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200402845
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: April 28, 2004

♦ ♦ ♦

Invitation for Bids

The Panhandle Regional Planning Commission (PRPC) is soliciting bids for a contract to rent/lease three digital copiers according to the following specifications:

Electronic document handler, stackless auto duplexing, 3850+ sheet capacity, multi-position staple finisher with hole punch, network print control and network scanning, rental contract with 30-day cancellation clause, quantity (2) 47-50 copies per minute; quantity (1) 55+ copies per minute.

Bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Leslie Hardin, Facilities Coordinator, at (806) 372-3381 or lhardin@prpc.cog.tx.us.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., May 21, 2004. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200402846
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: April 28, 2004

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line Located in Wood and Upshur Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 21, 2004, for a proposed transmission line located in Wood and Upshur Counties, Texas.

Docket Style and Number: Application of Upshur-Rural Electric Cooperative, Incorporated for a Certificate of Convenience and Necessity for a 69-kV Transmission Line in Wood and Upshur Counties, Texas. Docket Number 28414.

The Application: The proposed project is designated the Little Mound to Piney Woods transmission line. The project involves the construction of an approximately 6.8 mile long 69- kV transmission line between the Little Mound Substation and the Piney Woods Substation. The new line would provide increased capacity to an expanding water bottling facility and provide greater service reliability to the cooperative's transmission and distribution system.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas on or before June 7, 2004, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28414.

TRD-200402773
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 26, 2004

♦ ♦ ♦

Notice of Filing to Withdraw AutoConnect Service Pursuant to §26.208

Notice is given to the public of SBC Texas's application filed with the Public Utility Commission of Texas (commission) on March 30, 2004 to withdraw AutoConnect Service, pursuant to commission substantive rule §26.208.

Docket Title and Number: Application of Southwestern Bell Telephone, L.P. doing business as SBC Texas to Withdraw AutoConnect Service, Docket Number 29531.

The Application: SBC Texas filed an application to withdraw AutoConnect service. AutoConnect is a subscription service offered to business customers for a monthly charge. The service provides Directory Assistance Call Completion for no charge to customers that select a telephone number to a business subscribing to AutoConnect. SBC Texas stated the reason for the withdrawal is that the SBC Texas network group is expensive and difficult to update and maintain. In addition, SBC Texas stated the continued offering of AutoConnect Service renders SBC Texas unable to deploy enhancements to switches that would allow ten digit translations schemes. SBC Texas does not propose to grandfather current customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas no later than May 27, 2004, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 29531.

TRD-200402771
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 26, 2004

♦ ♦ ♦

Notice of Petition for Exemption of Certain Requirements Regarding Lifeline and LinkUp Services

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on April 7, 2004, by Leaco Rural Telephone Cooperative, Incorporated requesting exemption from certain requirements regarding Lifeline and Link Up Services.

Docket number and title: Docket Number 29572, *Application of Leaco Rural Telephone Cooperative, Incorporated for Exemption of Certain Requirements in P.U.C. Substantive Rule §26.412.*

Summary of petition: On April 7, 2004, Leaco Rural Telephone Cooperative, Incorporated (Leaco) filed an application, pursuant to P.U.C. Procedural Rule §22.5(b), with the commission an application for exemption from certain requirements in P.U.C. Substantive Rule §26.412.

Leaco serves customers primarily in New Mexico. Of the 2,518 total access lines served by Leaco, only 13 access lines are located in Texas.

Comments: 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll- free 1-800-735-2989. All comments should reference Docket Number 29572.

TRD-200402843
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2004

♦ ♦ ♦

Public Notice of Workshop on CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines Pursuant to P.U.C. Substantive Rule §26.131 and Request for Comments

The staff (Staff) of the Public Utility Commission of Texas (commission) will hold an industry workgroup regarding CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines pursuant to P.U.C. Substantive Rule §26.131 on Tuesday, June 15, 2004 from 10:00 a.m. until 2:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 29349, *Industry Workgroup Regarding CLEC-to-CLEC and CLEC-to-ILEC Migrations Pursuant to P.U.C. Substantive Rule 26.131*, has been established for this proceeding. The specific purposes of the workshop are to consider the "either/or" approach to requesting number porting in certain migration scenarios and the possible exempting of telephone cooperatives from the rule. Additionally, Staff is interested in determining whether the commission's decision in Docket Number 29175 (Triennial Review Order: Batch Hot Cut Proceeding) will impact Rule §26.131. Prior to the workshop, interested persons are requested to file comments to the following questions:

1. For Network Service Providers-Switch (NSP-S), what are your current or planned procedures for implementing porting option, Option A, which allows the New Local Service Provider (NLSP) to send its porting local service request (LSR) to the Old Network Service Provider (ONSP)?

2. For NSP-Ss what are your current or planned procedures for implementing porting option, Option B, which allows the NLSP to send its porting LSR to the New Network Service Provider (NNSP)?

3. For NSP-Ss, are you capable of implementing both Option A and Option B? If not, why not?

4. If the commission determines that NSP-Ss can only offer Option A or Option B, but not both, which option should the commission adopt? Please explain the rationale behind the chosen option.

5. Will the commissioners' decision in Docket Number 29175 impact the application of Rule §26.131? If so, how?

6. Should Telephone Cooperatives be specifically excepted from Rule §26.131? Why or why not?

The foregoing questions are not exhaustive of the issues to be discussed at the workshop. The workshop will also be open for discussion of general or specific issues of interest to attendees and Staff. Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within **20 days** of the date of publication of this notice. All responses should reference Project Number 29349. Parties are urged to include everything they wish to discuss in their comments, however the commission requests that parties identify the question for which a response is being provided, and to respond to the question in sequential order. If parties wish to present anything at the workshop that was not included with the comments, it must be filed in Central Records no later than **June 7, 2004**.

This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for amending an existing rule.

On or before **June 9, 2004**, the commission will make a workshop agenda available in Central Records under Project Number 29349. Questions concerning the workshop or this notice should be referred to Paula Hunt-Wilson, Staff Attorney, Legal and Enforcement, Telecommunications Division, (512)-936-7294 or paula.hunt-wilson@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200402770
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 26, 2004

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on Forms with Proposed Amendments to 16 TAC §3.80

The Railroad Commission of Texas requests comments on certain Oil and Gas Division forms as part of the proposed amendments to 16 TAC §3.80, relating to Commission Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The proposed amendments to §3.80 are proposed in the Table only and add the Security Administrator Designation (SAD) Form and accompanying ECAP procedures, and the Commercial Facility Bond Form (Form CF-1); correct the title of the Form CF-2; add the Forms CF-1 and CF-2 instructions; and add a new version of the United States Environmental Protection Agency Form 8700-12 (RCRA Subtitle C Site Identification Form). The Commission is requesting comments on both the proposed amendments to §3.80 and these proposed forms and instructions.

Railroad Commission of Texas
Permitting/Production Services / Oil and Gas Division

P.O. Box 12967
Austin, Texas 78711-2967

Draft 04-15-04

SAD FORM

SECURITY ADMINISTRATOR DESIGNATION
FOR ELECTRONIC FILING

SEE INSTRUCTIONS ON BACK

I. COMPANY IDENTIFICATION

CHECK APPROPRIATE BOX:

[ ] Operator **OR** [ ] Petroleum Consultant/Independent Contractor or other Non-Operator

COMPLETE THE FOLLOWING:

Company Name: _____ RRC P-5 Number, if Operator: _____

Mailing Address: _____

Phone No.: _____ Fax No.: _____ E-mail Address: _____

II. SECURITY ADMINISTRATOR IDENTIFICATION

YOU **MUST** COMPLETE THE FOLLOWING TO PARTICIPATE AS A SECURITY ADMINISTRATOR:

Name of Security Administrator: _____

Mailing Address if Different from Above: _____

E-mail Address: _____

Phone No.: _____

Fax No.: _____

Initial One-Time Use Password: _____

CERTIFICATION

I declare, under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this Security Administrator Designation, that it was prepared by me or under my supervision and direction, and that the information stated herein is true, correct, and complete, to the best of my knowledge and belief.

I further declare that all electronic filings made pursuant to this designation will be in the manner prescribed by the Railroad Commission of Texas and will be compatible with the software, equipment, and facilities required by the Railroad Commission of Texas. All electronic filings will comply with any required procedures for participation in electronic filing.

I further declare that any filings which I make on behalf of another party will be made only if I have been authorized by that party to file on its behalf and I acknowledge that any filings made on behalf of an operator by me as an independent third party which are subsequently determined by the Commission to be made without the operator's authorization may result in the suspension or revocation of this Security Administrator Designation and/or the right to make any filings at the Commission on behalf of other parties.

SIGNATURE: _____

NAME (Print): _____

TITLE: _____

For RRC Use Only
Approval Date: _____
Initials: _____

ELECTRONIC FILING

SECURITY ADMINISTRATOR DESIGNATION FORM

Authorization Procedures

- Refer to Statewide Rule 80 (16 Texas Administrative Code [TAC] §3.80)

- A Security Administrator Designation Form must be on file as a condition of participation in electronic filing with the Commission. A separate form must be completed for each additional security administrator. Participants may change a Security Administrator Designation at any time.

  Once the Commission approves the Security Administrator Designation, the security administrator will be notified of his or her assigned User ID. The security administrator may then further distribute security by assigning additional User IDs to employees within the company and designating which forms they are authorized to file electronically with the Commission. The security administrators will have complete control over who within the company receives authorization to file electronically for the company. The security administrator is responsible for maintaining security of all assigned User IDs and passwords.

  For any filing made on behalf of an operator by an independent third party, the operator on whose behalf the filing was made is responsible for compliance with all Commission rules and regulations relating to the filing and any permit issued by the Commission.

  If the Commission determines that a filing made by an independent third party on behalf of an operator was not authorized by the operator, the Commission may take action to suspend or revoke the Security Administrator Designation of the independent third party and may pursue an enforcement action against the independent third party for violation of Texas Natural Resources Code, §91.143. Violations of §91.143 may result in the assessment by the Commission of an administrative penalty of up to $1,000 per incident after an administrative hearing is held. Violations of §91.143 may also be subject to separate criminal prosecution.

  Passwords must have a minimum length of six (6) and no more than thirty (30) characters. Passwords may consist of alphabetic characters, numeric characters, the following special characters (@, #, {, }, $, or |), or any combination of these characters.

  Mail the Security Administrator Designation Form to:

  Railroad Commission of Texas
  Permitting/Production Services
  1701 North Congress Avenue
  P.O. Box 12967
  Austin, TX 78711-2967

  Receipt of the Security Administrator Designation Form will be acknowledged by e-mail.

  All electronic filing information maintained at the Commission is subject to the Public Information (Open Records) Act, Chapter 552 of the Texas Government Code.

Electronic Compliance And Approval Process

(ECAP)

Requirements for Participation

Authorization Procedures

- Refer to SWR 80 (16 Texas Administrative Code [TAC] §3.80)
- Security Administrator Designation

A Security Administrator Designation must be on file as a condition of participation in electronic filing with the Commission, including ECAP filing. A separate form must be completed for each additional security administrator. Participants may change a Security Administrator Designation at any time.

Once the Commission approves the Security Administrator Designation, the security administrator will be notified of his or her assigned User ID. The security administrator can then further distribute security by assigning additional User IDs to employees within the company and designating which forms they are authorized to file electronically with the Commission. The security administrator(s) will have complete control over who within the company receives authorization to file electronically. The security administrator is responsible for maintaining security of all assigned User IDs and passwords.

For filings made on behalf of an operator by an independent third party, the operator on whose behalf the filing was made is responsible for compliance with all Commission rules and regulations relating to the filing and any permit issued by the Commission.

If the Commission determines that a filing made by an independent third party on behalf of an operator was not authorized by the operator, the Commission may take action to suspend or revoke the Security Administrator Designation of the independent third party and may pursue an enforcement action against the independent third party for violation of Texas Natural Resources Code, §91.143. Violations of §91.143 may result in the assessment by the Commission of an administrative penalty of up to $1,000 per incident after an administrative hearing is held. Violations of §91.143 may also be subject to separate criminal prosecution.

Passwords must have a minimum length of six (6) and no more than thirty (30) characters. Passwords may consist of alphabetic characters, numeric characters, the following special characters (@, #, {, }, $, or |), or any combination of these characters.

Mail the Security Administrator Designation to:

Railroad Commission of Texas
Permitting/Production Services
1701 North Congress Avenue
P.O. Box 12967
Austin, TX 78711-2967

Receipt of the Security Administrator Designation will be acknowledged by e-mail.

General Procedures for Electronic Filing

Electronic Filing through ECAP

- To submit filings through ECAP, the following equipment is required:
  - Personal computer
  - Internet connection
  - Standard web browser, such as Microsoft Internet Explorer (version 5.5/SP2 or higher) or Netscape Navigator (version 4.77 or higher)
  - Image scanner for capturing attachments electronically

- A scanning resolution with a minimum of 200 dots per inch is required for recording documents that contain no type font smaller than six point. For documents with a type font smaller than 6 point, scanning resolution must be adequate to ensure that no information is lost.

  For plats, operators will be required to enter pre-scanned plat paper size and to show a scale bar on the plat. When the scanned plat is printed out from the electronic record on the same size paper as the original, the scale is the same. The bar will ensure that the scale is identical.

- Payments, when required, must be made by Visa or MasterCard only through the State of Texas payment portal. Access to the payment portal is provided within the application.

- All ECAP information maintained at the Commission is subject to the Public Information (Open Records) Act, Chapter 552 of the Texas Government Code.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

RRC **CF-1**
rev. 8/28/98
TDI Ref. No. TDI-98-BB155-RCT-PF

COMMERCIAL ☐ STORAGE, ☐ RECLAMATION, ☐ TREATMENT, OR ☐ DISPOSAL FACILITY BOND

1. Organization Name, exactly as shown on P-5 organization Report.	2. P-5 Number, if assigned.	3. Total # of operators Wells, if applicable.
4. Other Commission-regulated operations.		

Background

1.1 _____ (operator name), "Principal", operates or is applying for Railroad Commission approval to operate one or more commercial storage, reclamation, treatment, or disposal facilities ("Facility" or "Facilities") subject to Texas laws. Texas Natural Resources Code §91.109 and Texas Administrative Code Vol. 16, §3.76, provide that the owner and operator of a Facility must maintain a bond or letter of credit that satisfies the Railroad Commission.

1.2 As specified in §3.76, Principal has retained _____ , a State of Texas authorized Surety, to secure this promise to pay.

1.3 This bond covers the following Facilities (*include the facility name, RRC ID No., physical address, and county in which the facility is located; attach information on additional facilities as Exhibit A*):

(A) _____

(B) _____

(C) _____

(D) _____

Terms

2.1 Principal and Surety must pay the Railroad Commission of Texas, in Austin, Travis County, Texas, the sum of $_____ U.S., according to the following paragraphs.

2.2 The Railroad Commission will notify the Surety after Principal fails to operate or close a Facility as required by Texas law, Railroad Commission rules, or the permit conditions. Notice will be mailed by registered or certified U.S. mail to the address shown below. After Surety receives notice of Principal's default, the Surety may either:

(A) pay up to the face amount of this bond to bring into compliance or close the Facility according to Texas law, Railroad Commission rules, and the permit conditions; or

(B) pay the face amount of this bond to the Railroad Commission to be used by the Railroad Commission to bring into compliance or close the Facility. The Railroad Commission will return unexpended funds to the Surety after the Facility is brought into compliance or closed.

Bond No. _____

2.3 The Railroad Commission does not have to expend state funds before Surety must pay under this bond.

2.4 The State of Texas may enforce the Suretys obligation under this bond without first obtaining a judgment against Principal or exhausting its remedies against the Principals properties or assets.

2.5 Under paragraph 2.2(A), Surety must present to the Railroad Commission, within 60 days after it receives notice of Principals default, a plan demonstrating how the Facility will be brought into compliance or closed. Surety must also furnish an accounting, acceptable to the Railroad Commission, of all sums expended by it to bring into compliance or close the Facility according to Texas law, Railroad Commission rules, and the permit conditions. Surety will submit the accounting to the Railroad Commission within 30 days of its bringing into compliance or closing the Facility.

2.6 Under paragraph 2.2(B), Surety must pay the face amount of the bond to the Railroad Commission of Texas, at Austin, Texas within 60 days after the Surety receives written notice of Principals default.

2.7 Under paragraph 2.2, Surety remains obligated to pay for any other covered Facilities up to the face amount of the bond.

2.8 The term of this bond expires _____ , _____, and is renewable annually. The Principal or Surety will renew in writing this bond and submit it to the Railroad Commission 30 days before the bond expires. Obligations to pay part or all of the bond amount are released after 4 years from the expiration date of the bond if no clean up or closure-related activities are initiated by the Railroad Commission or its authorized representative at the Facility during that 4 year period. The Railroad Commission or its authorized representative may relieve in writing Principal and Surety from their obligations under this bond.

2.9 If the Surety does not fulfill its obligations according to the bond terms and if judgment for any part of the bond amount is awarded through action of the Attorney General in court, then the State shall be entitled to court costs and reasonable attorney's fees awarded by the court. Suretys liability for such costs and fees shall not be limited by the face amount of this bond.

2.10 Principal and Surety execute this bond and agree to pay proceeds under this bond in Austin, Travis County, Texas. A suit to collect on this bond or construe this bond lies in Travis County, Texas.

Dated _____ , _____

_____	_____
SURETY (Attach Power of Attorney)	PRINCIPAL
_____	_____
NAME AND TITLE	NAME AND TITLE
_____	
SURETYS FULL MAILING ADDRESS	(Seal)
_____	
(Seal)	

RRC **CF-2**
rev. 8/28/98

Date: _____

Name of Issuing Bank: _____

Address: _____

_____

Other Information: _____

COMMERCIAL ☐ **STORAGE,** ☐ **RECLAMATION** ☐ **TREATMENT, OR** ☐ **DISPOSAL FACILITY**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

TO: RAILROAD COMMISSION OF TEXAS
Attention: Oil and Gas Division
Environmental Services Section
P.O. Box 12967
Austin, Texas 78711-2967

1. Organization Name, exactly as shown on P-5 organization Report.	2. P-5 Number, if assigned.	3. Total # of operators Wells, if applicable.
4. Other Commission-regulated operations.		

This letter of credit covers the following Facilities (*include the facility name, RRC ID No., physical address, and county in which the facility is located; attach information on additional facilities as Exhibit A*):

(A) _____

(B) _____

(C) _____

(D) _____

We hereby issue in favor of the Railroad Commission of Texas, Austin, Texas our irrevocable credit for the account of _____ (operator's name), for an amount or amounts not to exceed in the aggregate $_____ U.S., available by your drafts at sight on the bank, effective _____ , _____ and expiring on the date we are provided with a letter from you stating that each of the above-referenced facilities have been closed in a manner that meets your requirements or on such date as you authorize the release of this letter of credit.

The documents specified below must be presented at sight on or before the expiry date in accordance with the terms and conditions of this letter of credit:

A. This Irrevocable Standby Letter of Credit or a copy thereof; and

B. An affidavit from the Railroad Commission of Texas or its authorized representative, stating that a commercial facility subject to this Letter of Credit has defaulted on its obligations under state law, Railroad Commission rules, or the conditions of the commercial facility permit.

We engage with you that drafts drawn under and in conformity with the terms of this credit will be duly honored on presentation if presented to us at our office at the address shown above on or before the expiry date.

The credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision in force as of January 1, 1994), International Chamber of Commerce--Publication 500.

_____ AUTHORIZED COUNTERSIGNATURE

_____ AUTHORIZED SIGNATURE

LOC No. _____

GUIDANCE FOR FILING
FORMS RRC CF-1 (BOND) and RRC CF-2 (LETTER OF CREDIT)
RULE 78 (p): FINANCIAL SECURITY FOR COMMERCIAL FACILITIES

FORM RRC CF-1

Type of Facility:	Place an X in the box that identifies the type of facility (ies) the bond will cover.
Box Number 1:	Fill in complete organization name exactly as it appears on Form P-5 (Organization Report). If the name on the Form P-5 is an assumed name, you must also state the full name of the organization for which the Form P-5 name is assumed. For example, if the name DC Drilling is on the Form P-5, but DC Drilling is actually a d/b/a or assumed name of Smith Exploration, Inc. the name in Box Number 1 would be DC Drilling (a d/b/a (or assumed name) of Smith Exploration, Inc.)
Box Number 2:	Fill in Form P-5 number as shown on organization report.
Box Number 3:	Include the total number of injection/disposal wells, if applicable, associated with the commercial facility. For example, a collecting pit is associated with at least one injection/disposal well.
Box Number 4:	Identify any other Commission-regulated operations. If none, may mark "NA" or leave blank.
1.1:	Fill in the operator's name exactly as shown above in Box Number 1.
1.2:	Fill in full name of Surety.
1.3:	Use each line for information concerning one permit only. If there will be more than 4 permits covered by the instrument, the additional permits may be added on a separate sheet entitled "Exhibit A of RRC CF-1 Bond No. _____." Include only the pertinent information as described in instructions on form: facility name, RRC ID No., physical address, county, permit number.
2.1:	Fill in the amount of financial security approved by the Commission.
Bond No.:	Fill in the bond number.
2.8:	Fill in the expiration date.
Dated:	Fill in the effective date of the bond.
Surety Signature:	The person signing for the surety must have authority to sign. Place a seal on the bond and attach a signed and dated power of attorney demonstrating that the person signing for the surety indeed has authority to sign.
Principal Signature:	The person signing for the operator/principal must have authority to sign and may be asked to provide documentation demonstrating the person's authority to sign. Print or type the name of the person that signed and their title.
NOTE:	If the Commission approved bond has a rider, the rider must be updated and included with any continuation certificate yearly, or upon renewal, a clause can be included in continuation certificate.

FORM RRC CF-2

Date:	Fill in date.
Name of Issuing Bank:	Fill in complete name of issuing bank.
Address of Issuing Bank:	Fill in complete physical address of the issuing bank.
Type of Facility:	Place an X in the box that identifies the type of facility (ies) the letter of credit will cover.
Letter of Credit No.:	Fill in the letter of credit number. This number must match the number on the bottom right of this page "LOC No. ____," and on the Exhibit A, if an Exhibit A is needed.
Box Number 1:	Fill in complete organization name exactly as it appears on Form P-5 (Organization Report). Form P-5 must be active. If the name on the Form P-5 is an assumed name, you must also state the full name of the organization for which the Form P-5 name is assumed. For example, if the name DC Drilling is on the Form P-5, but DC Drilling is actually a d/b/a or assumed name of Smith Exploration, Inc. the name in Box Number 1 would be DC Drilling (a d/b/a (or assumed name) of Smith Exploration, Inc.)
Box Number 2:	Fill in Form P-5 number as shown on organization report.
Box Number 3:	Include the total number of injection/disposal wells, if applicable, associated with the commercial facility. For example, a collecting pit is associated with at least one injection/disposal well.
Box Number 4:	Identify any other Commission-regulated operations. If none, may mark "NA" or leave blank.
Lines (A) through (D):	Use each line for information concerning one permit only. If there will be more than 4 permits covered by the instrument, the additional permits may be added on a separate sheet entitled "Exhibit A of RRC CF-2 Letter of Credit No. _____." Include only the pertinent information as described in instructions on form: facility name, RRC ID No., physical address, county, permit number.
2nd Paragraph:	Fill in the operator's name exactly as shown above in Box Number 1. Fill in the aggregate amount of financial security approved by the Commission, and the effective date of the letter of credit.
Authorized Signature and Countersignature:	Sign by officers of the financial institution, type their name and office under their signature. Send a certified copy of the financial institution's Corporate Resolution that is passed each fiscal year stating who has authority to sign and for how much. The authorized signature must be from a person whom the corporate resolution identifies as having authority.
LOC No.:	Fill in the letter of credit number.
NOTE:	No additional wording of any nature may be added to the form.

OMB#: 2050-0028 Expires 1/31/2006

SEND COMPLETED FORM TO: The Appropriate State or EPA Regional Office.	United States Environmental Protection Agency **RCRA SUBTITLE C SITE IDENTIFICATION FORM**	

1. Reason for Submittal (See instructions on page 13.) MARK ALL BOX(ES) THAT APPLY	**Reason for Submittal:** ❑ To provide Initial Notification of Regulated Waste Activity (to obtain an EPA ID Number for hazardous waste, universal waste, or used oil activities) ❑ To provide Subsequent Notification of Regulated Waste Activity (to update site identification information) ❑ As a component of a First RCRA Hazardous Waste Part A Permit Application ❑ As a component of a Revised RCRA Hazardous Waste Part A Permit Application (Amendment #_____) ❑ As a component of the Hazardous Waste Report		
2. Site EPA ID Number (page 14)	**EPA ID Number**		
3. Site Name (page 14)	**Name:**		
4. Site Location Information (page 14)	**Street Address:**		
	City, Town, or Village:		**State:**
	County Name:		**Zip Code:**
5. Site Land Type (page 14)	**Site Land Type:** ❑ Private ❑ County ❑ District ❑ Federal ❑ Indian ❑ Municipal ❑ State ❑ Other		
6. North American Industry Classification System (NAICS) Code(s) for the Site (page 14)	**A.**	**B.**	
	C.	**D.**	
7. Site Mailing Address (page 15)	**Street or P. O. Box:**		
	City, Town, or Village:		
	State:		
	Country:		**Zip Code:**
8. Site Contact Person (page 15)	**First Name:**	**MI:**	**Last Name:**
	Phone Number: **Extension:**		**Email address:**
9. Operator and Legal Owner of the Site (pages 15 and 16)	**A. Name of Site's Operator:**		**Date Became Operator (mm/dd/yyyy):**
	Operator Type: ❑ Private ❑ County ❑ District ❑ Federal ❑ Indian ❑ Municipal ❑ State ❑ Other		
	B. Name of Site's Legal Owner:		**Date Became Owner (mm/dd/yyyy):**
	Owner Type: ❑ Private ❑ County ❑ District ❑ Federal ❑ Indian ❑ Municipal ❑ State ❑ Other		

EPA Form 8700-12 (Revised 1/2004) Page 1 of 3

RAILROAD COMMISSION OF TEXAS

EPA ID NO: ☐☐☐ ☐☐☐ ☐☐☐ ☐☐☐

OMB#: 2050-0028 Expires 1/31/2006

9. Legal Owner (Continued) Address	Street or P. O. Box:	
	City, Town, or Village:	
	State:	
	Country:	Zip Code:

10. Type of Regulated Waste Activity
Mark "Yes" or "No" for all activities; complete any additional boxes as instructed. (See instructions on pages 16 to 20.)

A. Hazardous Waste Activities
Complete all parts for 1 through 6.

Y ☐ N ☐ **1. Generator of Hazardous Waste**
If "Yes", choose only one of the following - a, b, or c.

- ☐ a. LQG: Greater than 1,000 kg/mo (2,200 lbs./mo.) of non-acute hazardous waste; or
- ☐ b. SQG: 100 to 1,000 kg/mo (220 - 2,200 lbs./mo.) of non-acute hazardous waste; or
- ☐ c. CESQG: Less than 100 kg/mo (220 lbs./mo.) of non-acute hazardous waste

In addition, indicate other generator activities.

Y ☐ N ☐ d. United States Importer of Hazardous Waste

Y ☐ N ☐ e. Mixed Waste (hazardous and radioactive) Generator

Y ☐ N ☐ **2. Transporter of Hazardous Waste**

Y ☐ N ☐ **3. Treater, Storer, or Disposer of Hazardous Waste (at your site)** Note: A hazardous waste permit is required for this activity.

Y ☐ N ☐ **4. Recycler of Hazardous Waste (at your site)**

Y ☐ N ☐ **5. Exempt Boiler and/or Industrial Furnace**
If "Yes", mark each that applies.
- ☐ a. Small Quantity On-site Burner Exemption
- ☐ b. Smelting, Melting, and Refining Furnace Exemption

Y ☐ N ☐ **6. Underground Injection Control**

B. Universal Waste Activities

Y ☐ N ☐ **1. Large Quantity Handler of Universal Waste (accumulate 5,000 kg or more) [refer to your State regulations to determine what is regulated]. Indicate types of universal waste generated and/or accumulated at your site. If "Yes", mark all boxes that apply:**

	Generate	Accumulate
a. Batteries	☐	☐
b. Pesticides	☐	☐
c. Thermostats	☐	☐
d. Lamps	☐	☐
e. Other (specify) _____	☐	☐
f. Other (specify) _____	☐	☐
g. Other (specify) _____	☐	☐

Y ☐ N ☐ **2. Destination Facility for Universal Waste**
Note: A hazardous waste permit may be required for this activity.

C. Used Oil Activities
Mark all boxes that apply.

Y ☐ N ☐ **1. Used Oil Transporter**
If "Yes", mark each that applies.
- ☐ a. Transporter
- ☐ b. Transfer Facility

Y ☐ N ☐ **2. Used Oil Processor and/or Re-refiner**
If "Yes", mark each that applies.
- ☐ a. Processor
- ☐ b. Re-refiner

Y ☐ N ☐ **3. Off-Specification Used Oil Burner**

Y ☐ N ☐ **4. Used Oil Fuel Marketer**
If "Yes", mark each that applies.
- ☐ a. Marketer Who Directs Shipment of Off-Specification Used Oil to Off-Specification Used Oil Burner
- ☐ b. Marketer Who First Claims the Used Oil Meets the Specifications

RAILROAD COMMISSION OF TEXAS

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EPA ID NO: | | | | | | | | | | | | |

OMB#: 2050-0028 Expires 1/31/2006

11. Description of Hazardous Wastes (See instructions on page 20.)

A. Waste Codes for Federally Regulated Hazardous Wastes. Please list the waste codes of the Federal hazardous wastes handled at your site. List them in the order they are presented in the regulations (e.g., D001, D003, F007, U112). Use an additional page if more spaces are needed.

B. Waste Codes for State-Regulated (i.e., non-Federal) Hazardous Wastes. Please list the waste codes of the State-regulated hazardous wastes handled at your site. List them in the order they are presented in the regulations. Use an additional page if more spaces are needed for waste codes.

12. Comments (See instructions on page 20.)

13. Certification. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. **(See instructions on page 20.)**

Signature of operator, owner, or an authorized representative	Name and Official Title (type or print)	Date Signed (mm/dd/yyyy)

EPA Form 8700-12 (Revised 1/2004)

Page 3 of 3

RAILROAD COMMISSION OF TEXAS

Comments on the proposed amendments to §3.80 or these proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically requests comments and information on the proposed form changes that are part of this rulemaking, and on any Commission form that might be affected in the future because of the OGM Project or other factors. The Commission will accept comments on the forms listed in this notice for 30 days after publication of the proposed amendments to §3.80 in the *Texas Register*, and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

TRD-200402731
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: April 23, 2004

♦ ♦ ♦

Texas Department of Transportation

Notice to Extend Comment Period for a Draft Environmental Impact Statement

Notice To Extend Comment Period for a Draft Environmental Impact Statement: Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Department of Transportation is issuing this notice to advise the public that we are extending the comment period for the Draft Environmental Impact Statement (DEIS) for the Grand Parkway (State Highway 99) Segment F-2, northwest of Houston in Harris County, Texas. Comments regarding the DEIS should be submitted to Ms. Robin Sterry at the Grand Parkway Association, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, or to Mr. Pat Henry, P.E., at the Texas Department of Transportation's (TxDOT) Houston District Office. Comments submitted to TxDOT may be hand-delivered to the Houston District Office located at 7721 Washington Avenue, Houston, Texas, or sent by mail. TxDOT's mailing address is P.O. Box 1386, Houston, Texas, 77251-1386.

The Notice of Availability for the Grand Parkway Segment F-2 DEIS was published in the *Texas Register* on February 6, 2004. The end of the official comment period was to be May 7, 2004; however, the comment period has been extended to July 12, 2004. All comments must be received prior to 5:00 p.m. on Monday July 12, 2004.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-2 at the corridor level (four corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access freeway from SH 249 to IH 45 in Harris County, a distance ranging from 11.9 to 13.0 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane at-grade controlled access divided freeway with intermittent frontage roads within a 400-foot right of way (ROW) width. A total of five build alternative alignments, in addition to the No-Build alternative, have been presented in the DEIS. All five alternative alignments lie between SH 249 and IH 45 in an east-west direction. Alternative Alignment A begins at SH 249 and traverses mainly through the center of the study area. This alignment alternative ends at IH 45, approximately 0.6 miles north of Spring Stuebner Road and is 12.5 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A, but traverses mainly through the middle and southern portion of the study area. Alternative Alignment B ends 0.1 miles south of the Hardy Toll Road and IH 45 intersection, and is 13.0 miles in length. Alternative Alignment C begins at the same location as Alignments A and B, and traverses mainly through the north and middle portion of the study area. Alternative Alignment C ends at the same location of Alternative Alignment A and is 12.2 miles in length. Alternative Alignment D begins at Boudreaux Road approximately 0.3 miles northeast of FM 2920 and traverses 7.0 miles before ending at the same location as Alternative Alignment C. Alternative Alignment E begins at the same location as Alternative Alignment D and traverses 6.8 miles before ending at the same location as Alternative Alignment B.

The preferred corridor and transportation mode, and recommended alignment, were proposed after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments received from a comprehensive agency/public outreach program. The recommended build alternative alignment that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Purpose and Need while minimizing impacts to the natural, physical, and social environments. The Recommended Build Alternative Alignment is B, B, D, C and is 11.9 miles in length. The recommended alternative alignment for Segment F-2 would require the taking of new ROW, the adjustment of utility lines, and the filling of aquatic resources, including approximately 0.4 acres of jurisdictional wetlands. Four potential historic sites, three business and twenty-two residential displacements would occur, and no archeological sites or endangered species are expected to be affected. Although a Recommended Alternative Alignment is presented, selection of the final Preferred Alternative Alignment will not be made until after the public comment period is completed, comments on the DEIS are received and considered, and the environmental effects are fully evaluated.

Copies of the DEIS and other information about the project may be obtained at the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact Robin Sterry at (713) 965-0104 or Pat Henry, P.E. at (713) 802-5241. Copies of the DEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Houston Public Library in the Bibliographic Information Center, 500 McKinney, Houston, Texas; at the Harris County Public Library, Barbara Bush Branch, 6817 Cypresswood Dr., Spring, Texas; Harris County Public Library, Tomball Branch, 1226 W. Main St., Tomball Texas; Montgomery County Library, South Branch, 2101 Lake Robbins Dr., The Woodlands, Texas; and the Harris County Public Library, Baldwin Boettcher Branch, 22248 Aldine Westfield Rd., Humble, Texas.

TRD-200402839
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: April 28, 2004

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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-200402701
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 22, 2004

♦ ♦ ♦

The University of Texas System

Request for Proposals for Consulting Services

The University of Texas at San Antonio

Notice of Intent to Seek Consultant Services Related to a Compensation and Compression Study

The University of Texas at San Antonio (UTSA) will be seeking Request for Proposals to hire a consultant to develop a pay plan for classified jobs and to complete a compression analysis for classified employees.

The President of The University of Texas at San Antonio has made a finding of fact that the consulting services are necessary. The University of Texas at San Antonio does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Request for Proposal should contact:

Mr. Bernard Leiter

Senior Buyer

Materials Management Department

The University of Texas at San Antonio

6900 N. Loop 1604 West

San Antonio, TX 78249

Voice: 210- 458-4066

Email: bleiter@utsa.edu

The proposal submission deadline will be Tuesday, May 25, 2004 at 2:30 p.m. Central Time.

TRD-200402850
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: April 28, 2004

♦ ♦ ♦

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-200402800
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 27, 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).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

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