TEXAS REGISTER

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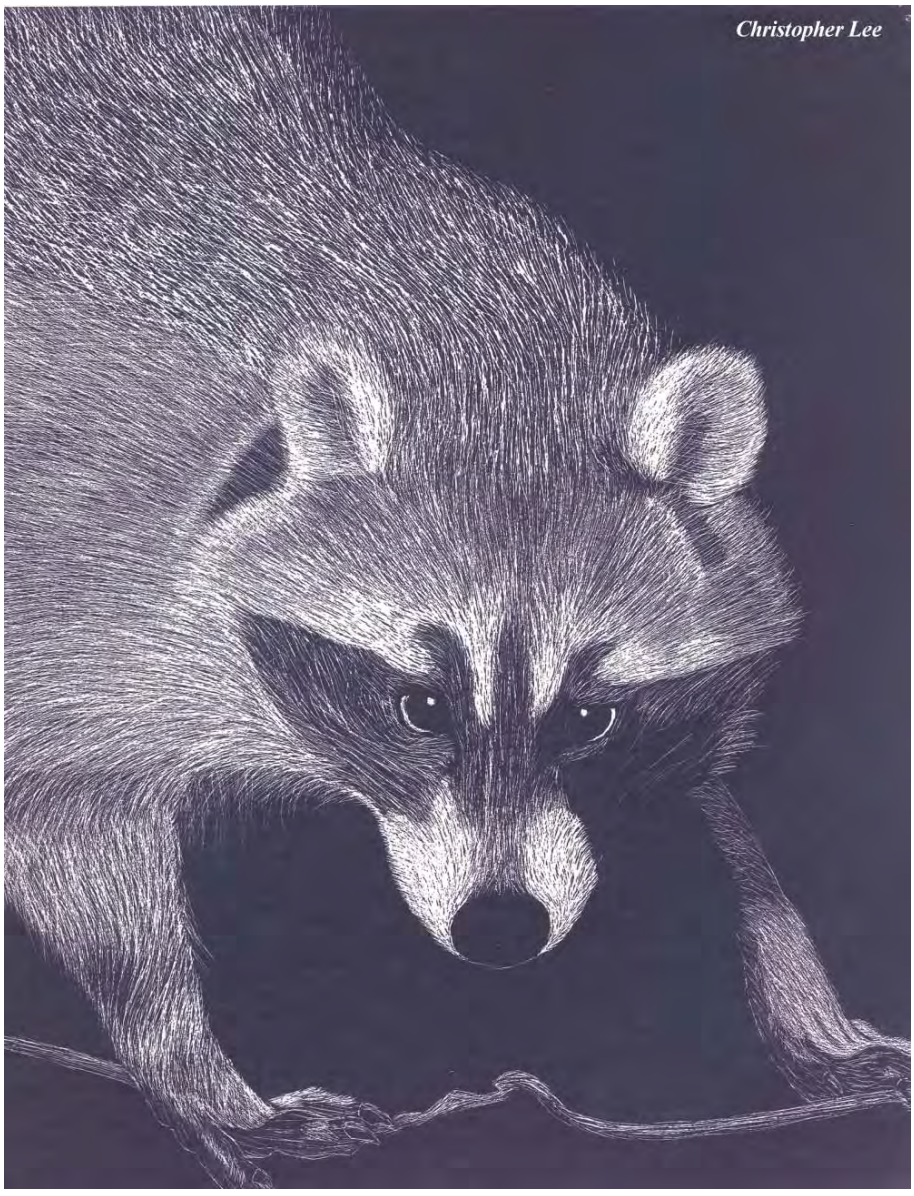

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

IN ADDITION

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).

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409

28 TAC §5.4909, §5.4910

The Texas Department of Insurance is renewing the effectiveness of the emergency adoption of new §5.4909 and §5.4910, for a 60-day period. The text of the new sections was originally published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6925).

Filed with the Office of the Secretary of State on January 4, 2010.

TRD-201000004
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Original Effective Date: September 28, 2009
Expiration Date: March 27, 2010
For further information, please call: (512) 463-6327

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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 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.64

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §97.64, concerning required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education.

BACKGROUND AND PURPOSE

The amendment to §97.64(d)(2) is proposed in order to update the rule text regarding the potential of hepatitis B transmission for students enrolled in veterinary courses. Section 97.64(d)(2) currently states that: "Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete series of hepatitis B vaccine prior to such contact."

The amendment to §97.64(d)(2) is required by Senate Bill (SB) 291, 81st Legislature, Regular Session, 2009. SB 291 (b-1) states that: "A rule adopted under Subsection (b) that requires a hepatitis B vaccination for students may apply only to students enrolled in a course of study that involves potential exposure to human or animal blood or bodily fluids." SB 291 also states in Section 2 that: "Not later than November 1, 2009, the executive commissioner of Health and Human Services Commission shall adopt rules as required by Subsection (b-1), Section 51.933, Education Code, as added by this Act."

The proposed amendment to §97.64(d)(2) will implement the SB 291 language. The proposed amendment tracks the statutory amendment, and reflects the potential for human-to-human hepatitis B transmission due to blood and bodily fluid exposure because of cuts and abrasions acquired during veterinary coursework.

Texas' only school of veterinary medicine is Texas A&M University, which did submit informal feedback regarding this rule amendment. Public comments will be received during the *Texas Register* 30-day comment period.

SECTION-BY-SECTION SUMMARY

The proposed amendment changes current language from "Students enrolled in schools of veterinary medicine whose coursework involves "direct contact with animals or animal remains" shall receive a complete series of hepatitis B vaccine prior to such contact" to "Students enrolled in schools of veterinary medicine whose coursework involves "potential exposure to human or animal blood or bodily fluids" shall receive a complete series of hepatitis B vaccine prior to such contact." This change will bring the rule in line with the statutory amendment.

FISCAL NOTE

Casey S. Blass, Section Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the section will be in effect, if future funds are appropriated at current levels, there will be no additional costs to state and local government as a result of enforcing and administering the section as proposed. The proposed amendment is required by statute.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. The Texas A&M University is the only Texas institution affected by this proposed amendment.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no economic costs to persons who are required to comply with the section. There is no impact on local employment.

ECONOMIC IMPACT STATEMENT

An economic impact statement is not required because small businesses and micro-businesses are not affected by this proposed amendment.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430), 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rule is merely an implementation of legislative directives because of statutory changes, that proposed rule language becomes per se consistent with the health, safety, or environmental and economic welfare of the state and, therefore

the department need not consider alternative methodologies as part of the preamble small business impact analysis.

PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit as a result of the rule reflecting the recent statutory amendment as proposed is to ensure the safety and health of students in veterinary medicine and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Victoria Brice, Infectious Disease Prevention Section, Department of State Health Services, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347, Victoria.brice@dshs.state.tx.us, or (512) 458-7111, extension 6658. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is proposed under Education Code, §51.933, which requires the immunization against diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Education Code, Chapter 51; and Government Code, Chapter 531, and Health and Safety Code, Chapter 1001.

§97.64. Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

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

(d) Students enrolled in schools of veterinary medicine.

(1) (No change.)

(2) Hepatitis B Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves potential exposure to human or animal blood or bodily fluids [~~direct contact with animals or animal remains~~] shall receive a complete series of hepatitis [~~Hepatitis~~] B vaccine prior to such contact.

(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 January 4, 2010.

TRD-201000006
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§39.402, 39.404, and 39.606; proposes new §39.402; and also proposes amendments to §§39.106, 39.403, 39.405, 39.409, 39.411, 39.418 - 39.420, 39.501, 39.551, 39.601 - 39.605, 39.651, 39.653, and 39.709.

The following new and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP): §§39.402(a)(1) - (3) and (5) - (9), 39.405(f)(3) and (g), (h)(1)(A) - (4), (6), (8) - (11), (i) and (j), 39.409, 39.411(e)(1) - (5)(B) and (6) - (10), (11)(A)(i) and (iii) and (iv), (12) and (15), and (f) - (h), 39.418(a), (b)(2)(A) and (c), 39.419(e), 39.420(c) - (e) and (h), 39.601, 39.602, 39.603, 39.604, and 39.605.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

PRIOR SIP SUBMISSIONS

Certain sections and subsections of the rules regarding public participation for air quality permit applications were previously submitted to EPA as revisions to the SIP on October 25, 1999, July 31, 2002 and March 9, 2006. The sections submitted in 1999, as part of the implementation of House Bill (HB) 801 (76th Legislature, 1999) which is discussed more fully later in this preamble, were §39.201; §39.401; §39.403(a) and (b)(8) - (10); §39.405(f)(1) and (g); §39.409; 39.411(a), (b)(1) - (6) and (8) - (10) and (c)(1) - (6) and (d); §39.413(9), (11), (12), and (14); §39.418(a) and (b)(3) and (4); §39.419(a), (b), (d), and (e); §39.420(a), (b), and (c)(3) and (4); §39.423(a) and (b); §39.601; §39.602; §39.603; §39.604; and §39.605. The sections submitted in 2002 were new §39.404, and amended §§39.411, 39.419, 39.420; 39.603, 39.604, and 39.606. The sections submitted in 2005 were amended §39.403(b)(8) - (10)

and new (f); §39.411(a), (b)(1) - (6), (8) - (10), (c)(1) - (6), and (d); §39.419(a), (b), (d), and (e); and §39.420(a), (b), and (c)(3) and (4). In 2005, the commission also proposed to submit the repeal of §39.404, and the newly adopted §39.404, and to withdraw §§39.411, 39.419, and 39.420 as submitted in 2002.

Subsequently, the commission conducted two rulemakings that concern public participation for air quality permit applications which were not submitted as revisions to the SIP. The first was the implementation of HB 2518 (77th Legislature, 2001), relating to the issuance of certain permits for the emission of air contaminants, by adding new §39.402. The second rulemaking amended alternate language publication requirements in §39.405(h), as well as amendments to §39.604 and §39.605. Therefore, to ensure that current versions of the necessary and appropriate rules are submitted to EPA as revisions the SIP, the commission is proposes to withdraw all sections previously submitted as listed earlier and to submit the following sections as revisions to the SIP: §§39.402(a)(1) - (3) and (5) - (9), 39.405(f)(3) and (g), (h)(1)(A) - (4), (6), (8) - (11), (i) and (j), 39.409, 39.411(e)(1) - (5)(B) and (6) - (10), (11)(A)(i) and (iii) and (iv), (12) and (15), and (f) - (h), 39.418(a), (b)(2)(A) and (c), 39.419(e), 39.420(c) - (e) and (h), 39.601, 39.602, 39.603, 39.604, and 39.605. In addition, §39.407 will be submitted to the EPA as a revision to the SIP.

HOUSE BILL 801

In September and October 1999, the commission conducted rulemaking to implement HB 801, adopted by the 76th Legislature to be effective September 1, 1999. HB 801 established new procedures for public participation in multi-media environmental permitting proceedings. It established procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing for certain actions. This legislation allowed the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy air quality federal program authorization requirements, and in 1999, these changes were implemented in various chapters of the commission's rules, including Chapter 39. This effort complimented the commission's ongoing effort to consolidate agency procedural rules and make certain processes consistent among different agency programs and media.

HB 801 revised the commission's procedures for public participation in environmental permitting by adding, among other things, new Texas Water Code (TWC), Chapter 5, Subchapter M; and by revising the Texas Clean Air Act (TCAA), §382.056 in the Texas Health and Safety Code (THSC). The changes in law made by HB 801 apply to certain permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999.

Specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit 30 days after declaration of administrative completeness. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county, and, in most cases, to publish newspaper notice of the executive director's preliminary decision of the application. In addition, the bill requires the commission to establish by rule the form and content of the notices and to mail notice to certain persons. It also requires the executive director to hold public meetings regarding applications which are required, if requested by a legislator, or if the executive director determines there is substantial public interest in the proposed activity. The executive director is also required to prepare responses to relevant and material public comments received in response to the notices or at public meetings, and file the responses with the chief clerk. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are implemented in 30 TAC Chapters 39, 50, 55, and 80 by consolidating the rules for public participation for various air quality, water quality and waste applications. For air quality applications, the changes were newly added to these chapters rather than amend the existing rules Chapter 116, which contains the rules for the new source review permitting program.

EPA REVIEW OF SUBMITTED RULES

On November 26, 2008, the EPA proposed simultaneous limited approval and limited disapproval of revisions to the applicable implementation plan for the State of Texas which relate to public participation for air quality permit applications for new and modified sources (*Federal Register* notice of November 26, 2008, hereinafter referred to as "Public Participation Notice"). With noted exceptions, this proposed limited approval and limited disapproval affects portions of SIP revisions submitted by the commission on December 15, 1995; July 22, 1998; and October 25, 1999 (See 73 *Federal Register* 72001). EPA found that these revisions, as a whole, strengthen the SIP as compared to the provisions in the existing SIP (located in 30 TAC §§116.130 - 116.137). However, EPA also found that these rules do not meet all of the minimum federal requirements that relate to public participation. The TCEQ filed comments in response to this notice. In addition, the executive director's letter to EPA dated October 23, 2009 commits to proposal of this rulemaking on December 9, 2009. This proposal is intended to address EPA's concerns as set forth in the Public Participation Notice and submit rule amendments that are approvable as a revision to the Texas SIP, and the text of the SECTION BY SECTION DISCUSSION portion of this preamble incorporates EPA's concerns and the commission's responses to those concerns.

At the time the rules were adopted, the commission stated that, generally, the amendments made by HB 801 are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

Based on the Public Participation Notice, the commission has determined that to meet the minimum requirements of federal law for public participation for air quality permit applications, amendments to the established rules implementing the various state legislation described above, are necessary.

DESCRIPTION OF THE CURRENT PROCESS FOR PUBLIC PARTICIPATION FOR AIR QUALITY PERMIT APPLICATIONS

Due to the comprehensive nature of the requirements of HB 801 (76th Legislature, 1999), the commission's permitting process is frequently referred to as the "HB 801" process. The vast majority of air, waste, and water quality permit applications received by the commission are subject to the procedural requirements of

HB 801. A brief description of that process for air applications follows. As there are a number of possible scenarios depending on the type of permit, this discussion focuses on the basic HB 801 process. Additionally, in its Public Participation Notice, EPA states "for a new or modified source subject to PSD, the revised rules do not contain a definition of a final appealable decision for a PSD permit" (see 73 *Federal Register* 72008). EPA goes on to state that it would like "further information about how and when commenters are informed of the agency's final decision, access to the response to comments (RTC) and timing for judicial appeal, in order to provide an opportunity for State court judicial review" (see 73 *Federal Register* 72008). The following discussion also addresses those issues. The SECTION BY SECTION DISCUSSION of this preamble for §55.156, Public Comment Processing, in the concurrent proposal preamble discusses in greater detail EPA's issue regarding access to the RTC.

Notice of Receipt of Application and Intent to Obtain Permit (First notice): Permit applications received by the TCEQ undergo an administrative review by staff to determine whether the applicant has submitted all of the initially required parts of the application. Within 30 days after the application is declared administratively complete, the applicant is required to publish the Notice of Receipt of Application and Intent to Obtain Permit (NORI) in a newspaper. The NORI describes the location and nature of the proposed activity, lists agency and applicant contacts for obtaining additional information, and gives the location in the county where a copy of the application can be viewed and copied. In some cases, the applicant may also have to publish the notice in other languages. Applicants must post signs with application and contact information around the property. Mailed notice to persons on the mailing list and others is also provided by the chief clerk. The NORI provides instructions for submitting comments, getting on the mailing list, requesting a public meeting, and requesting a contested case hearing. The instructions explain that in order for an issue to be considered at a contested case hearing, it must first be raised in a comment or in a request for a contested case hearing during the time specified in the published notice.

Notice of Application and Preliminary Decision (Second notice): After the application has been determined to be administratively complete, it undergoes a technical review to determine whether it satisfies state and federal regulatory requirements. For certain types of permits, after technical review is complete, the executive director issues his preliminary decision. The applicant is then required to publish a second notice, called the Notice of Application and Preliminary Decision (NAPD), in a newspaper and the notice is also mailed to persons who timely filed public comment or hearing requests and to persons on the mailing list. The NAPD contains information regarding the review of the application and provides an additional opportunity to submit comments, request a public meeting and/or contested case hearing, or request to be added to the mailing list.

Second notice is currently required for an air quality permit application for a minor source (or a registration for a concrete batch plant standard permit) *only* when a request for a contested case hearing was made during the first notice (NORI) period and was not withdrawn before the preliminary decision was issued. If no contested case hearing has been requested, the comment period ends 30 days after the date of publication of the NORI. For all major sources of air pollution which require a Prevention of Significant Deterioration (PSD) or nonattainment permit, publication of the NAPD is required, regardless of whether or not contested case hearing requests are received for the permit application. This rulemaking would expand the requirement to publish the NAPD to all minor source applications. This is more fully discussed later in the SECTION BY SECTION DISCUSSION portion of this preamble.

Response to comments: After the public comment period closes, the executive director is required to review and respond to all timely, relevant and material or significant filed comments in a formal RTC prior to issuance of the permit. The TCEQ's practice is to respond to all comments. The staff considers all timely filed comments to determine whether any issues raised require changes to the preliminary decision and/or proposed permit. The RTC and the executive director's preliminary decision are mailed to the applicant, and any person who submitted comments during the public comment period, timely filed a contested case hearing request, or requested to be on a mailing list for the permit application.

Mailing list for notice: Interested persons can receive future public notices by requesting to be placed on either the permanent mailing list for a specific applicant name and permit number or the permanent mailing list for a specific county which includes all air, water, and waste permit notices in that county. Persons who submit a comment, request a public meeting, or request a contested case hearing regarding a specific application, are automatically added to the mailing list for that specific permit application.

Public meeting: Public meetings provide the public with an opportunity to learn about the application, ask questions of the applicant and TCEQ, and offer formal comments. It also allows TCEQ staff to hear firsthand the concerns and objections of the community and gather input for use in the agency's consideration of the application. Currently, the TCEQ will hold a public meeting if there is significant interest in an application, if requested by a legislator from the area of the proposed project, or if otherwise required by law. This rulemaking will add the requirement that for some types of permits, including PSD and nonattainment, that a meeting will be held upon request of an interested person. A request for a public meeting must be submitted to the chief clerk during the public comment period.

Request for contested case hearing: If comments were filed during the comment period, there may be an opportunity to request a contested case hearing. Currently, for there to be an opportunity for a contested case hearing, a request for a contested case hearing must be received during the NORI comment period for applications for minor sources of air pollution. For major sources of air pollution, the opportunity for a contested case hearing request to be made extends to the end of the comment period, with an additional opportunity to make the request for 30 days after the mailing of the executive director's RTC. A hearing request must be based on issues that were raised during the comment period, in comments that were not withdrawn prior to the filing of the RTC. The person requesting a hearing must demonstrate that they are an "affected person" as defined in state law in order to be granted party status and challenge the executive director's preliminary decision on an application. Requests for contested case hearings must include among other pertinent information, a detailed explanation of how the requester would be adversely affected by the proposed facility or activity in a manner not common to the general public. If the request is made on behalf of a group or an association, the request must identify one or more members who are affected persons, and state how the interest that the group or association seeks to protect is relevant to the

group's purpose. The request for hearing must be received no later than 30 days after the date of the letter transmitting the executive director's preliminary decision and RTC, which is mailed out by the chief clerk. The TCEQ considers all contested case hearing requests received during the public comment period as well as those timely received after the RTC is filed and mailed.

Commission consideration of requests for reconsideration and contested case hearing: After the executive director's preliminary decision and RTC have been mailed, any person has the option of filing a request for reconsideration, which asks the commissioners to reconsider the executive director's decision. The request for reconsideration must be received no later than 30 days after the date of the decision letter. All timely filed requests for reconsideration and contested case hearing are considered at the commissioner's agenda meetings, except when the application is directly referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. At these meetings, the commissioners consider contested case hearing requests, response and reply briefs, the executive director's RTC, and applicable statutes and rules and decide whether they will grant or deny the contested case hearing requests and requests for reconsideration. If the commission decides to grant a request for a contested case hearing, the case is referred to SOAH with a list of issues to be the subject of the hearing and an expected duration for the hearing.

Contested case hearing: A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by the SOAH, an independent agency that conducts hearings for state agencies. Contested case hearings can take place either when referred to SOAH by the commission, or when an application is directly referred to SOAH, usually by the applicant. When a contested case is referred to SOAH, an administrative law judge will preside over the hearing and will consider evidence in the form of sworn witness testimony and documents presented as exhibits. At the conclusion of the SOAH hearing, the judge issues a proposal for decision with proposed findings of fact and conclusions of law, which is submitted to the TCEQ for formal consideration by the commission. The commission then approves, denies, or modifies the proposal for decision.

For minor sources of air pollution, if there are comments but no contested case hearing requests in response to the first notice (NORI), the executive director will respond to comments, but there is no longer an opportunity to request a contested case hearing. Persons wishing to protest the granting of the permit must file a motion to overturn.

Motion to overturn: If no request for contested case hearing or reconsideration is received and the executive director issues the uncontested permit, any person may file a *motion to overturn* requesting that the commission overturn the executive director's action. The motion must be filed no later than 23 days after the date the agency mails notice of the signed permit, and must explain why the commission should review the executive director's action. If a motion to overturn has not been acted on by the commissioners within 45 days after the date the agency mails notice of the signed permit, the motion is overruled by operation of law, unless an extension of time is specifically granted. In the case of an uncontested permit application that is issued by the executive director, agency rules require the chief clerk to send the executive director's RTC along with notice that the permit has been signed to appropriate persons including all who timely filed public comments. That letter also explains that a motion to overturn can be filed for the commission's consideration, and that an appeal may be filed in state district court in Travis County, Texas.

Protesting a commission approved permit: For a contested permit, i.e., one for which a contested case hearing was requested and the permit was subsequently issued by the commission either after denial of all hearing requests or after a contested case hearing, the rules also require the chief clerk to send the order and notice of the action to a list of persons including those who timely filed public comment. If the commission adopts a change to the executive director's original RTC, the rules require the chief clerk to include this final RTC with the notice of the commission's action. In matters where the commission makes no changes to the executive director's RTC, in accordance with the rules, the chief clerk would have previously transmitted the executive director's RTC to appropriate persons including commenters who subsequently receive the order and notice of action. The letter transmitting the order and notice of commission action explains that a motion for rehearing of the commission's action can be filed. A motion for rehearing is a prerequisite to appeal.

Judicial review: Access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution." The state statutory authority cited in support of the Texas Title V Operating Program includes THSC, §382.032, which is the underlying authority for the appeal of Texas' air quality permit actions, including PSD permitting program. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accordance with Article III of the United States Constitution is also applicable for every action of the commission subject to the TCAA, including PSD permit decisions.

OVERVIEW OF THE PROPOSED AMENDMENTS AND RELATED RULEMAKING

This rulemaking, in Chapters 39, 55, and 116 includes significant changes to the existing public participation process for air quality permit applications. The first is the expansion of the scope of applications that are subject to NAPD to all air quality permit applications, except certain permit renewal applications; the commission is no longer excluding minor new source review (NSR) applications from this notice requirement when no request for a contested case hearing is received by the commission, or such request is withdrawn. This addresses EPA's concerns regarding opportunity for the public to comment on the executive director's draft permit and air quality analysis for new or modified minor NSR sources or minor modifications at major sources. There is no change in the commission's procedure for requesting a contested case hearing for any air quality applications that are currently subject to a request for contested case hearing. For air quality minor NSR permit applications, the opportunity to request a contested case hearing continues to be contingent upon a request for such a hearing being received during the comment period for the NORI. If a request for a contested case hearing is received during the NORI comment period for these applica-

tions, then the opportunity to request a contested case hearing for 30 days after the executive director's RTC is mailed continues to apply. If, however, no requests for a contested case hearing are received during the comment period for NORI, then there is no further opportunity to request a contested case hearing for an air quality permit for a minor source. Importantly, however, the NAPD for minor NSR applications is required with an opportunity for public comment as well as an opportunity to request a public hearing. For major sources, the opportunity to request a contested case hearing is open until the end of the NAPD comment period, or, if timely comments are filed, for 30 days after the executive director's RTC is mailed. Second, the commission is ensuring that all persons to whom notice must be given, and specific notice content, are specifically set forth in the rules. In addition, because EPA expressed concern in the Public Participation Notice about portions of previously submitted rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval. It should be noted that not all of the rules that apply to air quality permitting are proposed to be submitted as a SIP revision. Rather, the commission proposes those sections, or portions of sections that meet minimum federal requirements or meet the requirements of the existing Texas SIP, as revisions to the SIP.

Concurrently with this proposal, and published in this issue of the *Texas Register*, the commission is proposing amendments to 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 60, Compliance History; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The proposed amendments to Chapter 55 require the executive director to hold a public meeting when requested by any interested person for applications for PSD or nonattainment permits, and update the type of application available for concrete batch plants that are subject to the public participation requirements in Chapter 55. Finally, the rules specify that before any air quality permit application for a PSD and nonattainment permit is approved, the executive director shall prepare a response to all comments received. The commission is also proposing to withdraw certain sections and resubmit certain sections in Chapter 55 as revisions to the SIP. The primary objective of this rulemaking is to obtain SIP approval for the public participation requirements and process for the commission's NSR air quality permitting program.

The commission is proposing amendments to Chapter 60 to update cross-references that have changed as part of this rulemaking.

The commission is also concurrently proposing amendments to certain sections in Chapter 116 to ensure that the public participation requirements for Plant-wide Applicability Limit (PAL) permits meet state and federal public participation requirements. In addition, the amendments update cross-references.

The new and amended rules in these four chapters should be considered together, since all changes are necessary to achieve the goal of SIP approval and the increased public participation opportunities.

SECTION BY SECTION DISCUSSION

Because this rulemaking is intended to revise the commission's rules to obtain SIP approval for its air quality permitting program (exclusive of the Federal Clean Air Act (FCAA) Title V portion), the commission will not respond to comments regarding the public participation requirements for other media not addressed in this rulemaking. However, the commission will accept comments regarding the proposed updated cross-references in the rules that are not applicable to air quality permit applications.

Section 39.106, Application for Modification of a Municipal Solid Waste Permit or Registration

The commission proposes to amend §39.106(a) to update the cross-reference to §39.411(b)(1) - (3), (6), (7), (9), and (12) as §39.411(b)(1) - (3), (6), (7), (9), and (11).

Section 39.402, Applicability to Air Quality Permits and Amendments

The commission proposes the repeal of existing §39.402 and simultaneously proposes new §39.402. The proposed new section would consolidate the rules for the types of applications subject to notice requirements in Chapter 39, Subchapters H and K currently listed in §39.402 and §39.403(b)(8) - (10) and (13). In the consolidation, the commission is not carrying forward the references to certain types of permit applications for which the deadline to submit those applications has passed. Specifically, those references are in existing §39.404(a), and include grandfathered facilities, electric generating facilities, and existing facilities permits. No applications for these types of permits remain pending.

The commission proposes new §39.402(a), which would require applications for air quality permits and permit amendments be subject to Chapter 39, Subchapters H and K. The specific types of applications that are subject to these various requirements are listed in subsection (a)(1) - (9).

Proposed new §39.402(a)(1) lists permits and permit amendments that must obtain a permit pursuant to THSC, §382.0158. This is moved from existing §39.403(b)(8). In the Public Participation Notice, EPA objected to the statutory cross-references in §39.403(b)(8) as non-SIP provisions, and requested the commission remove or change the references to SIP-approvable references. However, EPA has approved rules in other states that also contain statutory references. Specifically, in the notice, EPA points out the state rules of Alaska and Oregon as examples of rules that have been approved by EPA. A cursory examination of the rules of those states, however, reveals statutory references within the EPA approved rules. For example, the Alaska rules 18 Alaska Administrative Code (AAC) §50.200 and §50.311 reference Alaska Statutes (AS) §§46.03, 46.14, and 46.14.180. The Oregon rule for Public Participation, Oregon Administrative Rules (OAR) 340-209-0080, is also EPA approved, and yet it references Oregon Revised Statutes, §§183.413 - 183.470.

The references to THSC, §382.0518 and §382.055 in §39.402(a)(1) and (3), respectively, specify the statutorily defined types of facilities that are subject to the rule. These specific statutory provisions are the underlying authority for the commission to require that a permit be obtained before a facility may begin construction, or apply for renewal of such an air quality permit. Although EPA does not approve or disapprove state legislative actions that result in such statutes, without the underlying authority, the commission could not require anyone to obtain a permit before constructing or operating. Submittal of a SIP is contingent on a state or state agency having the delegated authority from the legislature to act (FCAA, §110(a)(2)(E)(i)). The commission has been delegated this authority under the TCAA, and the specific sections referenced in the rule specify which types of applications are subject to

this rule. Therefore, the commission has not revised the rule to make the requested change.

In proposed new §39.402(a)(1), the commission would specifically list applications for the initial issuance of flexible permits. In the September 23, 2009, notices, EPA stated concerns about notice requirements for flexible permits. EPA specifically stated that, for initial issuance of a flexible permit to establish a minor NSR applicability cap or an increase in a flexible permit cap, the rules do not require 30-day notice and comment on information submitted by the owner or operator and the agency's analysis of the effect of the permit on ambient air quality, including the agency's proposed approval or disapproval as required by 40 Code of Federal Regulations (CFR) §51.161. Flexible permits applications, like other minor NSR applications, are subject to publication of NAPD. Proposed new §39.402(a)(1) and (2) specify that initial issuance and amendments of flexible permits are subject to the public participation requirements of Chapter 39. EPA also commented that where PSD and nonattainment permit terms and conditions are modified or eliminated when the permit is incorporated into a flexible permit, the rules do not require public participation consistent with 40 CFR §51.161 and §51.166(q). The proposed changes in this rulemaking clarify the applicable notice requirements for both initial issuance and amendments of flexible permits.

Proposed new §39.402(a)(1)(A) and (B) would specify that applications for permits and permit amendments apply when a permit action involves construction of any new facility or a modification of an existing facility. These are moved from existing §39.403(b)(8)(A) and (B).

In proposed new §39.402(a)(2), applications for certain air quality amendments are subject to the requirements of Chapter 39, Subchapters H and K. Subparagraphs (A) and (B) are moved from existing §39.403(b)(8) and (8)(A).

In proposed new §39.402(a)(2)(C), the commission relocates existing text in §39.402(a)(1), regarding amendments when there is a change in character of emissions or release of an air contaminant not previously authorized.

In proposed new §39.402(a)(2)(D), the commission relocates existing text in §39.402(a)(3). This implements HB 2518 (77th Legislature, 2001), which added THSC, §382.0518(h), which provides that for certain permit amendments, the public participation requirements of THSC, §382.056 do not apply if the total increase for all facilities authorized under the amended permit will meet the commission's *de minimis* criteria, and the emissions do not change in character. In the existing rule, the commission established those criteria, and therefore would remain the same in proposed new subsection (a)(2)(D).

In proposed new §39.402(a)(2)(E), the commission relocates existing text in §39.402(a)(2) and §39.403(b)(8). This implements HB 2518 (77th Legislature, 2001), which added new THSC, §382.0518(h), which provides that permit amendments that the public participation requirements of THSC, §382.056 do not apply if the total increase for all facilities that are affected by THSC, §382.020 (relating to control of emissions from facilities that handle certain agricultural products) authorized under the amended permit will not be significant and will not change in character. In the existing rule, the commission established the significance levels, which are the same as in §106.4(a); these would remain the same in the proposed rule.

In the Public Participation Notice, EPA commented that, under §39.403(b)(8), for a minor NSR permit amendment or minor modification under §116.116(b), (where there is a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant) the existing SIP requires the permit holder to apply for and receive approval of a permit amendment. However, the revised rules do not require any public participation as required by 40 CFR §51.161(a) and (b) unless the change involves construction of a new facility or modification of an existing facility that results in an increase in allowable emissions equal to or greater than 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x) or 25 tpy of volatile organic compound (VOC) or sulfur dioxide (SO_2) or particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen or other changes within the discretion of the executive director. The commission responds that EPA has approved into the SIP TCEQ's air quality permit by rule (PBR) program, as specified in Chapter 106, Subchapter A; see 68 *Federal Register* 64548 (November 13, 2003). Therefore, the exclusion of notice requirements for increases that are less than significant is consistent with the approved SIP.

In proposed new §39.402(a)(2)(F), the commission would relocate existing text in §39.402(a)(4) and §39.403(b)(8)(C). This new paragraph would provide for applications to be subject to the notice requirements of Chapter 39, Subchapters H and K when the executive director determines that there is a reasonable likelihood for emissions to impact a nearby sensitive receptor or there is a reasonable likelihood of high nuisance potential from the operation of the facilities. It would also apply when an application involves a facility with a poor compliance history rating, or when there is a reasonable likelihood of significant public interest in a proposed activity.

In proposed new §39.402(a)(3), the commission would relocate text regarding renewal applications from §39.403(b).

In proposed new §39.402(a)(4), the commission would relocate text from §39.403(b)(9), which states that applications for hazardous air pollutant permits are subject to the notice requirements of Chapter 39, Subchapters H and K.

In proposed new §39.402(a)(5), applications for the establishment or renewal of, or an increase in, a PAL permit under Chapter 116 are subject to the requirements of Chapter 39, Subchapters H and K. In the Public Participation Notice (73 *Federal Register* at 72012), EPA commented that for PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 CFR §51.160 and §51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11).

In addition, in its September 23, 2009, notice (74 *Federal Register* at 48474 - 48475), EPA stated that the commission's rules for PAL permit applications were deficient, specifically because the rules do not include a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11). EPA also commented that the rule applicability section in §39.403 does not include PALs, despite the cross-reference to Chapter 39 in §116.194. In response, the commission proposes new subsection (a)(5), which adds PAL applications to the list of types of applications subject to notice and clarified the public participation

requirements for these permits. Specifically, applications for establishment or renewal of, or an increase in, a PAL permit would be required to comply with the requirements in Chapter 39.

In proposed new §39.402(a)(6), the commission would relocate text regarding multiple plant permit (MPP) applications from §39.403(b)(13).

In proposed new §39.402(a)(7), the commission would relocate applicability for Future Gen permit applications from existing §39.404(b)(2). That section is proposed for repeal.

In proposed new §39.402(a)(8), the commission has relocated and updated the text of §39.403(b))(10) and updated the citation to the current type of authorization that is available for concrete batch plants that are subject to the public participation requirements in THSC, §382.056.

In proposed new §39.402(a)(9), applications for change of location of portable facilities would be subject to certain notice requirements of Subchapters H and K. Proposed new §39.402(a)(9) codifies existing commission guidance and practice on notice requirements for the change of location of portable facilities pursuant to THSC, §382.056(r). See "Guidance Memo for the Relocations and Change of Locations of Portable Facilities," September 10, 2008, from Richard Hyde, P.E., Director, TCEQ Air Permits Division to Air Permits Staff, Field Operations Staff, and Interested Applicants, which can be found at *http://www.tceq.state.tx.us/assets/public/permitting/air/memos/portable_memo_9_10_08.pdf*. In a separate rulemaking action, the commission has proposed to adopt §116.20 and §116.178 regarding changes of location of portable facilities (34 *Texas Register* 6281, September 11, 2009). If the commission adopts those sections prior to consideration of adoption of these rule amendments, the new rules will be referenced in this subsection.

The commission proposes new §39.402(b), that would provide that unless otherwise stated in this chapter, applications for air quality permits and permit amendments filed before July 1, 2010, are governed by the rules in Chapter 39, Subchapters H and K as they existed immediately before July 1, 2010, and that those rules are continued in effect for that purpose.

The commission proposes new §39.402(c), which would relocate text from existing §39.403(c)(4) - (6). This section states that applications for federal operating permits and standard permits (other than those specified in proposed new §39.402(a)(8)), and registrations for permits by rule are not subject to the requirements of Chapter 39, Subchapters H and K.

Section 39.403, Applicability

The commission proposes to amend subsections (a), (a)(1) and (b) to segregate references to Subchapter K.

In subsection (b), the commission proposes to delete the types of applications subject to notice requirements in Chapter 39, Subchapters H and K currently listed in §39.402(b)(8) - (13). Except for Voluntary Emission Reduction Permits (VERPs), Electric Generating Units (EGUs), and MPPs, currently included in §39.402(b)(11) - (13), the commission is relocating these to proposed new §39.402. The restructuring results in relettering remaining subsection (b)(14) as subsection (b)(8). Existing §39.403(c)(4) - (6) is proposed to be relocated to proposed new §39.402(c)(1) - (3), and the subsequent paragraphs are proposed to be relettered as subsection (c)(4) - (12).

Existing §39.403(d), which is proposed for repeal, refers to types of permits no longer issued by the commission, including VERPs, EGUs, and MPPs for which applications were filed before September 1, 2001. Therefore, it is appropriate for the commission to omit this outdated language from the rule. Existing subsection (e) is proposed to be relettered as subsection (d). Existing subsection (f) is proposed to be relocated to proposed new §39.402(a)(7).

Section 39.405, General Notice Provisions

The commission proposes several amendments to §39.405 for the purpose of segregating requirements for air quality permit applications from the other types of applications that are subject to this section. As discussed earlier, the commission is eliminating references to other programs that are not subject to the requirements of the FCAA, and therefore, cannot be approved as a revision to the SIP. The first proposed change is to segregate out references to Subchapter K in subsections (a) and (e). The commission proposes to relocate the existing requirements regarding failure to publish notice in subsection (a) and the notice and affidavit requirements of subsection (e) to proposed subsections (i) and (j). As part of this restructuring, the commission proposes to relocate the last sentence of subsection (f)(1) to proposed subsection (f)(3).

The commission proposes to amend subsection (h)(1) by segregating air quality applications from other applications by splitting paragraph (1) into proposed subparagraphs (A) and (B).

The commission also proposes to update the cross reference in §39.405(h)(2)(C). Effective September 17, 2007, the Texas Education Agency amended 19 TAC §89.1205 by deleting subsection (g) regarding bilingual education program exceptions. The cross reference updates the new location for this information, which was moved to new 19 TAC §89.1207.

Section 39.409, Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing or Notice and Comment Hearing

The commission proposes to amend §39.409 to update the title of the reference to §55.152.

Section 39.411, Text of Public Notice

The commission proposes to move the air requirements located in existing subsections (a) - (d) to proposed subsections (e) - (h). The commission proposes to add a statement to indicate that the requirements of that section for air quality permits are in subsections (e) - (h). In subsection (b), paragraph (10) would be deleted, and the remaining paragraphs would be renumbered as paragraphs (10) - (13), and the cross reference to existing subsection (b)(12) in subsection (c)(1) would be updated.

The commission proposes to repeat the requirements for text of public notice listed in existing subsection (b)(1) - (10) in proposed subsection (e)(1) - (11) and (13) - (14), with additional proposed text. Specifically, the commission proposes to specify in subsection (e)(4)(A)(i) that the executive director will respond to all comments submitted regarding PSD, nonattainment, and PAL permit applications when those applications are filed on or after July 1, 2010. In addition, the commission proposes to specify in subsection (e)(4)(A)(ii) that the executive director will respond to all comments submitted regarding hazardous air pollutants permit applications when those applications are filed on or after July 1, 2010. In proposed subsection (e)(5), the commission would add that, where applicable, the notice should include a statement that a public meeting will be held by the executive director

if requested by an interested person for an application filed on or after July 1, 2010 for a PSD, nonattainment, PAL permit, or hazardous air pollutant permit.

In proposed subsection (e)(11)(A), the commission would prescribe notice text regarding the period for which a contested case hearing can be requested for applications for PSD and nonattainment permits, hazardous air pollutant permits, permit renewals, as well as all other applications which are subject to a contested case hearing. Proposed subsection (e)(12) would require text regarding requesting a public meeting or notice and comment hearing, as applicable, for certain applications.

In proposed subsection (e)(11), subparagraph (F) is added to include the requirement to include in text of the NORI (first notice), that for minor NSR applications for which no hearing requests are received, or are received and withdrawn, then the applicant will publish the NAPD (second notice) that provides an opportunity to submit public comment and request a public meeting.

The commission proposes subsection (f), which provides that the chief clerk shall mail notice to the persons listed in §39.602, and text of notice must include the information listed in paragraphs (1) - (7). This includes a summary and public location of the executive director's preliminary decision and air quality analysis, as well as the location of the application. It also proposes requirements for text regarding public comment procedures, the deadline for filing comments or requesting a public meeting. It also states that for PSD applications, the text must include the degree of increment consumption that is expected from the source or modification. This addresses EPA's comment in the Public Participation Notice that for a new or modified source subject to PSD, the revised rules do not require that the public notice of a PSD permit contain the degree of increment consumption that is expected from the source or modification as required by 40 CFR §51.166(q)(2)(iii) and Clean Air Act, §165(a)(2).

In the Public Participation Notice, EPA expressed concern about the timely ability to determine the beginning and ending dates of the comment period. Existing text, which the commission now proposes to locate in §39.411(f)(5) requires that the text of the notice state the deadline to file comments. Comments are timely if received at any time after the application is filed with the TCEQ until the close of the comment period, which is never less than 30 days from date of initial publication. The TCEQ includes text of notice on its Web site from the time it is provided to applicants for publication, and makes every effort to include the actual date of the end of the comment period in its Web database for contested items. And, both EPA and the general public can call the TCEQ with questions about the close of the comment period. The commission's current and proposed rules meet existing federal requirements, and any infrequent or non-existing delays due to mailing are not a reasonable or supportable basis for disapproval of TCEQ's rules.

Proposed subsection (f)(7)(D) also would specify that the notice text should include a statement that the executive director will hold a public meeting at the request of any interested person for PSD and Nonattainment permit applications. This, together with the concurrently proposed amendments to §55.154 is in response to EPA's comment in the Public Participation Notice comment that, for a new or modified source subject to PSD, the revised rules do not require the commission to provide an opportunity for a public hearing for interested persons to appear and submit written or oral comment on the air quality impact of the source, alternatives to it, the control technology required, and appropriate considerations and to provide notice of the opportunity for a public hearing, as required by 40 CFR §51.166(q)(2)(v) and Clean Air Act, §165(a)(2).

Proposed subsection (g) would specify text for a notice of public meeting, and would include a brief description of the public comment procedures.

Proposed subsection (h) would specify text of a notice for a contested case hearing.

Section 39.418, Notice of Receipt of Application and Intent to Obtain Permit

The commission proposes to amend §39.418(c) by segregating the requirements for air permits that are subject to the requirement to publish the NORI. The change would allow the commission to submit proposed subsections (a), (b)(2)(A), and (c) as revisions to the SIP.

Section 39.419, Notice of Application and Preliminary Decision

The commission proposes to amend §39.419 by restructuring subsection (e) to require publication of the NAPD for all applications other than renewals of air quality permits for which there is no proposed increase in emissions or change in character of emissions, and for which the applicant's compliance history is rated "poor" under the commission's compliance history rules. The existing rule lists which applications are not required to publish this notice. The commission makes this change to add this requirement for certain applicants who currently are not subject to this requirement, and to improve readability and understanding of the rule.

The expansion of the scope of which applications are subject to this requirement is based on comment from EPA. In its Public Participation Notice, EPA commented that under §39.419(e), for new or modified minor NSR sources or minor modifications at major sources, the rules do not require public notice and the opportunity for comment on the state's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR §51.161(a) and (b), unless a contested case hearing is requested and not withdrawn after notice of application and intent to obtain a permit is published. The proposed change to the rule would no longer exclude applicants whose applications for new or modified minor NSR sources are not subject to a request for a contested case hearing.

In the Public Participation Notice, EPA commented that under §39.419(e)(1)(C), for any amendment, modification, or renewal of a major or minor source which require a permit application, the rules do not require public notice and the opportunity for comment on the state's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR §51.161(a) and (b), if the amendment, modification, or renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

The commission is not proposing any changes to the rules in response to this comment with regard to renewal applications for which there is no increase in allowable emissions. The executive director may, however, require such applications to publish

NAPD if the application involves a facility for which the applicant has a poor compliance history. There are no requirements for renewal of permit under the EPA's general permit rules, and therefore, there are no accompanying notice requirements. Further, the commission is prohibited by THSC, §382.056(g) from seeking comment for renewal applications for which there is no increase in allowable emissions beyond the comment period for NORI as required by §39.418. Further, the commissions's existing rules do not require publication of NAPD for any amendment or modification application for which there is no increase in allowable emissions and no new air contaminants not previously emitted.

Section 39.420, Transmittal of the Executive Director's Response to Comments and Decision

The proposed amendment to §39.420 would segregate certain requirements for air quality permit applications by amending subsection (a) to exclude those applications from the requirements of that subsection, which concerns the transmittal of the executive director's response to comments. Similar requirements for air quality applications are in proposed subsections (c) and (d). Existing subsection (c) is proposed to be relettered as subsection (e), and the commission proposes to delete references to permit applications for which the commission no longer issues permits, specifically VERPs, EGUs, and existing facility permits.

The commission proposes subsection (c)(1)(D) to add text, which currently exists in §55.156, as proposed clauses (i) and (ii). This specifies the text that must be included regarding instructions for requesting a contested case hearing for certain types of permit applications.

The commission proposes to amend §39.420(c) by adding paragraph (2) to address EPA's rule in 40 CFR §51.166(q)(2)(vi) and (viii) that requires the commission to make available comments and the final determination on the application available for public inspection in the same locations where the reviewing preconstruction information was made available. The commission interprets this as a requirement that the RTC, which is a summary of the comments submitted on an application and the agency's response to those comments, and the issued permit, be made available in the local area. The commission proposes, in §39.420(c)(2) to codify its plans to make available all RTCs on its Web site. The commission anticipates this being established by January 2010. This rule change is in addition to its long-standing practices of maintaining a copy of the final permit at the commission's headquarters in Austin and at the appropriate regional offices, and, as required by rule, by mailing a copy of the RTC to all commenters, as well as any other interested persons who have asked to be included on a mailing list for a particular application. This rule change not only satisfies but exceeds the federal rule, and thus is at least as stringent. Concurrently, the commission is proposing similar rule amendments to §55.156.

The commission proposes to reletter existing subsection (c)(4) as subsection (e)(1) and existing subsection (c)(5) as subsection (e)(2). Proposed subsection (e)(2) would be amended to include the statutory text regarding the authorization for the commission's compliance history requirements. Existing subsections (d) - (f) will be relettered as subsections (f) - (h).

Section 39.501, Application for Municipal Solid Waste Permit

The commission proposes to amend §39.501(c)(2)(A) to update the cross-reference to §39.411(b)(1) - (9), (11), and (12) as §39.411(b)(1) - (11).

Section 39.551, Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge

The commission proposes to amend §39.551 to update the cross-reference to §39.411(b)(12) throughout this section as §39.411(b)(11).

Subchapter K, Public Notice of Air Quality Applications

The commission proposes to amend the title of Subchapter K to add the word "Permit," such that the new title will be Public Notice of Air Quality Permit Applications. This change is to ensure consistency with rule text regarding air quality permit applications in Chapter 39, Subchapters H and K.

Section 39.601, Applicability

The commission proposes to add text for consistency with other amendments in this rulemaking. Specifically, the commission is revising the references of "air applications" to "air quality permit applications."

Section 39.602, Mailed Notice

The commission proposes subsection (a)(1) - (4) that lists the persons to whom mailed notice must be provided that are currently included only by cross reference to §39.413.

Section 39.603, Newspaper Notice

The commission proposes to add language to subsection (a) to clarify that the NORI under §39.418 is not required for PAL permit applications. The commission also proposes to update cross-references in subsections (c)(1) and (e) that is based on this rulemaking.

In the Public Participation Notice, EPA commented that the existing SIP has no provision for alternative public notice for small businesses, and that the provision in §39.603(e)(1)(A), now located in §39.603(d), is a relaxation of the SIP. Specifically, the rule reviewed by EPA referred to a definition of "small business stationary source" in THSC, §382.0365. Since that rule was submitted to EPA, the TCAA has been revised. THSC, §382.056(a) now requires that the commission, by rule, shall prescribe alternative procedures for publication of newspaper notice if the applicant is both a small business stationary source as defined in TWC, §5.135 and will not have a significant effect on air quality. TWC, §5.135 establishes the commission's small business compliance assistance program as required by the FCAA, and it incorporates the definition of "small business stationary source" in FCAA, §507(c). The statute also requires that the alternative procedures must be cost-effective while ensuring adequate notice.

To implement this, the commission has adopted §39.602(d). It defines applicable small businesses as those meeting the definition in TWC, §5.135, and adds that the determination of whether the applicant's site is significant is based on the emission limits in §106.4(a), which is part of the Texas SIP. This subsection waives only one notice requirement, which is the newspaper display notice required by §39.603(c)(2). The primary purpose of this notice is to direct newspaper readers to the full notice in the public notice section of the newspaper. Therefore, waiver of this requirement does not diminish notice of detailed information regarding the application and the public participation procedures, while achieving the statutory requirement to adopt a cost-effective procedure. The display notice requirement is a procedural rule that has no counterpart in federal rules. The commission's adoption of this additional procedural requirement as revised will

not interfere with the requirement for the commission to attain and maintain the national ambient air quality standards. Therefore, the commission disagrees that this alternative procedure constitutes a relaxation of the SIP.

Section 39.604, Sign-Posting

The commission proposes to update a cross-reference in subsection (e) that is based on this rulemaking. The commission proposes to amend §39.604 to update the cross-reference to §39.405(h)(7) in subsection (e) to §39.405(h)(8).

In the Public Participation Notice, EPA commented that it identified two provisions which relax the sign posting requirements in §39.604(c), and asked the commission to demonstrate how this rule is consistent with FCAA, §110(l). EPA has acknowledged that the sign posting requirements, in state rule since 1985, have no federal counterpart and exceed federal requirements. Further, both of the issues raised by EPA relate to text that is already part of a SIP-approved rule. See TCEQ's submission to EPA on August 31, 1993, and July 22, 1998. The text of these two issues is in §116.133, as approved by EPA into the SIP; see 71 *Federal Register* 12285 (March 10, 2006). However, further discussion may be helpful due to reorganization of the text when it was adopted as new §39.604 in 1999. First, in 1999, the term "thoroughfare" was replaced with "public highway, street or road" in subsection (c) when §39.604 was adopted. As explained in the TCEQ's proposal for this rule change (see 24 *TexReg* 5303, 5309 (July 16, 1999)) and the adoption preamble (see 24 *TexReg* 8190, 8218 (September 24, 1999)), these changes were made to clarify that a sign is not required to be posted on a waterway based on TCEQ Air Rule Interpretation Memo R6-133.001. The memo addresses the issue of what is meant by the undefined term "thoroughfare." It analyzed Texas law and determined that the term "thoroughfare" means a street or passage through which one can travel, or a street or highway affording an unobstructed exit at each end into another street or passage. Given this interpretation, and the fact that agency staff historically had not considered rivers or any water body a public thoroughfare and therefore no applicant had been required to post a sign on the shore of a river or water body, the new rule included this amended text.

Second, the rulemaking added the last sentence to subsection (c) in new §39.604 which states "{t}his section's sign requirements do not apply to properties under the same ownership which are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application." The sentence that was and is located in subsection (e) of §116.133 was revised to replace the word "thoroughfare" when it was relocated into the §39.604 was adopted. Section 116.133 is SIP-approved; see 67 *Federal Register* 58709, (September 18, 2002) and 60 *Federal Register* 49781 (September 27, 1995). The relocated sentence incorporates and compliments this clarification and ensures that the property that is the subject of the application has proper signage.

In addition, TCEQ disagrees that the sign posting rule was further relaxed by the omission of the SIP-approved §116.133(f)(1). The requirement to post signs in an alternate language, even if alternate language newspaper notice publication is waived, remains in the rule at §39.604(e). However, it appears that the version of the rule submitted to EPA in 1999 contained an incorrect cross-reference (§39.703(d)(5)); this was corrected in a subsequent rulemaking that was not concurrently submitted as a revision to the SIP.

The sign posting rule is a procedural rule that has no counterpart in federal rules. The commission's adoption of this additional procedural requirement as revised will not interfere with the requirement for the commission to attain and maintain the national ambient air quality standards. Therefore, the commission disagrees that these changes constitute a relaxation of the SIP.

Section 39.605, Notice to Affected Agencies

The commission proposes to add paragraph (1)(D) that would require applicants for a PSD or nonattainment permit under Chapter 116, Subchapter B, filed on or after July 1, 2010, to notify the chief executives of the city and county where the source would be located, and any Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification. This is in response to EPA comment in the Public Participation Notice that for a new or modified source subject to PSD, the rules do not require a copy of the public notice of a PSD or nonattainment permit to be sent to state and local air pollution control agencies, the chief executives of the city and county where the source would be located and any State or Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification, as required by 40 CFR §51.166(q)(2)(iv). The commission is addressing this comment by proposing §39.605(1)(D). Because nearby state and local pollution control agencies are already included in rule in subparagraphs (B) and (C), they were not added as part of this rulemaking.

Section 39.651, Application for Injection Well Permit

The commission proposes to amend §39.651(c)(2) to update the cross-reference to §39.411(b)(1) - (9) and (12) as §39.411(b)(1) - (9) and (11).

Section 39.653, Application for Production Area Authorization

The commission proposes to amend §39.653(b) to update the cross-reference to §39.411(b)(1) - (9) and (12) as §39.411(b)(1) - (9) and (11).

Section 39.709, Notice of Contested Case Hearing on Application

The commission proposes to amend §39.709(c) to update the cross-reference to §39.411(b)(13) and (d) as §39.411(b)(12) and (d).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of the proposed rules. The agency will use currently available resources to implement the proposed rules. State agencies or local governments required to publish notice for minor sources of air emissions as a result of the administration or enforcement of the proposed rules will see an increase, although not anticipated to be significant, in costs associated with placement of notice in newspapers.

The proposed rules respond to concerns expressed by the EPA in its review of the proposed SIP regarding current notice and public meeting requirements found in Chapter 39. In its Public Participation Notice, EPA requested the agency provide for additional notice and opportunity for public participation regarding certain air permits. The proposed rules expand the scope of which applications are subject to NAPD. Specifically, the proposed rules will require NAPDs for all applications for

minor sources of air emissions. In addition, the rules limits the time period for requesting a contested case hearing for minor sources.

The agency is ensuring that all persons to whom notice must be given are specifically listed in the rules, and therefore, the proposed rules will also require the mailing of notice of PSD or nonattainment draft permits to Federal Land Managers or Indian Governing Bodies whose lands could be affected by emissions from a source or a modification of a source. Because EPA expressed concern about portions of rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval.

Concurrently with this proposal, the commission is proposing amendments to rules in Chapter 55 to provide an opportunity to request a public meeting for PSD, nonattainment and hazardous air permit applications to address additional EPA concerns, and changes to Chapter 116 to address public notice for plant-wide applicability limit permits. The fiscal impacts of amendments to Chapters 55 and 116 are covered in a separate fiscal note.

State agencies and local governments that own or operate minor sources of air emissions, such as engines, hospitals, labs, incinerators, research centers, landfills, and air curtain incinerators will be required to publish the NAPD as a result of the proposed rules. Publication costs for these governmental entities could increase, although the increase is not expected to be significant. Publication costs include publication of the NAPD in an English language newspaper and possibly an alternate language newspaper. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since governmental entities are required to provide a NORI in all required languages and could probably use most of that language for the NAPD.

Based on the number of first notices in the past year that did not have to publish NAPD, staff estimates that there could be as many as 415 NAPDs per year statewide required by the proposed rules. Estimates of minor source activity indicate that as much as 5% of minor sources (21) could be from governmental entities, 65% (270) could be from large businesses, and 30% (124) could be from small businesses. Publication costs for governmental entities statewide could range from $2,100 to $84,000 per year.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more public awareness because of notice regarding draft permits for applications from minor sources as well as consistency with federal notice requirements.

Based on the number of first notices in the past year that did not have to publish NAPD, staff estimates that there could be as many as 415 NAPDs per year statewide required by the proposed rules. Estimates of minor source activity indicate that as much as 5% of minor sources (21) could be from governmental entities, 65% (270) could be from large businesses, and 30% (124) could be from small businesses. Examples of businesses that could be affected by the proposed rules are rock crushers, concrete batch plants, agricultural enterprises, surface coating operations, bulk fuel terminals, and tank truck/rail car cleaning facilities. The proposed rules are not expected to have a fiscal impact on individuals since they do not typically participate in activities that require compliance with the public notice rules.

Publication costs for large businesses could increase, although the increase is not expected to be significant. Publication costs include publication of the NAPD in an English language newspaper and possibly an alternate language newspaper. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since large businesses are required to provide a NORI in all required languages and could probably use most of that language for the NAPD. Statewide, publication costs for large businesses could range from $27,000 to $1,080,000 per year as a result of the proposed rules.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, although not significant, are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses can expect to incur the same costs for publication of notice as those incurred by a large business. However, if the small business meets the requirements for a small business stationary source as defined in the rules, it can be exempt from publication of the display notice in the newspaper, resulting in lower costs of publication. Staff estimates that there may be as many as 124 small businesses per year that will incur increases in publication costs to provide NAPDs. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since small businesses are required to provide a NORI in all required languages and could probably use most of that language for the NAPD. Statewide, publication costs for small businesses could range from $12,400 to $496,000 per year as a result of the proposed rules.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with federal regulations.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 39 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, instead they amend the notice requirements for applications for air quality permits, which are procedural in nature. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA in the Public Participation Notice. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP.

The first proposed change is the expansion of the scope of applications that are subject to Notice of Preliminary Decision to all applications for minor NSR applications, except for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. This will include applications for PALs and flexible permits. In addition, the commission is ensuring that all persons to whom notice must be given, and specific notice content, are specifically set forth in the rules, and the list has been expanded to include the chief executives of the city and county where the source would be located, and any Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification. Because EPA expressed concern about portions of previously submitted rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval. The proposed rulemaking will also require applicants for PSD and nonattainment air quality permits to make available for public comment the executive director's air quality analysis of the permit. Finally, the proposed rulemaking will remove obsolete references from the rules for VERPs, FGUs, and MPPs for which applications were filed before September 1, 2001. Although the expansion of publication requirements may place additional financial requirements on the regulated community, the rulemaking action does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapter 39 were developed to correct deficiencies in the public notice requirements for air quality permit applications identified by EPA in the Public Participation Notice. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the FCAA, and authorized under THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; FCAA, 42 United States Code (USC), §§7401 *et seq*., as well as TWC, §§5.102, 5.103 and 5.105, TWC, Chapter 26; the Injection Well Act, TWC, Chapter 27; the Solid Waste Disposal Act, THSC, Chapter 36;, and the Texas Radiation Control Act, THSC, Chapter 401.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapter 39 amend the procedural requirements for applications for air quality permits. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA in the Public Participation Notice. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Although the proposed rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do partially fulfill a federal mandate under 42 USC, §7410. Consequently, the exemption that applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The com-

mission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules update procedural rules that govern the submittal of air quality permit applications. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed rules will not require any changes to outstanding federal operating permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 25, 2010, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. The comment period closes on February 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

SUBCHAPTER B. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.106

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Health and Safety Code (THSC), §361.024, concerning Rules and Standards, which authorizes the commission to adopt rules concerning the management and control of solid waste. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105, and the Solid Waste Disposal Act, THSC, Chapter 361, and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.106. Application for Modification of a Municipal Solid Waste Permit or Registration.

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), (9), and (11) [~~§39.411(b)(1) - (3), (6), (7), (9), and (12)~~] of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.

(b) When mailed notice is required by §305.70 of this title [~~(relating to Municipal Solid Waste Permit and Registration Modifications)~~], notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste[~~,~~] or Hazardous Waste[~~, or Municipal Solid Waste~~] Permit) and this new §39.106 is June 3, 2002. Applications for modifications filed before amended §39.105 of this title and this new §39.106 become effective, will be subject to §39.105 of this title as it existed prior to June 3, 2002.

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 December 31, 2009.

TRD-200906085
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.402, §39.404

(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 Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeals are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The repeals are also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeals are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The repeals implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

§39.402. Applicability to Air Quality Permit Amendments.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated 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 December 31, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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30 TAC §§39.402, 39.403, 39.405, 39.409, 39.411, 39.418 - 39.420

STATUTORY AUTHORITY

The new section and amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new section and amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new section and amendments are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish

notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The new section and amendments are also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The new section and amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The new section and amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

§39.402. Applicability to Air Quality Permits and Amendments.

(a) As specified in those subchapters, Subchapter H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to notices for:

(1) applications for air quality permits and air quality permit amendments under Texas Health and Safety Code (THSC), §382.0518, including applications for initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), when an action involves:

(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions); and

(B) modification of an existing facility as defined in §116.10 of this title, including modification of pipeline facilities permits;

(2) applications for air quality permit amendments under §116.116(b) of this title (relating to Changes to Facilities) and applications for amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) construction of any new facility as defined in §116.10 of this title;

(B) modification of an existing facility as defined in §116.10 of this title, including modification of pipeline facilities permits;

(C) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(D) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(E) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(F) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(3) renewal of air quality permits under THSC, §382.055;

(4) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(5) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(6) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(7) applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

(8) concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project; and

(9) change of location of a portable facility.

(b) Unless otherwise stated in this chapter, applications for air quality permits and permit amendments filed before July 1, 2010 are governed by the rules in Subchapters H and K of this chapter as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose.

(c) Notwithstanding subsections (a) or (b) of this section, Subchapters H and K of this chapter do not apply to the following applications where notice or opportunity for contested case hearings is not otherwise required by law:

(1) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(8) of this section; and

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; [~~Public Notice of Air Quality Applications;~~] Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(6) and (7) [~~(c)(9) and (10)~~] of this section, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection [~~Subsections~~] (d) [~~and (e)~~] of this section specifies [~~specify~~] that only certain sections apply to applications for radioactive materials licenses [~~or voluntary emission reduction permits~~].

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits[~~, concrete batch plant air quality exemptions from permitting or permits by rule,~~] and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) [~~(e)~~] of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

[~~(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:~~]

[~~(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions);~~]

[~~(B) modification of an existing facility as defined in §116.10 of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements~~

for Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or]

[(C) other changes when the executive director determines that:]

[(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;]

[(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;]

[(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or]

[(iv) there is a reasonable likelihood of significant public interest in a proposed activity;]

[(9) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;]

[(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;]

[(11) applications for voluntary emission reduction permits under THSC, §382.0519;]

[(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;]

[(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and]

(8) [(14)] Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

[(4) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);]

[(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);]

[(6) applications under Chapter 106 of this title except for concrete batch plants specified in subsection (b)(10) of this section;]

(4) [(7)] applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(5) [(8)] applications for minor amendments under §305.62(c)(2) of this title (relating to Amendments [Amendment]). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(6) [(9)] applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(7) [(10)] applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(8) [(11)] applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(9) [(12)] applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(10) [(13)] applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(11) [(14)] applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(12) [(15)] applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection [Pre-Injection] Units Registration).

[(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).]

(d) [~~(e)~~] Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

[~~(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.~~]

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits, Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, [~~Public Notice of Air Quality Applications,~~] Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality; [~~. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule; and~~]

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and [~~.~~]

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings; and [~~.~~]

(3) where applicable, for air quality permit applications filed on or after July 1, 2010, the applicant shall also provide a copy of the executive director's air quality analysis for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

(h) Alternative language newspaper notice.

(1) Applicability. The following are subject to this subsection:

(A) Air quality permit applications [~~or registrations~~] that are declared administratively complete by the executive director on or after September 1, 1999, are subject to this subsection; and[~~.~~]

(B) Permit applications other than air quality permit applications [~~or registrations~~] that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005 [~~the effective date of this subsection~~] are subject to the requirements of this subsection.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title [~~(relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision)~~], and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program has been granted an exception form the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Exceptions and Waivers) [~~waives out of this requirement under 19 TAC §89.1205(g)~~].

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(4) The notice must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(7) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title [~~(relating to Text of Public Notice)~~].

(8) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(9) Notice under this subsection will only be required to be published within the United States.

(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(11) If a waiver is received under this subsection on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(i) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(j) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

§39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing. Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment Period) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be

taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, [~~Public Notice of Air Quality Applications,~~] and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to [~~Mailed Notice~~] for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commissions's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

[~~(10) for notices of air applications:~~]

[~~(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);~~]

[~~(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability) or for applications submitted on or before January 1, 2018, under §39.404(b) of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:~~]

[~~*(i)* a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;~~]

[~~*(ii)* a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;~~]

[~~*(iii)* a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity; and~~]

[~~*(iv)* that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted;~~]

[~~(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing; and~~]

[~~(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality"; and~~]

(10) [~~(11)~~] for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) [~~(12)~~] any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) [~~(13)~~] for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and [~~.~~]

(13) [~~(14)~~] for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) [~~(12)~~] of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (12) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter, the text of the notice must include the information in this subsection.

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after July 1, 2010;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after July 1, 2010; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, or if, there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after July 1, 2010; or

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air application except those listed in paragraph (12) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Application and Intent to Obtain Permit; or

(iv) for all air quality permit applications other than those in clauses (i) - (iii) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, a request for a contested case hearing must be received by the commission no later than 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) air quality applications described in subparagraph (A)(iv) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant without enhanced controls under a standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;" and

(15) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and air quality analysis and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision and air quality analysis are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment; and

(7) in addition to the requirements in paragraphs (1) - (6) of this subsection, for air quality permit applications filed on or after July 1, 2010 for permits under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review):

(A) the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting; and

(D) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, a statement that the executive director will hold a public meeting at the request of any interested person.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality applications filed on or after July 1, 2010, the text of the notice must include the information in this subparagraph. Air quality permit applications filed before July 1, 2010 are governed by the rules in Subchapter H and K of this chapter as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9) and (11) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (15) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.418. Notice of Receipt of Application and Intent to Obtain Permit.

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant, other than applicants for air quality permits, [~~applicant~~] shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.405(h) of this title, if applicable;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26; and

(3) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

(c) [~~(3)~~] For [~~for~~] air quality permit applications, [~~paragraphs (1) and (2) of this subsection do not apply. Instead~~] the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.405(h) of this title. [~~; and~~]

[~~(4) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).~~]

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e) [~~(e)(1)~~] of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice

of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) Air quality permit applications that are filed on or after July 1, 2010, are subject to this paragraph. Applications filed before July 1, 2010 are governed by the rules as they existed immediately before July 1, 2010, and those rule are continued in effect for that purpose. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.405(h) of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History). [~~The applicant is not required to publish Notice of Application and Preliminary Decision, if:~~]

[~~(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;~~]

[~~(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued;~~]

[~~(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations; or~~]

[~~(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (related to Applicability) or§39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities);~~]

(2) If notice under this section is required, the chief clerk [~~agency~~] shall mail notice according to §39.602 of this title (relating to Mailed Notice).

[~~(3) Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications) and, as applicable, under §39.405(h) of this title for permits that are not exempt under paragraph (1)(A) - (D) of this subsection or are for the following federal preconstruction approvals:~~]

[~~(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);~~]

[~~(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and~~]

[~~(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63))~~]

(3) [~~(4)~~] If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) Except for air quality permit applications, when [~~When~~] required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) described in §39.402(a)(4), (8) and (9) of this title (relating to Applicability to Air Quality Permits and Amendments;

(II) described in §39.402(a)(1) and (2) of this title which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and

(III) described in §39.402(a)(1) and (2) of this title which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn.

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) make available by electronic means on the commission's Web site the executive director's decision and the executive director's response to public comments.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(e) [~~(c)~~] For air quality permit applications which meet the following conditions, items listed in subsection (c)(3) and (4) of this section are not required to be included in the transmittals:

[~~(1) applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), 382.05186, and 382.0519;~~]

[~~(2) applications for initial issuance of electric generating facility permits under Texas Utilities Code, §39.264;~~]

[~~(3) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;~~]

(1) [~~(4)~~] applications for which a timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(2) [~~(5)~~] the application is for any [~~amendment, modification, or~~] renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History) [~~contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations~~].

(f) [~~(d)~~] For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) [~~(e)~~] For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) [~~(f)~~] For applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) 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 December 31, 2009.

TRD-200906087
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.501

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes

the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including solid waste matters authorized under the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361; and THSC, §361.024, concerning Rules and Standards, which authorizes the commission to adopt rules concerning the management and control of solid waste. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105, Chapter 5, Subchapter M, and the Solid Waste Disposal Act, THSC, Chapter 361, and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.501. Application for Municipal Solid Waste Permit.

(a) Applicability. This section applies to applications for municipal solid waste permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (11) [~~§39.411(b)(1) - (9), (11), and (12)~~] of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the *Texas Register;* and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) If an application for a new facility is filed before September 1, 2005:

(A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and

(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(2) If an application for a new facility is filed on or after September 1, 2005:

(A) the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility; and

(B) the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1)(A) or (2)(A) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (1)(B) or (2)(B) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1)(A) or (2)(A) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection must be completed at least 30 days before the hearing.

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 December 31, 2009.

TRD-200906088

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER J. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER QUALITY MANAGEMENT PLANS

30 TAC §39.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including water quality matters authorized under TWC, Chapter 26. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105; TWC Chapter 5, Subchapter M, and TWC, Chapter 26; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.551. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Applicability. This section applies to applications for wastewater discharge permits, including disposal of sewage sludge or water treatment sludge applications that are declared administratively complete on or after September 1, 1999. This subchapter does not apply to registrations and notifications for sludge disposal under §312.13 of this title (relating to Actions and Notice).

(b) Notice of receipt of application and intent to obtain permit.

(1) Notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director deems an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [~~§39.411(b)(1) - (9) and (12)~~] of this title (relating to Text of Public Notice). In addition to the requirements of §39.418 of this title, the chief clerk shall mail notice to the School Land Board if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(2) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendments); or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(3) For permits listed in paragraph (2)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of receipt of application and intent to obtain a permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(c) Notice of application and preliminary decision. Notice under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [~~§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)~~] of this title. In addition to §39.419 of this title, for all applications except applications to renew permits, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(A) For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(B) If the notice of the receipt of application and intent to obtain a permit was mailed more than two years prior to the time that notice of application and preliminary decision is scheduled by the executive director to be mailed, the applicant must submit an updated landowner map, landowner list, and any associated information for mailing the notice of application and preliminary decision. Notwithstanding this requirement, the Executive Director may require an updated landowner map, landowner list, and any associated information for mailing the notice of the application and preliminary decision if circumstances in the area have significantly changed that warrant updated lists.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [~~§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)~~] of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(5) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title; or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(6) For permits listed in paragraph (5)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of application and preliminary decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(d) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [~~§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)~~] of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(e) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits as designated by the United States Environmental Protection Agency on an annual basis, notice shall be published in the *Texas Register.*

(C) The text shall meet the requirements in §39.411(b)(1) - (4)(A), (6), (7), (9), and (11) and (c)(4) - (6) [~~§39.411(b)(1) - (4)(A), (6), (7), (9), and (12), and (c)(4) - (6)~~] of this title.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Period).

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411(d)(1) and (2) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subsection D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the agency's library located at the commission's central office located at 12100 Park 35 Circle, Building A, Austin.

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 December 31, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §§39.601 - 39.605

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The amendments are also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq.*

§39.601. Applicability.

Air quality permit applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or [~~§106.5 of this title (relating to Public Notice)~~] (effective December 24, 1998). Air quality permit applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

§39.602. Mailed Notice.

(a) When this chapter requires notice for air quality permit applications, the chief clerk shall mail notice [~~only~~] to: [~~those persons listed in §39.413 (9), (11), (12), and (14) of this title (relating to Mailed Notice)~~]

(1) the applicant;

(2) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);

(3) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests; and

(4) any other person the executive director or chief clerk may elect to include.

(b) When Notice of Receipt of Application and Intent to Obtain Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) [~~§39.411(b)(1) - (6) and (8) - (10)~~] of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) [~~§39.411(c)(1) - (6)~~] of this title.

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) [~~§39.411~~] of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(d) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (c)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule [~~Exemption from Permitting~~]) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(e) If an air application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in subsection (c) of this section, containing the information under §39.411(h) [~~§39.411(d)~~] of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(8)

[~~§39.405(h)(7)~~] of this title. The alternative language signs must meet all other requirements of this section.

§39.605. Notice to Affected Agencies.

In addition to the requirements in §39.405(f)(3) [~~§39.405(f)~~] of this title (relating to General Notice Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;

(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; [~~and~~]

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility; and

(D) if notice is for an application filed on or after July 1, 2010 for a Prevention of Significant Deterioration or Nonattainment permit under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the chief executives of the city and county where the source would be located, and any Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting verification, within 10 business days after the end of the comment period associated with the notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A) - (C) of this section; and

(3) when alternative language waiver verification are required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A) - (C) 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.

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Robert Martinez
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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §39.606

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeal is also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The repeal is also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeal is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515,

382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

§39.606. Alternative Means of Notice for Permits for Grandfathered 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.

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651, §39.653

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including authorizations relating to injection wells authorized under the Injection Well Act, TWC, Chapter 27 and under the Solid Waste Disposal Act, Chapter 361, of the Texas Health and Safety Code (THSC). Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendments implement TWC, §§5.102, 5.103, 5.105, TWC, Chapter 5, Subchapter M, and the Injection Well Act, TWC, Chapter 27; and THSC, Chapter 361; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [~~§39.411(b)(1) - (9) and (12)~~] of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain a permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk

has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste or Class III injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

§39.653. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of Receipt of Application and Intent to Obtain Permit. After the executive director determines that the application is administratively complete, notice shall be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [~~§39.411(b)(1) - (9) and (12)~~] of this title (relating to Text of Public Notice). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(c) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing. The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(d) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(4) Notice under paragraphs (2) and (3) this subsection shall be completed at least 30 days before the hearing.

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

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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §39.709

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Health and Safety Code (THSC), §401.051, concerning Adoption of Rules and Guidelines, which authorizes the Commission to adopt rules and guidelines relating to control of sources of radiation. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, and 5.105; Texas Radiation Control Act, THSC, Chapter 401; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) Except as provided in subsection (d) of this section, for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), or Subchapter L of this title (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), notice must be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(12) and (d) [~~§39.411(b)(13) and (d)~~] of this title (relating to Text of Public Notice).

(d) For an application for a new license to dispose of by-product material under Chapter 336, Subchapter L of this title that was filed with the Department of State Health Services on or before January 1, 2007, notice under this section must be provided to the applicant, the office of public interest counsel, the executive director, and any person who timely submitted a request for a contested case hearing by mail at least 10 days in advance of the hearing.

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

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§55.152, 55.154, 55.156, and 55.210.

The proposed amendments to §§55.152(a)(1), (2), (5) and (6), 55.154(a), (b), (c)(1) - (3) and (5), and (d) - (g), and 55.156, except §55.210, will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

PRIOR SIP SUBMISSIONS

Certain sections and subsections of the rules regarding public participation for air quality permit applications were previously

submitted to EPA as revisions to the SIP on October 25, 1999. The sections submitted in 1999, as part of the implementation of House Bill (HB) 801 (76th Legislature, 1999) which is discussed more fully later in this preamble, were §§55.1; 55.21(a) - (d), (e)(2), (3) and (12), (f) and (g); 55.101(a), (b), (c)(6) - (8); 55.103; 55.150; 55.152(a)(1), (2), and (5) and (b); 55.154; 55.156; 55.200; 55.201(a) - (h); 55.203; 55.205; 55.206; 55.209; and 55.211.

To ensure that current versions of the necessary and appropriate rules are submitted to EPA as revisions to the SIP, the commission proposes to withdraw all sections previously submitted as listed earlier and to submit the following sections as revisions to the SIP: §§55.152(a)(1), (2), (5), and (6); 55.154(a), (b), (c)(1) - (3) and (5), and (d) - (g); and 55.156. In addition, §55.150 will be submitted to the EPA as a revision to the SIP.

HOUSE BILL 801

In September and October 1999, the commission conducted rulemaking to implement HB 801, adopted by the 76th Legislature to be effective September 1, 1999. HB 801 established new procedures for public participation in multi-media environmental permitting proceedings. It established procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing for certain actions. This legislation allowed the commission by rule to provide any additional notice, opportunity for public comment, or opportunity for hearing as necessary to satisfy air quality federal program authorization requirements, and, in 1999, these changes were implemented in various chapters of the commission's rules, including 30 TAC Chapter 39, Public Notice. This effort complimented the commission's ongoing effort to consolidate agency procedural rules and make certain processes consistent among different agency programs and media.

HB 801 revised the commission's procedures for public participation in environmental permitting by adding, among other things, new Texas Water Code (TWC), Chapter 5, Subchapter M; and by revising the Texas Clean Air Act (TCAA), §382.056 in the Texas Health and Safety Code (THSC). The changes in law made by HB 801 apply to certain permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999.

Specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit 30 days after declaration of administrative completeness. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county, and, in most cases, to publish newspaper notice of the executive director's preliminary decision the application. In addition, the bill requires the commission to establish by rule the form and content of the notices and to mail notice to certain persons. It also requires the executive director to hold public meetings regarding applications which are required, if requested by a legislator, or if the executive director determines there is substantial public interest in the proposed activity. The executive director is also required to prepare responses to relevant and material public comments received in response to the notices or at public meetings, and file the responses with the chief clerk. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment, or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes were implemented primarily in 30 TAC Chapters 39, 50, 55, and 80 by consolidating the rules for public participation for various air quality, water quality and waste applications. For air quality applications, the changes were newly added to these chapters rather than amend the existing rules Chapter 116, which contains the rules for the new source review (NSR) permitting program.

EPA REVIEW OF SUBMITTED RULES

On November 26, 2008, the EPA proposed simultaneous limited approval and limited disapproval of revisions to the applicable implementation plan for the State of Texas which relate to public participation on air permits for new and modified sources. With noted exceptions, this proposed limited approval and limited disapproval affects portions of SIP revisions submitted by the commission on December 15, 1995; July 22, 1998; and October 25, 1999 (See 73 *Federal Register* 72001). EPA found that these revisions, as a whole, strengthen the SIP as compared to the provisions in the existing SIP (located in 30 TAC §§116.130 - 116.137). However, EPA also found that these rules do not meet all of the minimum federal requirements that relate to public participation. The TCEQ filed comments in response to this notice. In addition, the executive director's letter to EPA dated October 23, 2009 commits to proposal of this rulemaking on December 9, 2009. This proposal is intended to address EPA's concerns and submit rule amendments that are approvable as a revision to the Texas SIP, and the text of the SECTION BY SECTION DISCUSSION portion of this preamble incorporates EPA's concerns and the commission's responses to those concerns.

At the time the rules were adopted, the commission stated that, generally, the amendments made by HB 801 are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

Based on EPA's November 26, 2008 proposal for limited approval and limited disapproval, the commission has determined that to meet the minimum requirements of federal law for public participation for air quality permit applications, amendments to the established rules implementing the various state legislation described above, are necessary.

DESCRIPTION OF THE CURRENT PROCESS FOR PUBLIC PARTICIPATION FOR AIR QUALITY PERMIT APPLICATIONS

Due to the comprehensive nature of the requirements of HB 801, (76th Legislature, 1999), the commission's permitting process is frequently referred to as the "HB 801" process. The vast majority of air, waste, and water quality permit applications received by the commission are subject to the procedural requirements of HB 801. A brief description of that process for air applications follows. As there are a number of possible scenarios depending on the type of permit, this discussion focuses on the basic HB 801 process. Additionally, in its Public Participation Notice, EPA states "for a new or modified source subject to PSD, the revised rules do not contain a definition of a final appealable decision for a PSD permit" (see 73 *Federal Register* 72008). EPA goes on to state that it would like "further information about how and when commenters are informed of the agency's final decision, access

to the response to comments (RTC) and timing for judicial appeal, in order to provide an opportunity for State court judicial review" (see 73 *Federal Register* 72008). The following discussion also addresses those issues. The SECTION BY SECTION DISCUSSION for §55.156, Public Comment Processing, discusses in greater detail EPA's issue regarding access to the RTCs.

Notice of Receipt of Application and Intent to Obtain Permit (First notice): Permit applications received by the TCEQ undergo an administrative review by staff to determine whether the applicant has submitted all of the required parts of the application. Within 30 days after the application is declared administratively complete, the applicant is required to publish the Notice of Receipt of Application and Intent to Obtain Permit (NORI) in a newspaper. The NORI describes the location and nature of the proposed activity, lists agency and applicant contacts for obtaining additional information, and gives the location in the county where a copy of the application can be viewed and copied. In some cases, the applicant may also have to publish the notice in other languages. Applicants must post signs with application and contact information around the property. Mailed notice to persons on the mailing list and others is also provided by the chief clerk. The NORI provides instructions for submitting comments, getting on the mailing list, requesting a public meeting, and requesting a contested case hearing. The instructions explain that in order for an issue to be considered at a contested case hearing, it must first be raised in a comment or in a request for a contested case hearing during the time specified in the published notice.

Notice of Application and Preliminary Decision (Second notice): After the application has been determined to be administratively complete, it undergoes a technical review to determine whether it satisfies state and federal regulatory requirements. For certain types of permits, after technical review is complete, the executive director issues his preliminary decision. The applicant is then in required to publish a second notice, called the Notice of Application and Preliminary Decision (NAPD), in a newspaper which is also mailed to persons who timely filed public comment or hearing requests and to persons on the mailing list. The NAPD contains the same information as the NORI and provides an additional opportunity to submit comments, request a public meeting and/or contested case hearing, or request to be added to the mailing list.

Second notice is currently required for an air quality permit application for a minor source (or a registration for a concrete batch plant standard permit) *only* when a request for a contested case hearing was made during the first notice (NORI) period and was not withdrawn before the preliminary decision was issued. If no contested case hearing has been requested, the comment period ends 30 days after the date of publication of the NORI. For all major sources of air pollution which require a Prevention of Significant Deterioration (PSD) or nonattainment permit, publication of the NAPD is required, regardless of whether or not contested case hearing requests are received for the permit application. This rulemaking would expand the requirement to publish the NAPD to all minor source applications. This is more fully discussed later in the SECTION BY SECTION DISCUSSION portion of this preamble.

Response to comments: After the public comment period closes, the executive director is required to review and respond to all timely, relevant and material or significant filed comments in a formal RTC prior to issuance of the permit. The TCEQ's practice is to respond to all comments. The staff considers all timely filed comments to determine whether any issues raised require changes to the preliminary decision and/or proposed permit. The RTC and the executive director's preliminary decision is mailed to the applicant, and any person who submitted comments during the public comment period, timely filed a contested case hearing request or requested to be on a mailing list for the permit application.

Mailing list for notice: Interested persons can receive future public notices by requesting to be placed on either the permanent mailing list for a specific applicant name and permit number or the permanent mailing list for a specific county which includes all air, water, and waste notices in that county. Persons who submit a comment, request a public meeting, or request a contested case hearing regarding a specific application, are automatically added to the mailing list for that specific permit application.

Public meeting: Public meetings provide the public with an opportunity to learn about the application, ask questions of the applicant and TCEQ, and offer formal comments. It also allows TCEQ staff to hear firsthand the concerns and objections of the community and gather input for use in the agency's consideration of the application. Currently, the TCEQ will hold a public meeting if there is significant interest in an application, if requested by a legislator from the area of the proposed project, or if otherwise required by law. This rulemaking will add the requirement that for some types of permits, including PSD and nonattainment, that a meeting will be held upon request of an interested person. A request for a public meeting must be submitted to the chief clerk during the public comment period.

Request for contested case hearing: If comments were filed during the comment period, there may be an opportunity to request a contested case hearing. Currently, for there to be an opportunity for a contested case hearing, a request for a contested case hearing must be received during the NORI comment period for applications for minor sources of air pollution. For major sources of air pollution, the opportunity for a contested case hearing request to be made extends to the end of the comment period, with an additional opportunity to make the request for 30 days after the mailing of the executive director's RTC. A hearing request must be based on issues that were raised during the comment period, in comments that were not withdrawn prior to the filing of the RTC. The person requesting a hearing must demonstrate that they are an "affected person" as defined in state law in order to be granted party status and challenge the executive director's preliminary decision on an application. Requests for contested case hearings must include among other pertinent information, a detailed explanation of how the requester would be adversely affected by the proposed facility or activity in a manner not common to the general public. If the request is made on behalf of a group or an association, the request must identify one or more members who are affected persons, and state how the interest that the group or association seeks to protect is relevant to the group's purpose. The request for hearing must be received no later than 30 days after the date of the letter transmitting the executive director's preliminary decision and RTC, which is mailed out by the chief clerk. The TCEQ considers all contested case hearing requests received during the public comment period as well as those received after the RTC is filed and mailed.

Commission consideration of requests for reconsideration and contested case hearing: After the executive director's preliminary decision and RTC have been mailed, any person has the option of filing a request for reconsideration, which asks the commissioners to reconsider the executive director's decision. The request for reconsideration must be received no later than 30

days after the date of the decision letter. All timely filed requests for reconsideration and contested case hearings are considered at the commissioners' agenda meetings, except when the application is directly referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. At these meetings, the commissioners consider contested case hearing requests, response and reply briefs, the executive director's RTC, and applicable statutes and rules and decide whether they will grant or deny the contested case hearing requests. If the commissioners decide to grant a request for a contested case hearing, the case is referred to SOAH with a list of issues to be the subject of the hearing and an expected duration for the hearing.

Contested case hearing: A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by SOAH, an independent agency that conducts hearings for state agencies. Contested case hearings can take place either when referred to SOAH by the commission, or when an application is directly referred to SOAH, usually by the applicant. When a contested case is referred to SOAH, an administrative law judge will preside over the hearing and will consider evidence in the form of sworn witness testimony and documents presented as exhibits. At the conclusion of the SOAH hearing, the judge issues a proposal for decision with proposed findings of facts and conclusions of law, which is submitted to the TCEQ for formal consideration by the commissioners. The commissioners then approve, deny, or modify the proposal for decision.

For minor sources of air pollution, if there are comments but no contested case hearing requests in response to the first notice, or NORI, staff will respond to comments, but there is no longer an opportunity to request a contested case hearing. Persons wishing to protest the granting of the permit must file a motion to overturn.

Motion to overturn: If no request for contested case hearing or reconsideration is received and the executive director issues the uncontested permit, any person may file a motion to overturn requesting that the commissioners overturn the executive director's action. The motion must be filed no later than 23 days after the date the agency mails notice of the signed permit, and must explain why the commissioners should review the executive director's action. If a motion to overturn has not been acted on by the commissioners within 45 days after the date the agency mails notice of the signed permit, the motion is overruled by operation of law, unless an extension of time is specifically granted. In the case of an uncontested permit application that is issued by the executive director, agency rules require the chief clerk to send the executive director's RTC along with notice that the permit has been signed to appropriate persons including all who timely filed public comments. That letter also explains that a Motion to Overturn can be filed for the commissioners' consideration, and that an appeal may be filed in state district court in Travis County, Texas.

Protesting a commission approved permit: For a contested permit, i.e., one for which a contested case hearing was requested and the permit was subsequently issued by the commission either after denial of all hearing requests or after a contested case hearing, the rules also require the chief clerk to send the order and notice of the action to a list of persons including persons who timely filed public comment. If the commission adopts a change to the executive director's original RTC, the rules requires the chief clerk to include this final RTC with the notice of the commission's action. In matters where the commission makes no changes to the executive director's RTC, in accordance with the rules, the chief clerk would have previously transmitted the executive director's RTC to appropriate persons including commenters who subsequently receive the order and notice of action. The letter transmitting the order and notice of commission action explains that a Motion for Rehearing of the commission's action can be filed. A motion for rehearing is a prerequisite to appeal.

Judicial review: Access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution." The state statutory authority cited in support of the Texas Title V Operating Program includes THSC, §382.032, which is the basic support for the Texas PSD permitting program, as well. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accord with Article III of the United States Constitution is also applicable for every action of the commission, subject to the TCAA, including PSD permit decisions.

OVERVIEW OF THE PROPOSED AMENDMENTS AND RELATED RULEMAKING

The proposed amendments to Chapter 55 require the executive director to hold a public meeting when a request for such is received by an interested person for applications for PSD and nonattainment air quality permits and for hazardous air pollutant permits, and update the citation for the type of application available for concrete batch plants that are subject to the public participation requirements in Chapter 55. Finally, the rules specify that before any air quality permit application for a PSD or nonattainment permit is approved, the executive director shall prepare a response to all comments received. The commission is also proposing to withdraw certain sections and resubmit certain sections in Chapter 55 as revisions to the SIP. The primary objective of this rulemaking is to obtain SIP approval for the public participation requirements and process for the commission's NSR air quality permitting program.

Concurrently with this proposal, and published in this issue of the *Texas Register,* the commission is proposing amendments to Chapter 39. This rulemaking, in Chapters 39, 55, and 116, includes significant changes to the existing public participation process for air quality permit applications. The first is the expansion of the scope of applications that are subject to Notice of Preliminary Decision to all air quality permit applications, except certain permit renewal applications; the commission is no longer excluding minor NSR applications from this notice requirement when no request for a contested case hearing is received by the commission, or such request is withdrawn. This addresses EPA's concerns regarding opportunity for the public to comment on the executive director's draft permit and air quality analysis for new or modified minor NSR sources or minor modifications at major sources. There is no change in the commission's procedure for requesting a contested case hearing for any air quality applications that are currently subject to a request for contested case hearing. For air quality minor NSR permit applications, the opportunity to request a contested case hearing continues to be

contingent upon a request for such a hearing being received during the comment period for the NORI. If a request for a contested case hearing is received during the NORI comment period for these applications, then the opportunity to request a contested case hearing for 30 days after the executive director's RTC is mailed continues to apply. If, however, no requests for a contested case hearing are received during the comment period for NORI, then there is no further opportunity to request a contested case hearing for an air quality permit for a minor source. Importantly, however, the NAPD for minor NSR applications is required with an opportunity for public comment as well as an opportunity to request a public hearing. For major sources, the opportunity to request a contested case hearing is open until the end of the NAPD comment period, and, if timely comments are filed, for 30 days after the executive director's RTC is mailed. Second, the commission is ensuring that all persons to whom notice must be given, and specific notice content, are specifically set forth in the rules. In addition, because EPA expressed concern about portions of previously submitted rules applying to media other than air, or including rules that cite cross-references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval. It should be noted that not all of the rules that apply to air quality permitting are proposed to be submitted as a SIP revision. Rather, the commission proposes those sections, of portions of sections, that meet minimum federal requirements or meet the requirements of the existing Texas SIP, as revisions to the SIP.

The commission is also concurrently proposing to amend Chapter 60 to update cross-references that have changed as part of this rulemaking.

Finally, the commission is also concurrently proposing amendments to certain sections in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to ensure that the public participation requirements for Plant-wide Applicability Limit (PAL) permits meet state and federal public participation requirements. In addition, the amendments update cross-references.

The new and amended rules in these four chapters should be considered together, since all changes are necessary to achieve the goal of SIP approval and the increased public participation opportunities.

SECTION BY SECTION DISCUSSION

This rulemaking is intended to revise the commission's rules to obtain SIP approval for its air quality permitting program (exclusive of the Federal Clean Air Act (FCAA) Title V portion). Therefore, the commission will not respond to comments regarding the public participation requirements for other media not addressed in this rulemaking. This rulemaking also updates cross-references and to make non-substantive changes to update rule language to current Texas Register style and format requirements. However, the commission will accept comments regarding the proposed updated cross-references in the rules that are not applicable to air quality permit applications.

§55.152, Public Comment Period

The commission proposes to amend §55.152(a)(2) to update the type of applications for concrete batch plants that are subject to public comment. Specifically, the proposed amendment will add text that identifies that authorization as a concrete batch plant without enhanced controls authorized by a air quality standard permit adopted by the commission under Chapter 116, Subchapter F, unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project, is subject to the rules of this subchapter. The existing text refers to a concrete batch plant exemption from permitting or permit by rule in Chapter 106, Exemptions from Permitting.

§55.154, Public Meetings

The commission proposes to amend §55.154(c) by adding proposed paragraph (3), which states that the executive director will hold a public meeting regarding the draft permit and air quality analysis for PSD and nonattainment permits if requested by an interested person. This is in response to EPA comment that for a new or modified source subject to PSD or nonattainment requirements, the revised rules do not require the TCEQ to provide an opportunity for any interested person to give oral comments on PSD and nonattainment air quality draft permits. The provision in §55.154 that provides the executive director with discretion to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application is not consistent with the federal requirements. Under the Texas rule, the decision to grant a public hearing is within the executive director's discretion and must be based upon substantial or significant public interest. In contrast, the rules adopted by EPA provide for the opportunity of interested persons to request a public hearing and public notice of that opportunity. Currently, under §55.154, the public is not guaranteed notice of such opportunity or that such an opportunity will be provided upon request.

The commission proposes to amend §55.154(c) by adding proposed paragraph (4), which states that the executive director will hold a public meeting regarding the draft permit and air quality analysis for hazardous air pollutant permits if requested by an interested person. The state rules for a public meeting for these permits are similar to the federal rules for hearings for PSD and nonattainment permits. This requirement is in a separate paragraph because this paragraph will not be submitted to EPA as a revision to the SIP.

A public meeting is conducted by TCEQ in the same way that a notice and comment hearing is conducted, and is an equivalent opportunity for the public to participate in the permitting process for air quality permit applications.

The commission proposes that existing subsection (c)(3) be renumbered as subsection (c)(5). The commission proposes that existing subsection (e) be moved to proposed subsection (d), and would update a cross-reference to proposed §39.411(g), Text of Public Notice. Existing subsection (d) would be relettered as subsection (e). Finally the commission proposes that the last sentence of existing subsection (d) regarding recordation of the meeting be proposed as subsection (f).

The commission also proposes subsection (g), which provides that the commission shall make available by electronic means on the commission's Web site the executive director's decision and the executive directors's response to public comment.

§55.156, Public Comment Processing

The commission proposes to amend §55.156(b)(1) to provide that before any air quality permit application for a PSD or nonattainment permit subject to Chapter 116, Subchapter B, or for air quality permit applications for the establishment or renewal of, or an increase in, a PAL permit subject to Chapter 116, is approved, that the executive director shall prepare a response to all comments received. This is in response to EPA comment that for

a new or modified source subject to PSD or nonattainment permitting rules in Chapter 116, Subchapter B, the commission's current rules do not provide that a response will be provided for all comments. EPA also commented that for PALs for existing major stationary sources, the commission's rules do not include a requirement that all material comments are addressed before taking final action on the permit, consistent with 40 Code of Federal Regulations (CFR) §51.166(w)(5).

EPA also commented that for a new or modified source subject to PSD or nonattainment rules, the rules do not require that RTC be available prior to final action on the PSD or nonattainment permit, as required by 40 CFR §51.166(q)(2)(vi) and (viii). These federal rules do not expressly require that the RTC be available prior to final action on the PSD or nonattainment permit; however, TCEQ's current process provides that for permits that are considered directly by the commission, the RTC is filed and available for viewing before the commission considers the permit. If the commission adopts a change to the executive director's original RTC, 30 TAC §50.119 requires that the chief clerk also mail this final RTC. In this event, the public would have the opportunity to file a motion for rehearing after they receive and have an opportunity to review the revised RTC. Section 50.119 requires that the notice include information about the availability of the motion for rehearing process allowed by 30 TAC §80.272.

In the case of an uncontested permit application that is signed by the executive director, the RTC that is prepared by the executive director is filed with the chief clerk's office, and mailed to everyone on the mailing list along with notice that the permit has been signed. A letter detailing the availability of the motion to overturn process is included with the notice and the RTC. Although the permit is effective upon signature, any person still has the opportunity to file a motion to overturn the permit with the commission. Therefore, the ability to challenge the executive director's decision is available after the RTC is mailed. Once an RTC has been filed with the chief clerk's office, it is also available as a public document.

Notwithstanding the commission's long-standing rules and practice regarding making the RTC available, the commission proposes subsection (g) to address EPA's comments regarding its rule in 40 CFR §51.166(q)(2)(vi) and (viii) that requires the commission to make available comments and the final determination on the application available for public inspection in the same locations where the reviewing preconstruction information was made available. The commission interprets this as a requirement that the RTC, which is a summary of the comments submitted on an application and the agency's response to those comments, and the issued permit be made available in the local area. The commission proposes, in §55.156 to codify its plans to make available all RTCs on its Web site. The commission anticipates this being established by January 2010. This rule change is in addition to its long-standing practices of maintaining a copy of the final permit at the commission's headquarters in Austin and at the appropriate regional offices, and, as required by rule, by mailing a copy of the RTC to all commenters, as well as any other interested persons who have asked to be included on a mailing list for a particular application. This rule change not only satisfies but exceeds the federal rule, and thus is at least as stringent. Concurrently, the commission is proposing similar rule amendments to §39.420.

The commission proposes to amend subsections (c) and (d) to update cross-references. In subsection (c) in the existing reference to §39.420(c) - (e) would be proposed as §39.420(f) and (g). In subsection (d), the existing reference to §39.420(a) would be proposed as §39.420(a) and (c)(4). These updates are necessary because of the commission's concurrent proposal to revise its public participation rules for air quality permit applications.

The commission also proposes to amend subsection (d) to delete paragraph (1), and renumber paragraphs (2) - (5) to paragraphs (1) - (4). The existing text in subsection (d)(1) - (5) is now proposed for addition to §39.420(c)(1)(D), which would specify the text that must be included regarding instructions for requesting a contested case hearing for certain types of permit applications. In addition, subsection (e) is revised to specify what subsections of §55.156 apply to air quality permit applications and to other permit applications.

The commission also proposes subsection (g), which states that notwithstanding the requirements in §39.420, the commission shall make available by electronic means on the commission's Web site the executive director's decision and the executive director's response to public comments.

§55.210, Direct Referrals

The commission proposes to amend §55.210 to update a cross-reference in subsection (e)(1) regarding text of notice for applications other than air quality applications. Specifically, existing reference to §39.411(b)(1) - (3), (4)(A), (6) - (9), (10)(A), (B)(i) - (iii), and (C) - (D), (11), (12), and (14) would be proposed as §39.411(b)(1) - (3), (4)(A), (6) - (11), and (13) and (e)(10), (11)(A), (C) and (D), (13) and (14). This is necessary because of concurrent rulemaking to revise the commission's public participation rules for air quality permit applications, as discussed earlier in this preamble.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will use currently available resources to mail additional notices and to travel to additional public meetings as required by the proposed rules. State agencies and local governments that own or operate major sources and who are required to obtain new or amend existing PSD or nonattainment permits will incur the costs of attending public meetings under the proposed rules. These costs are expected to be travel costs, and they are not expected to have a significant fiscal impact on state agencies or local governments.

The agency is proposing rules in response to concerns expressed by the EPA in their review of the proposed SIP regarding current notice and public meeting requirements found in Chapter 39 and Chapter 55. EPA requested the agency provide for additional notice and opportunity for public participation regarding certain air permits. In a separate, but concurrent rulemaking, the agency is proposing amendments to Chapter 39 regarding the provision of Public Notice for minor sources of air emissions, and the fiscal impact of those proposed rules can be found in a separate fiscal note.

The proposed changes to Chapter 55 provide an opportunity for any interested person to request and receive a public meeting for PSD and nonattainment permits. The agency will use currently available resources to cover increases in postage costs for mailing additional notices and to cover increased travel costs

to conduct public meetings under the proposed rules. Based on the number of PSD and nonattainment applications in the past two years, the agency expects an additional 27 PSD permits and two nonattainment permits per year could be subject to a public meeting. Since public interest varies greatly depending on the characteristics of each permit, the size of future mailing lists and increased postage and travel costs is difficult to estimate. However, any increase in costs for the agency as a result of the proposed rules is not expected to be significant.

Local governments that own or operate major sources for air emissions who are required to obtain new PSD or nonattainment permits or amend existing PSD or nonattainment permits will incur the cost of attending a public meeting. If the local government cannot find a free space in which the agency can hold the public meeting, they could incur a cost for renting the space. However, those costs are not expected to have a significant fiscal impact on local governments. Examples of facilities that are required to be authorized through a PSD or nonattainment permit that are owned by local governments are power plants. Staff estimates that two to three PSD and one to two nonattainment applications could be received from local governments on an annual basis.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency with federal notice and hearing requirements and increased public participation since there will be additional opportunity for the public to request and receive a public meeting related to PSD and nonattainment permits.

The proposed rules are not expected to have a fiscal impact on individuals since they do not typically participate in activities requiring a PSD or nonattainment permit. Individuals that would be interested in attending additional public meetings would be afforded more notice and opportunities to participate, and these individuals would incur travel or other costs on a voluntary basis.

Large businesses that are major sources of air emissions could be applicants for PSD and nonattainment permits. Staff estimates that there will be 24 to 25 PSD and one to two nonattainment permit applications per year that are submitted by large businesses. These businesses will be required to attend public meetings, if requested by an interested person, but cost increases to attend such meetings or rent a space to hold the meeting are not expected to have a significant fiscal impact. Examples of large businesses that might be affected by the proposed rules are power plants, chemical plants, and refineries.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses are not typically considered major sources of air emissions and are not typically subject to PSD and nonattainment permit requirements. If a small business did have to apply for a new PSD permit or to amend an existing PSD or nonattainment permit, it could expect to incur additional travel costs to attend public meetings. However, these costs increases are not expected to have a significant fiscal impact.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with federal regulations and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 55 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, instead they amend the notice requirements for applications for air quality permits, which are procedural in nature. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP.

The proposed amendments expand the opportunity for public comment by requiring the executive director to hold a public meeting for the purpose of taking public comment for all PSD and nonattainment air quality applications when such a request is made by any interested person. Thus, the rulemaking action does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapter 55 will expand opportunity for public notice and comment on air quality permit applications. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the FCAA, and authorized under THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.0291, 382.040, 382.051, 382.05101, 382.0512, 382.0515, 382.0516, 382.0518, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, 382.055, 382.056, 382.057, and 382.058; Texas

Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 United States Code (USC), §§7401 *et seq.*

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACTMENT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapter 55 amend the procedural requirements for applications for air quality permits. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP. Specifically, the proposed amendments will increase the opportunity for public participation in the permitting process for air quality permit applications. Promulgation and enforcement of the proposed amendments will not burden private real property. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Although the proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property, they do partially fulfill a federal mandate under 42 USC, §7410. Consequently, the exemption that applies to these proposed amendments is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments update procedural rules that govern the submittal of air quality permit applications. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

These amendments will not require any changes to outstanding federal operating permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 25, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. The comment period closes February 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §§55.152, 55.154, 55.156

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control

Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The amendments are also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq.*

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or a concrete batch plant without enhanced controls authorized by a air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project [~~a concrete batch plant exemption from permitting or permit by rule under Chapter 106 of this title (relating to Exemptions from Permitting)~~];

(3) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(4) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(5) the time specified in commission rules for other specific types of applications; or

(6) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

§55.154. Public Meetings.

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the Texas Administrative Procedure Act [~~APA~~].

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; [~~or~~]

(3) for applications filed on or after July 1, 2010, for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; applications filed before July 1, 2010, for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose;

(4) for applications filed on or after July 1, 2010, for Hazardous Air Pollutant permits subject to Chapter 116, Subchapter E of

this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this subparagraph will be held after Notice of Application and Preliminary Decision is published; applications filed before July 1, 2010, for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose; or

(5) [~~(3)~~] when a public meeting is otherwise required by law.

(d) Notice of the public meeting shall be given as required by §39.411(d) or (g) of this title (relating to Text of Public Notice), as applicable.

(e) [~~(d)~~] The applicant shall attend any public meeting held by the executive director or Office of Public Assistance.

(f) A tape recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

[~~(e) Public notice of the meeting shall be given as required by §39.411(d) of this title (relating to Text of Public Notice).~~]

§55.156. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director.

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. Before any air quality permit application for a Prevention of Significant Deterioration or Nonattainment permit subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or for applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), filed on or after July 1, 2010, is approved, the executive director shall prepare a response to all comments received. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings, under §55.154 of this title (relating to Public Meetings), in response to public comment.

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing. Instructions for requesting reconsideration of the executive director's decision or requesting a contested case hearing are not required to be included in this transmittal for the applications listed in §39.420(f) and (g) [~~§39.420(c) - (e)~~] of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision). The chief clerk shall provide the information required by this section to the following:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action;

(4) any person who timely filed a request for a contested case hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application;

(5) the Office of Public Interest Counsel; and

(6) the Office of Public Assistance.

(d) The instructions sent under §39.420(a) and (c) of this title regarding how to request a contested case hearing shall include at least the following statements:

[~~(1) for air applications, that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;~~]

(1) [~~(2)~~] that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(2) [~~(3)~~] that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(3) [~~(4)~~] that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(4) [~~(5)~~] that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(e) For applications [~~Subsections (b)(2), (c), and (d) of this section do not apply to a case~~] referred to State Office of Administrative Hearings [~~SOAH~~] under §55.210 of this title (relating to Direct Referrals): [~~.~~]

(1) for air quality permit applications filed on or after July 10, 2010, subsections (c) and (d) of this section do not apply; and

(2) for all other permit applications, subsections (b)(2), (c), and (d) of this section do not apply.

(f) Subsection (d) of this section does not apply to post-closure order applications.

(g) Notwithstanding the requirements in §39.420 of this title, the commission shall make available by electronic means on the commission's Web site the executive director's decision and the executive director's response to public comments.

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 December 31, 2009.

TRD-200906094
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.210

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendment is also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The amendment is also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq.*

§55.210. Direct Referrals.

(a) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.

(b) After receipt of a request filed under this section and after the executive director has issued his preliminary decision on the application, the chief clerk shall refer the application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

(c) A case which has been referred to SOAH under this section shall not be subject to the public meeting requirements of §55.154 of this title (relating to Public Meetings). The agency may, however, call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act [~~APA~~]. Public meetings held under this section shall be subject to following procedures.

(1) The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law.

(2) To the extent practicable, the public meeting for any case referred under this section shall be held prior to or on the same date as the preliminary hearing.

(3) Public notice of a public meeting may be abbreviated to facilitate the convening of the public meeting prior to or on the same date as the preliminary hearing, unless the timing of notice is set by statute or a federal regulation governing a permit under a federally authorized program. In any case, public notice must be provided at least ten days before the meeting.

(4) The public comment period shall be extended to the close of any public meeting.

(5) The applicant shall attend any public meeting held.

(6) A tape recording or written transcript of the public meeting shall be filed with the chief clerk and will be included in the chief clerk's case file to be sent to SOAH as provided by §80.6 of this title (relating to Referral to SOAH).

(d) A case which has been referred to SOAH under this section shall be subject to the public comment processing requirements of §55.156(a) and (b)(1) and (3) of this title (relating to Public Comment Processing).

(e) If Notice of Application and Preliminary Decision is provided at or after direct referral under this section, this notice shall include, in lieu of the information required by §39.411(c) of this title (relating to Text of Public Notice), the following:

(1) the information required by §39.411(b)(1) - (3), (4)(A), (6) - (11), and (13) and (e)(10), (11)(A), (C) and (D), (13) and (14) [~~§39.411(b)(1) - (3), (4)(A), (6) - (9), (10)(A), (B)(i) - (iii), and (C) - (D), (11), (12), and (14)~~] of this title;

(2) the information required by §39.411(c)(4) and (5) of this title; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, the deadline to file public comments or request a public meeting, and a statement that a public meeting will be held by the executive director if there is significant public interest in the proposed activity. These public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

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 December 31, 2009.

TRD-200906095
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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CHAPTER 60. COMPLIANCE HISTORY

30 TAC §60.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §60.1.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of this rulemaking is to update a cross-reference and to make non-substantive changes to update rule language to current Texas Register style and format requirements.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

SECTION DISCUSSION

The commission proposes to amend §60.1 to update a cross-reference to §39.402. In a concurrent rulemaking, the commission is proposing to repeal the existing §39.402 and propose new §39.402. The organization of the new section relocates the text referred in §60.1(a)(4)(H) from §39.402(a)(1) - (3) to §39.402(a)(2)(C) - (E).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency. The proposed rule is not expected to have a fiscal impact on other units of state or local governments since it is administrative in nature and does not impose new requirements.

The United States Environmental Protection Agency (EPA), in its review of the proposed State Implementation Plan (SIP), expressed concerns regarding current notice and public meeting requirements found in Chapter 39. EPA requested the agency provide for additional notice and opportunity for public participation regarding certain air permits. The proposed rulemaking amends Chapter 60 and is part of concurrent rulemakings for Chapters 39, 55, and 116. Fiscal impacts of rules proposed for Chapters 39, 55, and 116 can be found in separate fiscal notes for those chapters.

The proposed rulemaking amends Chapter 60 to update a cross-reference to a proposed amendment to Chapter 39. Specifically, the agency is proposing to repeal the existing §39.402 and propose new §39.402 in a separate rulemaking, and the proposed Chapter 60 rules will reference the proposed change in Chapter 39 to ensure that cross-reference is correct and there is consistency between the two chapters.

Since the proposed amendment to Chapter 60 is administrative in nature, it is not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be consistency in state rules regarding requirements for public notice and public hearings as well as consistency with federal requirements.

The proposed amendment to Chapter 60 is administrative in nature and updates a reference to coincide with the proposed changes to Chapter 39. Therefore, the proposed rule in Chapter 60 is not expected to have a fiscal impact on individuals or large businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule is administrative in nature and will not have a fiscal impact on small businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule complies with federal regulations and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The sole intent of the proposed rulemaking is to correct a cross-reference to §39.402 and make non-substantive formatting and style changes. In a concurrent rulemaking, the commission is proposing to repeal the existing §39.402 and propose new §39.402. The organization of the new section relocates the text referred to in §60.1(a)(4)(H) from §39.402(a)(1) - (3) to §39.402(a)(2)(C) - (E). The rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule merely corrects the changed cross-reference.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

DRAFT TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this proposed rule in accordance with Texas Government Code, §2007.043. The following is that assessment. The specific purpose of this rulemaking is to incorporate a corrected cross-reference to §39.402. The proposed rule does not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, this rulemaking is not subject to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amendment will not require any changes to outstanding federal operating permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 25, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. The comment period closes February 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which gives the commission general powers necessary and convenient to exercise jurisdiction authorized by the code; TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule. The amendment is also proposed under TWC, §5.751, concerning Applicability; TWC §5.752, concerning Definitions; TWC, §5.753, concerning Standard for Evaluating Compliance History; and TWC, §5.754, concerning Classification and Use of Compliance History. The amendment is proposed under Texas Health and Safety Code (THSC), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.011, which gives the commission general powers and duties to control the quality of the state's air; and THSC, §382.0518.

The proposed amendment implements THSC, §§382.017, 382.011, and 382.0518 and TWC, §§5.102, 5.103, 5.105, 5.751, 5.752, 5.753, and 5.754.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26 and 27, and Texas Health and Safety Code (THSC), Chapters 361, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(2)(C) - (E) [~~§39.402(a)(1) - (3)~~] of this title (relating to Applicability to Air Quality Permits and [~~Permit~~] Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) Beginning February 1, 2002, the executive director shall develop compliance histories with the components specified in this chapter.

(7) Beginning September 1, 2002, this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a motion for reconsideration or a motion to overturn is filed under §50.39 or §50.139 of this title (relating to Motion for Reconsideration; and Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of initiating an enforcement action with an initial enforcement settlement offer or the filing date of an Executive Director's Preliminary Report [~~(EDPR)~~], whichever occurs first; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of the commission or the United States Environmental Protection Agency [~~EPA~~]. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) notwithstanding any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, final enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states;

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit and specifying each violation of a state environmental law, regulation, permit, order, consent decree, or other requirement;

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995;

(9) the type of environmental management systems, if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program;

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements; and

(13) the name and telephone number of an agency staff person to contact for additional information regarding compliance history.

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

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 December 31, 2009.

TRD-200906096
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §116.114 and §116.194.

Section 116.114 and §116.194 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking is one of several concurrently proposed to address deficiencies identified by EPA in its review of the commission's public participation rules for approval as a revision to the SIP. The proposed amendments to Chapter 116 would update a cross-reference, delete outdated references, and clarify the public notice requirement citations for plant-wide applicability limit (PAL) permit applications.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 60, Compliance History. This rulemaking is proposed to address deficiencies identified by EPA in its review of the commission's public participation rules for approval as a revision to the SIP, and additional background information for this rulemaking project is included in those preambles.

EPA REVIEW OF SUBMITTED RULES

On November 26, 2008, the EPA proposed simultaneous limited approval and limited disapproval of revisions to the applicable implementation plan for the State of Texas which relate to public participation for air quality permit applications for new and modified sources *(Federal Register* notice of November 26, 2008, hereinafter referred to as "Public Participation Notice"). In the Public Participation Notice, (73 *Federal Register* 72012) regarding the review of the commission's public participation rules, and in its September 23, 2009, notice (74 *Federal Register* 48474 - 48475) regarding the review of the commissions's rules for the PAL permitting program, EPA commented that for PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 Code of Federal Regulations (CFR) §51.160 and §51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11). EPA stated that the commission's rules for PAL permit applications were deficient, specifically because the rules do not include a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11). EPA commented that the rule applicability section in §39.403 does not include PALs, despite the cross-reference to Chapter 39 in §116.194. EPA also commented that for PALs for existing major stationary sources, the commission's rules do not include a requirement that all material comments are addressed before taking final action on the permit, consistent with 40 CFR §51.166(w)(5). To ensure that the commission's rules include sufficient authority for PALs, the commission is proposing to amend §116.194. Concurrently, the commission is proposing new and amended rules in Chapters 39 and 55 that include the specific public participation requirements for applications for the establishment or renewal of, or an increase in, a PAL.

In the Public Participation Notice, EPA identified several rules in Chapter 116 for which it is proposing limited approval/limited disapproval. In two notices published on September 23, 2009 (74 *Federal Register* 48467, regarding New Source Review, and 74 *Federal Register* 48480, regarding Flexible Permits), EPA proposes disapproval of §116.194 and §116.740, and proposed no action on §116.406. The commission is proposing to address EPA's review as follows. This rulemaking addresses the concerns expressed by EPA found in §116.114 and §116.194. The commission is not proposing to withdraw previously submitted amendments to §116.114; those remain pending with EPA and those changes, together with the proposed changes in this rulemaking will be subject to EPA review. The commission is not proposing to withdraw §116.194, but proposes to submit this currently proposed amendment to EPA for its review.

The text in existing §116.111 and §116.116 (although subsequently amended and submitted to EPA in prior rulemakings) refers to Chapter 39. The commission is addressing the concerns specified by EPA with the changes to Chapter 39 proposed in this rulemaking. These two sections refer only to Chapter 39 and not specific sections within that chapter. Therefore, the commission is not withdrawing any versions of these sections previously submitted to EPA, nor making any changes to those sections. Section 116.312 refers only to Chapter 39 and not specific sections within that chapter. Therefore, the commission is not withdrawing this section, nor proposing amendments to it.

Section 116.124, which has subsequently been repealed by the commission, concerns compliance history and is beyond

the scope of this rulemaking. EPA proposed no action on §116.183, which was repealed and readopted by the commission as §116.406; this section addresses notice for hazardous air pollutant permits which implement Federal Clean Air Act (FCAA), §112(g), which is a process separate from the SIP process. Therefore, the commission is not proposing any action regarding §39.406 at this time. However, concurrently proposed rulemaking in Chapter 39 addresses the public notice requirements for this type of permit.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §116.114(a)(2)(C) to update a cross-reference based on the proposed amendments to §39.419, Notice of Application and Preliminary Decision.

The commission also proposes to amend §116.114(c)(2) to delete the obsolete reference to initial issuance of voluntary emission reduction permits and electric generating facility permits. The deadline for submitting these types of permit applications was September 1, 2001 and September 1, 2002, respectively. There are no pending applications for these types of permits. In a concurrent rulemaking, the commission is proposing amendments to Chapter 39 that also acknowledge these now-outdated notice requirements.

The commission proposes to amend §116.194 to clarify the public notice requirement citations for PAL permit applications. The amendment clarifies, in proposed designated subsection (a), that the public notice requirements apply to applications for establishment or renewal of, or an increase in, a PAL permit. The remaining existing text is proposed for deletion, except for the last sentence which is proposed as designated subsection (b). Proposed subsection (b) provides that this section does not exempt an applicant for a new source review permit from the requirements of Chapter 116, Subchapter B, New Source Review Permits.

When the commission adopted §116.194, effective February 1, 2006, the public participation requirements for PALs were designated by reference in this section to various sections in Chapter 39. However, at the time §116.194 was adopted (2006), the commission did not amend Chapter 39 to include any reference to PAL applications. Therefore, the commission is proposing this amendment to §116.194 as well as concurrently proposing amendments to Chapter 39 that ensure that PAL applications are subject to adequate public participation requirements. Specifically, those are publication of notice of the executive director's draft permit and air quality analysis, and providing the public an opportunity to comment on those. The commission is proposing these amendments to obtain SIP approval for its public participation requirements and process for the commission's new source review air quality permitting program. Additional background regarding the issues associated with the commission's rules for public notice for air quality permit applications is included in the proposed Chapter 39 preamble.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency. The proposed rules are not expected to have a fiscal impact on other units of state or local governments since they are administrative in nature and do not impose new requirements.

The EPA, in its review of the proposed SIP, expressed concerns regarding current notice and public meeting requirements found in Chapter 39. EPA requested the agency provide for additional notice and opportunity for public participation regarding certain air permits. The proposed rules amend Chapter 116 and are part of concurrent rulemakings for Chapters 39, 55, and 60. Fiscal impacts of rules proposed for Chapters 39, 55, and 60 can be found in separate fiscal notes for those chapters.

The proposed rules amend Chapter 116 to update references based on concurrent rulemaking proposed by the agency to amend Chapter 39 to address public participation for air quality permits. Specifically, the proposed rules for Chapter 116 update a cross-reference, delete outdated references, and clarify the public notice and participation requirement citations for PAL permit applications. The proposed amendments to Chapter 116 are administrative in nature and do not impose any new requirements for public notice or public meetings. Nor do the proposed rules eliminate any public notice or meeting requirements. Therefore, the proposed rules are not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency in state rules regarding requirements for public notice and public hearings as well as consistency with federal requirements.

The proposed rules for Chapter 116 update a cross-reference, delete outdated references, and clarify the public notice and participation requirement citations for PAL permit applications. The proposed amendments to Chapter 116 are administrative in nature and do not impose any new requirements for public notice or public meetings. Nor do the proposed rules eliminate any public notice or meeting requirements. Therefore, the proposed rules in Chapter 116 are not expected to have a fiscal impact on individuals or large businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are administrative in nature and will not have a fiscal impact on small businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules comply with federal regulations and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not

subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is to clarify the public notice requirement citations for PAL permit applications, delete obsolete language and update a cross-reference to a rule in Chapter 39. In a concurrent rulemaking, the commission is proposing amendments to Chapter 39, which will necessitate amendments to these rules to ensure that the amended rules are correct. The primary purpose of the proposed amendments is to address deficiencies in the public notice requirements of the rules as identified by the EPA in the Public Participation Notice. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP. The rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rulemaking merely corrects the changed cross-reference.

As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapter 39 were developed to correct deficiencies in the public notice requirements for air quality permit applications identified by EPA in the Public Participation Notice. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the FCAA, and authorized under THSC, §§382.002, 382.011, 382.012, 382.017, 382.0291, 382.040, 382.051, 382.0512, 382.0515, 382.0516, 382.0518, 382.055, and 382.056 and FCAA, 42 United States Code, §§7401 *et seq.*

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

DRAFT TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this proposed rules in accordance with Texas Government Code, §2007.043. The following is that assessment. The proposed rules will clarify the public notice requirement citations for PAL permit applications, delete obsolete language, and update a cross-reference to a rule in Chapter 39. The proposed rule does not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rues are not subject to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

These amendments will not require any changes to outstanding federal operating permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 25, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. The comment period closes February 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.114

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC),

§382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. The amendment is also proposed under THSC, §382.0291, concerning Public Hearing Procedures; THSC, 382.040, concerning Documents; Public Property; THSC, 382.0512, concerning Modification of Existing Facility; THSC, 382.0515, concerning Application for Permit; THSC, 382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.0291, 382.040, 382.051, 382.0512, 382.0515, 382.0516, 382.0518, 382.055, and 382.056 and FCAA, 42 USC, §§7401 *et seq.*

§116.114. Application Review Schedule.

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) Notice of completion or deficiency. The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

(A) If the application is deficient, the notification must state:

(i) the additional information required; and

(ii) the intent of the executive director to void the application if information for a complete application is not submitted.

(B) Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Preliminary decision to approve or disapprove the application. The executive director shall conduct a technical review and send written notice to the applicant of the preliminary decision to approve or not approve the application within 180 days from receipt of a completed permit application or 150 days from receipt of a completed permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) if comments are received on the proposed facility and replied to by the executive director in accordance with §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and §55.156 of this title (relating to Public Comment Processing); and

(B) if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.419(e) of this title [~~(relating to Notice of Application and Preliminary Decision)~~], the executive director shall send a copy of the Preliminary Decision to the applicant; or

(C) if Notice of Application and Preliminary Decision is required under §39.419(e) [~~§39.419(d)~~] of this title (relating to Notice of Application and Preliminary Decision), the executive director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice).

(3) Review schedule for Advanced Clean Energy Projects. In addition to the applicable requirements and deadlines specified in subsections (a) - (c) of this section, the following deadlines apply to permit applications for advanced clean energy projects as defined in Texas Health and Safety Code, §382.003, Definitions:

(A) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(B) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend this deadline up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting this deadline without creating an extraordinary burden on the resources of the commission.

(4) Refund of permit fee.

(A) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director for a refund of the permit fee.

(B) The permit fee shall be reimbursed if it is determined by the executive director that the specified period was exceeded without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3.

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 of this title [~~(relating to Public Notice)~~].

(2) If an applicant fails to make such good faith effort after two written notices of deficiency, the executive director shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. If a new application is submitted within six months of the voidance, it shall meet the requirements of §116.111 of this title (relating to General Application) but will be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) Notification of executive director's decision.

(1) Notification to applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title.

(2) Notification to commenters. Persons [~~Except for initial issuance of voluntary emission reduction permits and electric generating facility permits, persons~~] submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) at the same time that the applicant is notified. If the number of interested persons who have requested notification makes it impracticable for the commission to notify those persons by mail, the commission shall notify those persons by publication using the method prescribed by §382.031(a) of the Texas Health and Safety Code.

(3) Time limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete prevention of significant deterioration or nonattainment permit application, or a complete permit application for an action under Subchapter C of this chapter (relating to Plant-Wide Applicability Limits);

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

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 December 31, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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SUBCHAPTER C. PLANT-WIDE APPLICABILITY LIMITS
DIVISION 1. PLANT-WIDE APPLICABILITY LIMITS

30 TAC §116.194

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit. The amendment is also proposed under THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.0291, 382.040, 382.051, 382.0512, 382.0515, 382.0516, 382.0518, 382.055, and 382.056, and FCAA, 42 USC, §§7401 *et seq.*

§116.194. Public Notice and Comment.

(a) Applications for establishment or renewal of, or an increase in, a plant-wide applicability limit permit under this division are subject to the notice and comment requirements in Chapter 39 of this title (relating to Public Notice). [~~Applications for initial issuance of plant-wide applicability limit permits under this division are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.419, 39.420, and 39.601 - 39.605 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Application and Preliminary Decision; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; and Notice to Affected Agencies, respectively), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply.~~]

(b) Nothing in this section exempts an applicant for a new source review permit from the requirements of Subchapter B of this chapter (relating to New Source Review Permits).

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 December 31, 2009.

TRD-200906098
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §3.121

The Comptroller of Public Accounts proposes an amendment to §3.121, concerning definitions, imposition of tax, permits, and reports. This section is being amended to implement changes to Tax Code, Chapter 155 and the new worksheet to be used by distributors to report tobacco products received other than cigars pursuant to House Bill 2154, 81st Legislature, 2009, to clarify a reference to a form by providing the form name and number, and to correct a punctuation error.

Subsection (a)(12) is amended by adding a definition for manufacturer's net weight and by renumbering the existing and subsequent definitions. Subsection (a)(16) is amended to update and clarify the types of tobacco products by; separating pipe tobacco from smoking tobacco and defining pipe tobacco; clarifying the definition of chewing tobacco; including new types of snuff products and their intended use; defining roll-your-own tobacco; and adding "other tobacco products" and by renumbering subsequent subsections. Subsection (b)(1)(B) is amended by adding tables containing the tax rates for up to two ounces of tobacco products other than cigars for Fiscal Years 2010, 2011, 2012, 2013, 2014 and thereafter. Subsection (b)(1)(C) is added to explain how to calculate the tax due on a unit consisting of multiple individual cans or packages of tobacco products. Subsection (b)(2) is amended to clarify that free or promotional tobacco products other than cigars are taxed using the manufacturer's listed net weight for a product and the applicable tax rates according to the state's fiscal year. Subsection (c)(4) is amended to correct a punctuation error. Subsection (e)(6) is amended to delete the specific date of the retailer permit issued or renewed. Subsection (g)(2) is amended to clarify the name of the form used to document tax-free sales to the federal government.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying for taxpayers complex changes in the tax law. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, 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, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §155.0211(b).

§3.121. Definitions, Imposition of Tax, Permits, and Reports.

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

(1) Bonded agent--A person in Texas who is an agent for a principal located outside of Texas and who receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the principal.

(2) Cigar--A roll of fermented tobacco that is wrapped in tobacco and that the main stream of smoke from which produces an alkaline reaction to litmus paper.

(3) Common carrier--A motor carrier registered under Transportation Code, Chapter 643, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or its successor agency.

(4) Distributor--A person who:

(A) receives tobacco products from a manufacturer for the purpose of making a first sale in Texas;

(B) brings or causes to be brought into Texas tobacco products for sale, use, or consumption.

(5) Factory list price--The published manufacturer gross cost to the distributor.

(6) Export warehouse--A location in this state from which a person receives tobacco products from manufacturers and stores the tobacco products for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(7) First sale--Except as otherwise provided by this section, the term means:

(A) the first transfer of possession in connection with purchase, sale, or any exchange for value of tobacco products in intrastate commerce;

(B) the first use or consumption of tobacco products in this state; or

(C) the loss of tobacco products in this state whether through negligence, theft, or other loss.

(8) Importer or import broker--A person who ships, transports, or imports into Texas tobacco products manufactured or produced outside the United States for the purpose of making a first sale in this state.

(9) Manufacturer--A person who manufactures or produces tobacco products and sells tobacco products to a distributor.

(10) Manufacturer's representative--A person who is employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

(11) Manufacturer's list price--The published manufacturer gross cost to the distributor. The term is synonymous with factory list price.

(12) Manufacturer's listed net weight--For the purposes of calculating and reporting the state excise tax due on tobacco products other than cigars, the taxable net weight for a tobacco product is the weight of the finished product as shown or listed by the product manufacturer on the product can, package, shipping container, or the report required by Tax Code, §155.103(b).

(13) [~~(12)~~] Permit holder--A bonded agent, distributor, importer, manufacturer, wholesaler, or retailer required to obtain a permit under Tax Code, §155.041.

(14) [~~(13)~~] Place of business--the term means:

(A) a commercial business location where tobacco products are sold;

(B) a commercial business location where tobacco products are kept for sale or consumption or otherwise stored and may not be a residence or a unit in a public storage facility; or

(C) a vehicle from which tobacco products are sold.

(15) [~~(14)~~] Retailer--A person who engages in the practice of selling tobacco products to consumers and includes the owner of a coin-operated vending machine.

(16) [~~(15)~~] Tobacco product--A tobacco product includes: a cigar; pipe tobacco, including any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe; [~~smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;~~] chewing tobacco, including plug, scrap, and any kind of tobacco suitable for chewing and that is not intended to be smoked; snuff or other preparations of finely cut, ground, powdered, pulverized or dissolvable tobacco that is not intended to be smoked; roll-your-own smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed, any form of tobacco, which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or use as wrappers thereof; or other tobacco products, including an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

(17) [~~(16)~~] Trade discount, special discount, or deals--Includes promotional incentive discounts, quantity purchase incentive discounts, and timely payment or prepayment discounts.

(18) [~~(17)~~] Weight of a cigar--The combined weight of tobacco and nontobacco ingredients that make up the total product in the form available for sale to the consumer, excluding any carton, box, label, or other packaging materials.

(19) [~~(18)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes tobacco products in this state for resale but who is not a distributor.

(b) Imposition of tax. A tax is imposed and becomes due and payable when a permit holder receives cigars or tobacco products for the purpose of making a first sale in this state.

(1) Tax Rates.

(A) the tax on cigars is calculated at

(i) $ .01 per 10 or fraction of 10 on cigars that weigh three pounds or less per thousand;

(ii) $7.50 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(iii) $11 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and that contain no substantial amount of nontobacco ingredients; and

(iv) $15 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and that contain a substantial amount of nontobacco ingredients.

(B) Effective September 1, 2009, House Bill 2154, enacted by the 81st Legislature, 2009, changed the [~~The~~] tax [~~rate~~] for tobacco products other than cigars to a tax based on the manufacturer's listed net weight for an individual product's can or package and a rate for each ounce and proportionate rate on all fractional parts of an ounce of weight for that product. The tax imposed on a can or package of a tobacco product that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package that weighs 1.2 ounces. A new rate is imposed for state fiscal years 2010, 2011, 2012, 2013, and 2014. The rate for each ounce and proportionate rate on all fractional parts of an ounce in effect for FY 2014 apply to each fiscal year thereafter. The tax rate in effect for a state fiscal year that occurs according to this subparagraph does not affect the taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for the purposes of the liability for and collection of those taxes. The new rates imposed for state fiscal years 2010, 2011, 2012, 2013, 2014, and thereafter are set forth in this subparagraph [~~is 40% of the manufacturer's list price, exclusive of any trade discount, special discount, or deal~~].

(i) The rate for the state Fiscal Year 2010 (September 1, 2009 through August 31, 2010), is $1.10 per ounce and a proportionate rate on all fractional parts of an ounce for up to two ounces according to the following. An expanded chart showing rates for cans or packages greater than two ounces is available on the Window on State Government Web site.
Figure: 34 TAC §3.121(b)(1)(B)(i)

(ii) For the state Fiscal Year 2011 (September 1, 2010 through August 31, 2011), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.
Figure: 34 TAC §3.121(b)(1)(B)(ii)

(iii) For the state Fiscal Year 2012 (September 1, 2011 through August 31, 2012), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.
Figure: 34 TAC §3.121(b)(1)(B)(iii)

(iv) For the state Fiscal Year 2013 (September 1, 2012 through August 31, 2013), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.
Figure: 34 TAC §3.121(b)(1)(B)(iv)

(v) For state Fiscal Year 2014 (which begins September 1, 2013) and for each fiscal year thereafter, the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.
Figure: 34 TAC §3.121(b)(1)(B)(v)

(C) The tax imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed under paragraph (1)(B) of this subsection, on each individual can or package intended for sale or distribution at retail. For example, on November 1, 2009 (Fiscal Year 2010) a distributor receives from a manufacturer for the purpose of making a first sale in Texas a unit of snuff that consists of 10 individual cans. Each can weighs 1.3 ounces. The effective tax rate for each can is $1.43. The total tax due for the unit is calculated by multiplying the effective tax rate on each individual can ($1.43) by the total number of individual cans in the unit (10 cans), for a total tax due of $14.30.

(2) Free goods shall be taxed at the prevailing factory list price, except that each tobacco product other than cigars shall be taxed according to the manufacturer's listed net weight for the product and the applicable fiscal year rate for each ounce and proportionate rate for all fractional parts of an ounce according to paragraph (1)(B) of this subsection.

(3) A person who receives or possesses tobacco products on which a tax of more than $50 would be due is presumed to receive or possess the tobacco products for the purpose of making a first sale in this state. This presumption does not apply to common carriers or to manufacturers.

(4) A tax imposed on manufacturers, who manufacture tobacco products in this state, at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce.

(5) The delivery of tobacco products by a principal to its bonded agent in this state is not a first sale.

(6) If a manufacturer sells tobacco products to a purchaser in Texas and ships the products at the purchaser's request to a third party distributor in Texas, then the purchaser has received the tobacco products for first sale in Texas.

(7) The person in possession of cigars or tobacco products has the burden to prove payment of the tax.

(c) Permits required. To engage in business as a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable.

(1) A person who engages in the business of a bonded agent, distributor, importer, manufacturer, wholesaler, or retailer without a valid permit is subject to a penalty of not more than $2,000 for each violation. Each day on which a violation occurs is a separate offense. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number.

(2) Each distributor, importer, manufacturer, wholesaler, bonded agent, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, a retailer must have a separate permit for each vending machine including several machines at one location.

(4) A vehicle from which cigars and tobacco products are sold is a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, retailer, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. Each cigar or tobacco product manufacturer's [~~manufacturers~~] sales representative is required to purchase a wholesale dealer's permit for each manufacturer's vehicle operated. No cigar and tobacco product permit is required for a vehicle used only to deliver invoiced tobacco products.

(5) The comptroller may issue a combination permit for cigarettes, tobacco products, or cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer as defined by Tax Code, Chapter 154 and Chapter 155. A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue permits for a residence or a unit in a public storage facility because tobacco products must not be stored at such places.

(d) Permit Period.

(1) Bonded agent, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) Permit Fees. An application for a bonded agent, distributor, importer, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the required fee.

(1) The permit fee for a bonded agent is $300.

(2) The permit fee for a distributor is $300.

(3) The permit fee for a manufacturer with representation in Texas is $300.

(4) The permit fee for a wholesaler is $200.

(5) The permit fee for a motor vehicle is $15.

(6) The permit fee for a retailer permit issued or renewed [~~after August 31, 1999,~~] is $180. Retailers who fail to obtain or renew a retailer permit in a timely manner are liable for the fee in effect for the applicable permit period, in addition to the fee described in paragraph (7) of this subsection.

(7) A $50 fee is assessed, in addition to the regular permit fee, for failure to obtain or renew a permit in a timely manner.

(8) No permit fee is required to obtain an importer permit or to register a manufacturer when the manufacturer is located out of state with no representation in Texas.

(9) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(10) An unexpired permit may be returned to the comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification.

(f) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer if the comptroller has received an application and any applicable fee, the applicant has complied with Tax Code, §155.041, and the comptroller determines that the issuance of such permit will not jeopardize the administration and enforcement of Tax Code, Chapter 155.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied, after notice and opportunity for hearing, because the applicant has failed to disclose any information required by Tax Code, §155.041(d), (e), and (f), including the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052, and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) Sale and delivery of tax-free cigars and tobacco products to the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of tax-free cigars and tobacco products to instrumentalities of the United States government. These tax-free products must be packaged in a manner in which they will not commingle with any other cigars or tobacco products.

(2) Each sale of tax-free cigars and tobacco products by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed Texas Certificate of Tax Exempt Sale, Form 69-302 [~~federal exemption certificate~~]. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(h) Reports.

(1) With the exception of reports of sales to retailers required by the comptroller under Tax Code, §155.105, all tobacco distributor and manufacturer reports and payments must be filed on or before the last day of each month for transactions that occurred during the preceding month.

(2) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §155.105, shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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 January 4, 2010.

TRD-201000003
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 14, 2010
For further information, please call: (512) 475-0387

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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §94.26

The Texas Department of Licensing and Regulation withdraws proposed new §94.26 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7754).

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906069
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 29, 2009
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §§623.6 - 623.10

The Board of Tax Professional Examiners withdraws the proposed repeal of §§623.6 - 623.10 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7765).

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906070
William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Effective date: December 29, 2009
For further information, please call: (512) 463-7348

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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 rule (Government Code, §2001.036). If a rule is adopted without change to the text of 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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §§94.1, 94.10, 94.20 - 94.22, 94.25, 94.70 - 94.73, 94.80, 94.90, 94.91, 94.100

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code ("TAC") Chapter 94, §§94.1, 94.10, 94.20 - 94.22, 94.25, 94.70 - 94.73, 94.80, 94.90, 94.91, and 94.100 regarding the property tax professionals program. The new rules are adopted with changes to §§94.20, 94.21, and 94.25 from the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7754), and these rules are republished. There are no changes to the proposed text of §§94.1, 94.10, 94.22, 94.70 - 94.73, 94.80, 94.90, 94.91, and 94.100 as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7754), and these rules will not be republished. Proposed §94.26, which was published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7754), has been withdrawn from consideration for adoption. The new rules take effect January 18, 2010.

The new rules implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009), which amended Texas Occupations Code Chapter 1151 and transferred the regulation of property tax professionals from the Board of Tax Professional Examiners ("BTPE") to the Texas Department of Licensing and Regulation ("Department") effective September 1, 2009. The Commission in a separate rulemaking action is adopting the repeal of most of the rules of the Board of Tax Professional Examiners in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Department.

A summary of each new rule was included in the notice of proposed rules published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7754). The Commission adopts the following changes from the proposed text. Section 94.26 is being withdrawn at this time from consideration for adoption based on the Commission's review of the numerous public comments offered and the Tax Professional Advisory Committee's ("Committee") concern on the classification and education standards originating from this proposed rule section. Also, §§94.20, 94.21, and 94.25 reflect changes made from the proposed text. The change made to §94.20 is only editorial in nature. The change made to §94.21 deletes paragraph (8) which specifically established the classification system proposed under these rules. Section 94.25(e) was changed to remove the reference to §94.26, which is being withdrawn from consideration for adoption at this time. Section 94.25(e) now references that a course approved by the "Comptroller" may be taken for continuing education credit. The Commission and the Department intend to solicit additional comments and input from industry participants and the public at large on the issues pertaining to the classification and education of property tax professionals and will propose new rules on these issues at a future date. Section 94.25(h) is changed to read that a Registered Texas Collector ("RTC"), Registered Professional Appraiser ("RPA"), or Registered Texas Assessor/Collector ("RTA") must retain a copy of the certificate of completion "or other proof acceptable to the department" for a course for five years after the date of completion.

The proposed new rules were published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. At its meeting on December 11, 2009, the Tax Professional Advisory Committee reviewed the proposed rules and public comments received and unanimously recommended adoption by the Commission with the amendments as noted above. A public hearing was held on December 14, 2009, to receive additional comments regarding the proposed rules. The Department received comments from fourteen interested parties. The Commission adopted the rules, with the changes described above, at its public meeting on December 16, 2009. The specific comments and the Department's responses are summarized below.

A. Public comment made in response to the Texas Register publication.

Comment: The Texas Association of Appraisal Districts ("TAAD") has offered comment on several points. First, the Department did not include a rule addressing the chief appraiser program.

Response: Section 5.042 of the Tax Code requires a chief appraiser to take this training as a condition for their employment as chief appraiser. It is the Department's responsibility under Texas Occupations Code, §1151.164 to provide it. The Department has implemented this course as a Comptroller-approved course under continuing education. At this time, TAAD is currently the only provider of this course. It is not statutorily required that the Department implement this course by rule or enforce this provision of the Tax Code. Again, this is a condition of employment under the Tax Code, not a condition of registration under Texas Occupations Code, Chapter 1151.

The rules require chief appraisers to register, but they register under the general classification of "appraiser." The Department does not have a specific chief appraiser registration and the appraiser registrations only ask their field, not their actual position. As such, the Department does not have the data to track the chief appraisers specifically. No change has been made to the rules in response to this comment.

Comment: TAAD also commented that §94.26 does not include that a Registered Professional Appraiser take an ethics and Uniform Standards of Professional Appraisal Practices ("USPAP") course for recertification, yet a USPAP refresher course is listed as a core course.

Response: A work group of the Tax Professional Advisory Committee has been formed to consider future amendments to the education requirements for registrants including continuing education and ethics. The Department also plans to hold an education summit in Spring 2010 to obtain addition input on these issues. In response to this and other comments, the Department has withdrawn §94.26.

Comment: TAAD also commented that §94.26 lists the core courses, but it does not give language providing for the approval of equivalent courses.

Response: The Department does not review or approve courses. According to the statute, all courses are approved by the Office of the Comptroller. The directions for how to submit a course for the Comptroller's approval is currently listed on the Office of the Comptroller's website. Materials will be submitted to that office. Once the Comptroller's office has had a chance to review and approve the material, the Department will be electronically notified of the approval and will recognize that course for credit upon the processing of that information.

The Department intended the course titles for use in §94.26 as general course headings to be used for all courses and all providers meeting the Comptroller's approval, not as an endorsement of the previous BTPE courses or the creation of a monopoly on core education by those specifically named BTPE courses. The Department simply used these actual titles to provide a roadmap for any transitioning registrant to understand what they needed to take to continue their progression in the classification system in §94.21(8) without confusion or potential loss of educational opportunity.

Section 94.26 has been withdrawn and will not be adopted at this time. The Department will hold an education summit in Spring 2010 to obtain addition input on the various education issues.

Comment: TAAD commented that §94.70, regarding a registrant's capacity to act in a private tax matter, is better listed under the "conflicts of interest" rule portion.

Response: The Department believes the comment may have merit but declines to make the change at this time. A work group has been formed to consider future amendments regarding ethics and conflicts of interest. The Department will wait for the work group's recommendation before making further changes.

Comment: TAAD stated §94.25(h) should only require registrants to keep their continuing education course completion certificates one year as are Property Tax Consultants.

Response: Certified Registrants' continuing education is due every five years. It is for the protection of the registrant that the certificates are kept to give them the benefit of relying on them to prove they have met the requirements for continued registration. If they cannot prove their timely completion of the required education, they will not be renewed. This is different from Property Tax Consultants who have continuing education due every year and have a one-year retention requirement. Based on this information, the Property Tax Professionals suggested amending §94.25(h) to reflect that "other proof" acceptable to the Department also be allowed to demonstrate course completion. The rule as adopted reflects this change.

Comment: TAAD stated that compliance with the Comptroller report in §94.70 is problematic and should be dropped from the proposal. The requirement to "be in compliance" is so vague that is not understandable by registrants.

Response: Under Texas Occupations Code, §1151.1015, the Comptroller's office will refer reports under Tax Code §5.102 to the Department. The Comptroller and the Department envisioned that this would initiate the complaint process and ultimately the contested case process through enforcement if necessary. The Department also interprets that this was the legislative intent in delivering this "enforcement" duty to the Commission given its jurisdiction, capacity, and normal procedures.

As the Department understands, if any reports are issued by the Comptroller those reports will clearly describe the areas of noncompliance with explanation derived from the detailed audit performed by the Comptroller. The Department additionally believes information on a remedial plan will be included. The Department does not believe any report from the Comptroller's office will be vague or give insufficient notice to the respondent as to the compliance issue of concern. The Department declines to make the suggested change.

Comment: The Department does not have a "chief appraiser" registration classification.

Response: The Department has three registration classifications: appraiser, assessor/collector, and collector. These are the same classes that were used by the previous regulatory board. The chief appraiser would be an appraiser registrant subject to the laws and rules of the agency. The Department has ability to exercise its enforcement authority under Chapters 51 and 1151 of the Texas Occupations Code.

Comment: TAAD offered various suggestions to improve the disciplinary rules, specifically §§94.71, 94.72, 94.73, and 94.100.

Response: The Department believes the comments may have merit but declines to make any changes at this time. A work group has been formed to consider future amendments to the disciplinary rules and code of ethics under these provisions. The Department will wait for the work group's recommendation before making further changes.

Comment: A chief appraiser from an appraisal district offers several comments. First, he suggests deleting the provisions in §94.21(a)(3) of requiring "good moral character" and substitute a provision that would exclude anyone having been convicted of a felony offense. In addition, in §94.21(a)(4) he recommends for all new registrants to the industry a higher initial education standard of a 2-year or a 4-year degree. He states that the evolving demands of property appraisal require an enhanced educational background that will provide a foundation for professional performance.

Response: The Department appreciates his comment. However, the rule provisions in §94.21 reflect the statutory requirements for registration as mandated by the legislature in Texas Occupations Code, §1151.152. The Department cannot by rule supersede the registration requirements delineated in statute.

Second Comment: The chief appraiser recommends incorporating the experience factor back into the classification provisions as previously provided for in the previous BTPE rules. "Property appraisal by its nature is opinion-based. Only through experience does one acquire the necessary knowledge to express an informed opinion of value." He further advocates including

the old board's examination/re-examination policy in the Department's rules.

Response: Originally, the experience factor was deleted in the proposed classification system to allow those who wanted to "fast-track" their education to achieve their certification more quickly. Ultimately, this provided a path to create a more qualified registrant on a faster timetable. The Department believes the comment may have merit. Based on this and other comments, the rules are adopted without the proposed provisions of §94.21(8), which addressed the classification system. A work group has been formed to consider future amendments to the classification standards for registrants. The Department will wait for the work group's recommendation before making further changes.

Third Comment: The chief appraiser commented that an individual who is unsuccessful following three exam attempts should not be allowed to continue registration. He recommends that the Department incorporate the examination/re-examination policy of the old board as set out below into the new Department rules:

"(1) Class III examination (appraisal) or Class III examination (assessing/collection). A registrant who fails the first time must be reexamined within 120 days of the date of the examination. A registrant who does not pass the Class III examination within four years of their initial application date, or does not retake the examination within the prescribed time period shall have the registration cancelled and may apply for re-registration two years after the date of the last failure."

"(2) Class III examination (collections). This is a certification examination for the collections field. A registrant who fails the first time must be reexamined within 120 days of the date of the examination. A registrant who fails the second time must be reexamined within 120 days of the date of the second examination. A registrant who fails the third time or who fails to take the second or third examination shall have the registration cancelled and may apply for re-registration two years after the date of the last failure."

"(3) Class IV examination (appraisal) and Class IV examination (assessing/collecting). These are certification examinations. A registrant who fails the first time shall be re-examined within six months of the date of the first examination. A registrant who fails the second time shall be examined within six months of the second examination. A registrant who fails a Class IV examination the third time shall have the registration cancelled and may apply for registration two years from the date of the last failure."

Response: The Department declines to implement the previous board's standards. At this time, an appraisal or assessor/collector registrant must pass their Class IV or certification exam no later than five (5) years after initial registration as per Texas Occupations Code, §1151.160(c)(1) and (2) and the same applies for a Class III Collector on the three (3) year time table as per Texas Occupations Code, §1151.160(c)(3). Accordingly, if an applicant did not meet those standards they would not be renewed or given an extension to take the exam as was previously done by the last board.

The statute provides that a registrant who does not pass his or her certification exam after five (5) years in the industry may not participate in the industry. There appears to be no statutory provision to mandate the Commission re-exam an unsuccessful registrant within an artificially created 120-day deadline(s) or impose a waiting period to re-apply anew should the person repeatedly fail after three (3) mandated exam sittings. No re-examination opportunity should exceed the five (5) year limit for successful completion of the exam as clearly provided for in statute.

As for the Class III exams, the advisory board passed a disciplinary rule providing a "back stop" from anyone procrastinating advancement through the certification process. For appraiser and assessor/collector registrants §94.70(h) provides a basis for revocation of their registration should they not pass that exam. For collector registrants, it is a basis for revocation of their registration. The same disciplinary rule is repeated for appraiser and assessor/collector registrants at the five (5) year mark.

Comment: The Texas Apartment Association (TAA) and the Texas Building Owners and Managers Association (TBOMA) raise concern that a registrant, such as a Class I registrant may perform a job they are not qualified to do. Both groups propose to increase education standards for a Class I appraiser. They advocate that this appraiser class should be required to take introduction to the Texas property tax system, appraisal of real property, and ethics for tax professionals within 6 months of registration.

These two groups state that a Class I appraiser should take income approach to value, a mass appraisal concepts, and Texas property tax law and Course 31 on USPAP classes before being allowed to progress to a Class II registration. A Class II appraiser should be required to obtain a Class III classification in an undetermined timeframe and complete personal property appraisal and analyzing a real property appraisal class to progress. A Class III appraiser should complete all current accepted classes on property appraisals including Class 31 on USPAP.

Response: Both groups have correctly identified the statutory registration requirements. Under Texas Occupations Code, §1151.152, to be eligible for registration a person must be: (1) at least 18 years of age; (2) reside in Texas; (3) be of good moral character; (4) be a graduate of an accredited high school or establish high school equivalency; and (5) be actively engaged in appraisal, assessment, or collection. The Commission has no authority to redefine the qualifications for registration put in place by the legislature. A Class I registration is simply a registration without education or experience requirements. The Commission cannot in rule make more stringent initial registration standards than those set by the legislature in statute. The Commission declines to make the suggested change.

The Commission does have authority under Texas Occupations Code, §1151.102 to classify and establish minimum standards for individuals once they are registered. As noted above, §94.21(8) has been deleted, leaving in place the current BTPE rules regarding the classification system.

At the initial intake of any program into the Commission's oversight, it is a general practice of the Commission to not substantially change the rules applicable to the regulated population to the extent possible for three reasons:

(1) It does not want to disenfranchise any of the population by losing them in the transition from one board to another;

(2) It does not want to unfairly burden people regulated with new costs or notice of new responsibilities that they did not have a chance to plan for; and

(3) The Commission wants to make knowledgeable improvements to the regulation of the industry and that requires some experience with the industry and time to communicate meet with its advisory committee and industry participants.

In addition, in the case of this program, the Commission and the Department want time to work with the Comptroller on any issues that affect both agencies.

The Commission believes that the agency needs to lay a foundation from which to build improvements on industry regulation. These rules are the foundation for initial intake. As the advisory committee gets a chance to address the issues in the industry and the Department's enforcement, education, and licensing divisions get to know the industry and identify the needs and area of concern of the industry, the Department may build intelligent, considered improvements through the publicly vetted process of rule amendment through its advisory committee and finally the Commission itself.

Based on the comments, there appears to be a misunderstanding that a registrant may work for several years in the industry without succeeding in some fundamental education. The advisory board recommended a disciplinary rule providing a "back stop" from anyone procrastinating advancement through the certification process. For appraiser and assessor/collector registrants §94.70(h) provides a basis for revocation of their registration should they not pass that exam. For collector registrants, it is a basis for revocation of their registration.

As for approving education, the Commission has authority under Texas Occupations Code, §1151.102 to classify and establish minimum standards for registrants but it does not have the ability to approve educational courses. It can only use the courses approved by the Office of the Comptroller as one factor to define the classification system. Under Texas Occupations Code, §1151.1015, the legislature has clearly and definitively stated that the Office of the Comptroller has approval authority of all required education courses, examinations, and continuing education programs for registrants. This authority gives the Comptroller the power to decide the "necessary education" for a registrant.

TAA and TBOMA further advocate that the proposed rules should provide guidelines on what types of work duties different classes of registrants may engage in based on their class and that the Department should limit job functions/assignments allowable to each class of registrant. In addition, they advocate that the Commission should require that an appraiser be certified to be a chief appraiser.

The Department declines to make any changes based on these comments. The legislature has not assigned the Department with the duty to dictate what jobs a class of registrant can or cannot do. To intercede in the employer/employee relationship without express authority by the legislature, the Department may overstep its rulemaking authority in Texas Occupations Code, §1151.102, which says the Department may adopt and enforce rules necessary for the performance of the Department's duties. The Department reads this not as defining what duties each class can do but defining the standards in the general field of work for each classification such as appraisal, assessing, or collecting. The statute does not provide for a specific certification as a chief appraiser.

Lastly, TAA and TBOMA advocate the enhancement of continuing education under §94.25(g).

Section 94.25(g) refers to what type of course or courses a certified professional must take to fulfill their continuing education requirements. As stated in §94.25(b) and (c) a RTA and a RPA must take 75 hours of continuing education, a RTC must take 25 hours. It would be difficult to find one class providing 75 or even 25 hours of only ethics, or laws and rules, or any one of the four categories. In practical terms, a student will not be able to avoid taking classes in more than one of the areas required for that is what is offered to fulfill the requirement in hours. This rule does not create an opportunity for people to avoid taking substantive continuing education; it is insuring that they can only take substantive education by limiting the subject matter to the four subject areas.

The Department declines to make the suggested change at this time. A work group has been formed to consider future amendments to the education requirements for registrants including continuing education. The Department will wait for the work group's recommendation before making further changes.

Comment: An individual interested party asks if information revealed under §94.72 would be confidential.

Response: The purpose of the rule is transparency to avoid potential conflict of interest issues. A work group has been formed to consider future amendments to the disciplinary rules. The Department will wait for the work group's recommendation before making further changes. The Department declines to make any changes based on this comment at this time.

Comment: Another individual asks if he needs a property tax license to protest taxes given that he has a Texas certified general appraisers license and a Texas Broker's license.

Response: This comment does not appear to address the rules published for comment. The Department declines to make any changes based on this comment.

Comment: A third individual comments that although the rules have been available since October, she has been unable to consider them fully. She also feels that the disciplinary rules should be more detailed. For these reason, she asks for the rules not to be adopted.

Response: Regarding the disciplinary rules, a work group has been formed to consider future amendments to the ethical duties and disciplinary grounds for registrants. The Department will wait for the work group's recommendation before making further changes. Regarding the request to delay the adoption of the rules, the Commission and the Department believe the agency needs to lay a foundation from which to build improvements on industry regulation. These rules lay that foundation. The Department and Commission decline to halt adoption of these rules.

B. Public comments made at the public hearing on the rules held December 14, 2009.

Comment: An individual made two submissions during the written comment period and made comment on behalf of himself and his wife in the public hearing on the rules held on December 14, 2009. The Department has addressed his comments together to avoid duplicating the response under each summary heading. First, he proposes that "Course 33: IAAO---Property Appraisal and Assessment Administration: Chapter 20 Sales Analysis & Mass Appraisal Performance Evaluation" be included in the core curriculum under §94.26.

Response: A work group has been formed to consider future amendments to the education requirements for registrants. In addition, the Department will hold an education summit in Spring 2010 to obtain addition input on the various education issues. The Department has withdrawn §94.26, which contained the education and core curriculum requirements. The relevant existing board rules continue in existence.

It is important to note that §1151.1015 of the Occupations Code provides that the Comptroller shall enter into a Memorandum of Understanding ("MOU") with the Department under which the Comptroller shall provide, "Review and approval of all required educational courses, examinations, and continuing education programs for registrants". The MOU referred to in this statutory provision states that the Comptroller shall review and, if approved, provide written approval of educational courses. As clearly delineated by the statute and the MOU, the Department may not add a course to the core curriculum on its own.

Second Comment: The same individual submitted a second packet of information containing a collection of documents, pictures, photos, and a DVD. These items reflect the individual's interest and participation in property tax issues and the regulatory activities of the previous board and several appraisal districts. Most of the submitted documentation does not specifically address the Department's proposed rules, except as noted below.

Many documents appear to be original documents or emails that have been cut and pasted with pictures, handwritten comments, diagrams, photos of himself and his wife to create a packet that is a collage presentation of sorts. The majority of the material is not directly relevant to the rules that have been published for comment. However, it appears, although it is not stated, that he provided a page marked with "subject" post-it flags and those flags appear to propose language changes to the rule draft. The individual expressed concerns regarding potential conflicts of interests for employees of appraisal districts and offered language to revise §94.100.

Response: The Department declines to make the suggested changes to the wording of the rules at this time. It appears that these edits do not substantively add or detract from the substance of the proposed rules. The language offered does not require more stringent duties on the registrant than what is already indicated. As such, the Department believes the proposed language is appropriate. Furthermore, a work group has been formed to consider future amendments to the ethical duties and disciplinary grounds for registrants. The Department will wait for the work group's recommendation before making further changes.

Third Comment: The same individual said his public comment offered in open meeting was a repetition of what he had submitted earlier. He provided a copy of the rules with underlines, highlights, "confidential" stamps, a flag, and some arrows among other illustrations on a copy of the rules posted for comment. However, for most of this material, there is no clear explanation of how the comments relate to the proposed rules. He does comment in open meeting that §94.100(2) should state, "unless acceptance of something of value is totally unrelated to my performance of duties".

Response: The Department declines to make the suggested change. It appears that the suggested language does not substantively add or detract from the proposed rule. The language offered does not require a more stringent duty on the registrant than what is already indicated. As such, the Department believes the proposed rule is appropriate. Furthermore, a work group has been formed to consider future amendments to the ethical duties and disciplinary grounds for registrants. The Department will wait for the work group's recommendation before making further changes.

Comment: The same individual noted above offered and read a letter from a third party during the public hearing on the rules. The author of the letter expressed disapproval of the request for an open records determination sent to the Attorney General's office regarding whether certain education materials are public information or are confidential commercial information of a third party. The author of the letter also makes a general statement as to the displeasure of the tax burden placed on business owners by federal and state authorities.

Response: The Department has sought the determination of the Attorney General as to the Department's responsibility to deliver or withhold the material under the Public Information Act. When the Department receives the determination, the Department will timely respond according to the Attorney General's determination. His general comments do not appear to be commenting on the published rules, so the Department is unable to make any changes in response.

Comment: Another interested party expressed concerns about a financial report previously issued by the BTPE.

Response: The Department appreciates his comment. However, his comments did not appear to focus on the published rules but rather a financial report from the abolished board. The Department is unable to make any changes to the proposed rules at this time based on this comment.

Comment: Another person read an affidavit as to what happened with him and another individual at a 2004 BTPE meeting. He also read a letter from a third party offering a complaint against the Harris County Appraisal District.

Response: The Department appreciates these comments; however, they do not address the proposed published rules, which were the subject of the hearing. The comments on experiences with an appraisal district or a past hearing with the previous, now abolished board, do not appear to address the proposed rules as published. The Department is unable to make any changes to the proposed rules at this time based on these comments.

Comment: Another individual read a prepared statement criticizing BTPE and its relationship with appraisal districts. He also read a portion of a Harris County employment manual.

Response: The Department appreciates his general comments and participation in the public meeting, but declines to make any changes at this time. Work groups have been formed to consider future amendments to the requirements for registrants related to education, conflicts of interest, and disciplinary matters. The Department will wait for the work groups' recommendations before making further changes.

Comment: An interested party advocates adopting increased educational standards including annual or biennial mandatory continuing education.

Response: The Department declines to make any changes in response to the comment at this time. A work group has been formed to consider future amendments to the education requirements for registrants. In addition, the Department will hold an education summit in Spring 2010 to obtain addition input on the various education issues. The Department has withdrawn §94.26, which contained the education and core curriculum requirements.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1151, which authorizes the Commission, the Department's governing body, to adopt rules as necessary

to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the adoption.

§94.20. Persons Required to Register.

(a) Those required to register are:

(1) the chief appraiser of an appraisal district, an appraisal supervisor or assistant, a property tax appraiser, an appraisal engineer, and any other person authorized to render judgment on, recommend, or certify an appraised value to the appraisal review board of an appraisal district;

(2) a person who engages in appraisal of property for ad valorem tax purposes for an appraisal district or a taxing unit;

(3) an assessor-collector, a collector, or another person designated by a governing body as the chief administrator of the taxing unit's assessment functions, collection functions, or both; and

(4) a person who performs assessment or collection functions for a taxing unit and is required to register by the chief administrator of the unit's tax office.

(b) A county assessor-collector is not required to register with the department if the county, by contract entered into under §6.24(b) Tax Code, has its taxes assessed and collected by another taxing unit or an appraisal district.

§94.21. Registration.

To be registered an applicant must:

(1) be at least 18 years of age;

(2) be a resident of the State of Texas;

(3) be a person of good moral character;

(4) be a graduate of an accredited high school or holder of high school graduation equivalency;

(5) be actively engaged in appraisal, assessing/collecting, or collecting for an appraisal district; tax office, or private firm working for an appraisal district or tax office;

(6) submit a completed application on a form approved by the department; and

(7) pay the applicable fees under §94.80.

§94.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) For each fifth renewal of the following registration types: Registered Texas Assessor or Registered Professional Appraiser, a registrant must complete 75 hours of continuing education in courses approved by the Comptroller of Public Accounts.

(c) For each fifth renewal of a Registered Texas Collector, a registrant must complete 25 hours of continuing education in courses approved by the Comptroller of Public Accounts.

(d) The continuing education hours must have been completed within the five-year period ending with the current expiration date of the registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the five-year period prior to the date of renewal.

(e) A course approved by the Comptroller may be taken for continuing education credit.

(f) A registrant may not receive continuing education credit for attending the same course more than once.

(g) For each fifth renewal, a Registered Texas Collector, Registered Professional Appraiser, or Registered Texas Assessor/Collector must complete a course, or combination of courses, dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) ethics; or

(4) laws and rules.

(h) A Registered Texas Collector, Registered Professional Appraiser, or Registered Texas Assessor/Collector must retain a copy of the certificate of completion or other proof acceptable to the department for a course for five years after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.

(i) To be approved by the Comptroller, a provider's course must be dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) ethics; or

(4) laws and rules.

This agency 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 December 29, 2009.

TRD-200906059
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.7

The Texas Funeral Service Commission (commission) adopts an amendment to §203.7, concerning Price Disclosure, without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7759).

The amendment is adopted in order to update the requirements for specific descriptions of merchandise listed on the retail price

list and statement of goods and services and, with the increasing demand for cremation, to require a price list for urns.

Following are the public comments received and corresponding commission response:

COMMENT: The Commission received one comment from Scott Ahrendt of Service Corporation International (SCI) requesting the commission to reconsider adding §203.7(b)(2)(B)(ii): "The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list;" delete §203.7(b)(2)(C): "Place on the list, however produced," and add §203.7(b)(2)(C): "If the funeral home refers to the type of sealing feature, e.g. sealer, non-sealer, gasketed or non-gasketed on its general price list, it must also make reference to those qualities on its casket price list."

COMMISSION RESPONSE: The Commission disagrees with striking §203.7(b)(2)(B)(ii): "The type of sealing features, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list." These terms mean that the casket has a rubber gasket or some other feature that is designed to delay the penetration of outside elements into the casket. The Federal Trade Commission (FTC) Funeral Rule forbids claims that these features help preserve the remains indefinitely because they do not.

The Commission believes §203.7 is in compliance with the FTC Funeral Rule and will assure SCI staff members will also be in compliance with the FTC Rule while conducting business with the consuming public.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906052
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 936-2469

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PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 621. ADMINISTRATION

22 TAC §621.1

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 621, §621.1 regarding the administration of the Board of Tax Professional Examiners without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7765) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906060
William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §§623.1 - 623.5, 623.11 - 623.17

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 623, §§623.1 - 623.5 and §§623.11 - 623.17 regarding the registration and certification of tax professional examiners, without changes to the proposal as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7765) and will not be republished. The adopted repeal takes effect January 18, 2010.

The proposed repeal of §§623.6 - 623.10, which was published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7765), is being withdrawn at this time from consideration for adoption. It is necessary to keep these rules in place until the Department provides a substitute under 16 TAC Chapter 94 to implement an improved classification system for property tax professionals.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission with the changes as noted above.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906061
William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 624. EDUCATION

22 TAC §§624.1 - 624.11

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 624, §§624.1 - 624.11 regarding the education of tax professional examiners, without changes to the proposal as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7766) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
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For further information, please call: (512) 463-7348

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CHAPTER 625. STANDARDS OF PROFESSIONAL PRACTICE

22 TAC §625.1

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 625, §625.1 regarding the standards of professional practice of tax professional examiners, without changes to the proposal as published in the November 6, 2009,

issue of the *Texas Register* (34 TexReg 7767) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
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For further information, please call: (512) 463-7348

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CHAPTER 627. ASSESSOR'S CODE OF ETHICS

22 TAC §627.1

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 627, §627.1 regarding the assessor's code of ethics of tax professional examiners, without changes to the proposal as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7767) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

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CHAPTER 628. ETHICAL CONDUCT

22 TAC §§628.1 - 628.7

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 628, §§628.1 - 628.7 regarding the ethical conduct of tax professional examiners without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7768) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax profession-

als under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation (Department). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

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CHAPTER 629. PENALTIES, SANCTIONS, AND HEARINGS

22 TAC §§629.1 - 629.18

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 629, §§629.1 - 629.18 regarding penalties, sanctions, and hearings of tax professional examiners without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7769) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
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Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 630. EFFECTIVE DATES

22 TAC §630.1

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 630, §630.1 regarding effective date requirements of tax professional examiners, without changes to the proposal as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7770) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax pro-

fessionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 631. ADMINISTRATIVE PROCEDURES

22 TAC §§631.1 - 631.3

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 22 Texas Administrative Code ("TAC") Chapter 631, §§631.1 - 631.3 regarding the administrative procedures of tax professional examiners, without changes to the proposal as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7770) and will not be republished. The adopted repeal takes effect January 18, 2010.

The Commission adopts the repeal of the Board of Tax Professional Examiners rules in order to implement House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session (2009) and to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, the rules of the Texas Department of Licensing and Regulation ("Department"). HB 2447 transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Department effective September 1, 2009; amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals; and abolished the Board of Tax Professional Examiners. The Commission in a separate rulemaking action is adopting new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

At their meeting held December 11, 2009, the Tax Professional Advisory Committee discussed the rules and unanimously recommended adoption by the Commission.

The proposed repeal was published in the *Texas Register* on November 6, 2009. The 30-day public comment period closed on December 7, 2009. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under HB 2447, 81st Legislature, Regular Session (2009) and Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2009.

TRD-200906068
William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Effective date: January 18, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 463-7348

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §229.172 and new §229.172 concerning the accreditation of certified food management programs, and the repeal of §229.176 and new §229.176 concerning the certification of food managers. The new §229.176 is adopted with changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5476). The repeal of §229.172 and §229.176 and new §229.172 are adopted without changes to the proposed text and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The purpose of the repeals and new §229.172 and §229.176 is to reflect the decision to remove the department as one of the approved certified food manager examination providers. Neither the statutes nor the repealed rules require the department to pro-

vide an examination. The department's decision not to provide examinations required changes to the rules. The repeal and new rules are also a result of the Certified Food Managers (CFM) Program utilizing the recommendations of the Sunset Occupational Licensing Model (model). Through its history of reviewing occupational licensing agencies dating back to 1977, the Sunset Commission has observed standard practices that guide such matters as agency structure, the oversight they receive, and their approach to licensing and enforcement. The compilation of these standard practices provides a model for evaluating occupational licensing agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. The model states that for any written exam, an agency should use a national or regional testing service and not prepare its own test. A testing service eliminates bias and uses validated questions. It also promotes standardization of licensing requirements nationwide and helps simplify the movement of licensees from state to state.

The Conference for Food Protection (CFP) has developed the essential components of a nationally recognized food manager certification examination. The components outline the criteria for the development of food safety certification examinations, which includes psychometric standards, job analysis, internal security, periodic review and examination administration. The American National Standards Institute (ANSI) is the reviewing organization for companies that choose to achieve ANSI-CFP accreditation. At this time, the department licenses three companies that meet ANSI-CFP accreditation standards. The department also licenses two Internet certification examination providers that meet department rule requirements.

SECTION-BY-SECTION SUMMARY

The repeal and new §229.172 concern the accreditation of food management programs, to reflect the decision that the department will no longer be an examination provider in Texas. References in the new section have been updated throughout to reflect this change.

Concerning new §229.172(b), the following definitions are deleted as a result of the department not being one of the approved Certified Food Manager examination providers, so these terms are no longer necessary: "Examination administrator," "Proctor," "Psychometric," "Secure," and "Traceable means." The following definition is added for clarification, "On-site examination." Minor grammatical changes are made for clarification.

The repeal and new §229.176 concern the certification of food managers, to reflect the decision that the department will no longer be an examination provider in Texas, and adds new §229.176(g) concerning Internet examination development and additional reporting requirements for Internet examination providers. References in the new section reflect these changes.

Concerning new §229.176(b), the following definitions are deleted as a result of the department not being one of the approved Certified Food Manager examination providers, so these terms are no longer necessary: "Examination administrator," "Nonprofit organization," "Proctor," "Psychometric," "Secure," and "Traceable means." The following definitions are added, "Internet examination" and "On-site examination." Minor grammatical changes are made for clarification.

COMMENTS

The department on behalf of the commission has reviewed and prepared responses to the comments received regarding the repeal and new proposed rules at the public hearing during the comment period, which the commission has reviewed and adopts.

The commenter was a program provider, Food Safety Direct. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning new §229.172 and §229.176 in general, a commenter was concerned that the literacy needs of the industry were not addressed by the department-approved ANSI-CFP Program accredited examination providers.

RESPONSE: The commission disagrees because the CFP Program Standards for Accreditation of Food Protection Manager Certification Programs, §4, requires accredited examination providers to develop procedures necessary to accommodate qualified candidates with literacy limitations that may require a reader to assist the candidate. No changes were made to the rules as a result of this comment.

COMMENT: Concerning new §229.172 and §229.176 in general, a commenter was concerned about the types of identifications accepted by the department-approved ANSI-CFP Program accredited examination providers.

RESPONSE: The commission disagrees because security is essential for high stakes examinations such as the Food Protection Manager Certification Examination. The certification bodies must verify that the person who is taking the examination is indeed the person who is registered to take the examination. The most common practice in this regard is to require the examinee to show government issued identification(s). When a certification is directly related to public health, it is essential that security procedures are in place to protect the exam and ensure the individual who is certified has acquired the knowledge needed for a Certified Food Protection Manager. No changes were made to the rule as a result of this comment.

The following revision was made to clarify accreditation standards.

Concerning new §229.176(g), the following language was added: "with the exception of §4.14(a)" to clarify that §4.14(a) of the *CFP Program Standards for Accreditation of Food Protection Manager Certification Programs* is not applicable.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §229.172, §229.176

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 438, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §438.042, food service programs, §438.102, certification of food managers, §438.043, basic food safety accreditation, and §437.0076(b), certified food manager; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health

and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency 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 December 31, 2009.

TRD-200906099
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: January 20, 2010
Proposal publication date: August 14, 2009
For further information, please call: (512) 458-7111 x6972

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25 TAC §229.172, §229.176

STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, Chapter 438, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §438.042, food service programs, §438.102, certification of food managers, §438.043, basic food safety accreditation, and §437.0076(b), certified food manager; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§229.176. Certification of Food Managers.

(a) Purpose. This section is intended to provide the framework of certification requirements for food managers in accordance with Health and Safety Code, Chapter 438, Subchapter G, Certification of Food Managers, supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) ANSI-CFP Program Accreditation--Accreditation by the American National Standards Institute (ANSI) and the Conference for Food Protection (CFP), which accredit programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(2) Certificate--The documentation issued by a department-approved Internet examination provider licensee or an ANSI-CFP Program examination licensee verifying that an individual has complied with the requirements of this section.

(3) Certification--The process whereby a certified food manager certificate is issued.

(4) Certified food manager--A person who has demonstrated that he or she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a certified food manager examination and becoming certified as described in this section.

(5) Certified food manager examination--A department-approved Internet examination or an ANSI-CFP Program accredited on-site examination for food manager certification.

(6) Department--Department of State Health Services.

(7) Examination site--The physical location at which the department-approved examination is administered.

(8) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(9) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(10) Internet examination--A department-approved examination delivery system utilizing the Internet for food manager certification.

(11) Law--Applicable local, state and federal statutes, regulations and ordinances.

(12) Licensee--The individual, corporation, or company that is licensed by the department to administer a department-approved examination for food manager certification.

(13) On-site examination--An ANSI-CFP Program accredited paper and computer-based examination for food manager certification administered by a certified food manager program.

(14) Person--An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.

(15) Personal validation question--A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.

(16) Reciprocity--Acceptance by state and local regulatory authorities of a department-approved certified food manager certificate.

(17) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(18) Two-Year Renewal Certificate--The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department-issued certificate.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by a food safety examination. To be certified, a food manager shall pass a department-approved Internet examination or an accredited ANSI-CFP Program on-site examination.

(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department-approved examination shall be accepted as meeting the training and examination requirements under Health and Safety Code, §438.046(b).

(4) Certificate availability. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

(d) On-site examination. ANSI-CFP Program accredited food safety certification examinations shall be the only department-approved paper and computer-based examinations.

(e) Internet examinations. A department-approved examination utilizing the Internet for delivery shall meet the examination criteria outlined in this section.

(f) Responsibilities for Internet examination providers.

(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to Internet examinations in this section.

(2) Examination Security Agreement. Internet examination providers shall submit the department security agreement signed by the certified food manager Internet examination provider licensee.

(3) Examination security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures shall be taken to assure that the examination is not compromised.

(g) Internet examination development. Internet examination development shall meet the criteria established by the *CFP Standards for Accreditation of Food Manager Certification Programs*, §4.0, Food Safety Certification Examination Development, as amended, 2008, at http://www.foodprotect.org/managers-certification/, with the exception of §4.14(a).

(1) Examination questions. Internet examinations shall consist of a minimum of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.

(2) Examination forms. Each candidate shall receive a unique form of the examination with regard to question sequence.

(3) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.

(h) Internet examination administration.

(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:

(A) verify their identity;

(B) provide responses to ten personal validation questions; and

(C) maintain examination security.

(2) Licensee examination disclosure information. The licensee shall inform the candidate that:

(A) reference materials shall not be used during the examination;

(B) the candidate shall not receive assistance from anyone during the examination; and

(C) examination questions shall not be replicated in any fashion.

(3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process shall include the following elements:

(A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;

(B) the personal validation questions shall be randomly generated with respect to time and order;

(C) the same personal validation questions shall not be asked more than once during the same examination; and

(D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.

(4) System support. The Internet examination provider licensee shall include the following Internet examination system capabilities and security measures:

(A) capability to browse or review previously completed examination questions;

(B) capability to navigate logically and systematically through the examination;

(C) technical support personnel for Internet examination issues;

(D) security of personal candidate information in transit and at rest;

(E) a back-up and disaster recovery system capability; and

(F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.

(5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance for each language in which the examination is offered. The report shall include:

(A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;

(B) number of examinations administered;

(C) number and percentage of candidates passing the examination;

(D) number of personal validation questions used;

(E) number of examinations discontinued due to incorrect responses to personal validation questions; and

(F) statistics describing the performance of each item used on the examinations administered during the six-month period.

(i) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department-approved examination provider. Candidates whose certificates are issued after successful passage of a department-approved examination shall be deemed to meet the requirements for food manager certification.

(2) Certificate period. A certified food manager certificate issued by a department-approved examination provider under this section shall comply with the *CFP Standards for Accreditation of Food Protection Manager Certification Programs*, §7.3, Effective Date of Certificate, as amended, 2008, at http://www.foodprotect.org/managers-certification/.

(3) Recertification. Candidates may become recertified by passing a department-approved examination.

(j) Department certificates.

(1) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, shall be renewed every two years and may be renewed two times.

(2) Department certificate replacement. An individual requesting a certified food manager certificate replacement shall submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(k) Department certificate fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees shall be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Two-year renewal certificate fee. The fee for a two-year renewal certificate shall be $10.

(2) Replacement certificate fee. A replacement certificate fee for the department examination shall be $15.

(3) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(l) Licensing of certified food manager licensee. The department shall issue a license to a certified food manager licensee meeting the requirements of this section. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or examination site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed application to the department.

(2) Security agreement. The licensee shall submit a signed security agreement that individual examination items, examination item banks, certified food manager certification examinations, examination answer sheets, and candidate scores shall be secure at all times, and during administration that the examinations shall remain secure.

(3) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (n)(1) of this section.

(4) Certification examination. Department-approved examination(s) utilized by the certified food manager licensee shall be designated on the application.

(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.

(m) Responsibilities of licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (n) of this section.

(n) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees shall be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licenses shall be valid for a two-year period and fees shall be based on the number of examination sites at which the licensee administers the examinations based on the following scale:

(A) one site:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $400; and

(ii) a license fee for a program amendment during the current licensure period shall be $200;

(B) two to ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $1,000; and

(ii) a license fee for a program amendment during the current licensure period shall be $500;

(C) over ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $2,000; and

(ii) a license fee for a program amendment during the current licensure period shall be $1,000.

(2) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(3) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(o) Certified food manager licensee registry. The department shall maintain a registry of all certified food manager licensees. The registry shall be made available on the department website.

(p) Department audits. Audits of certified food manager licensees may be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Licensees shall allow personnel authorized by the department access for the purposes of an audit.

(q) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:

(1) breach of the security agreement;

(2) delinquency in payment of fees as described in this section; or

(3) violation of the provisions of this section.

(r) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(s) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (j) and (k) of this section are met.

This agency 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 December 31, 2009.

TRD-200906100
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: August 14, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 2. SPORTS AND EVENTS TRUST FUND

SUBCHAPTER A. MAJOR EVENTS TRUST FUND

34 TAC §§2.100 - 2.105

The Comptroller of Public Accounts (comptroller) adopts new Chapter 2, concerning Sports and Events Trust Funds, with changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6433). New Chapter 2 is necessary to implement Senate Bill 1515, 81st Legislature, 2009. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 2, new Subchapter A, Major Events Trust Fund. Subchapter A implements provisions of Texas Civil Statutes, Article 5190.14, §5A, which provides for the creation of the Major Events Trust Fund and provides for the deposit of state and local tax revenues into the trust fund for the purposes of paying costs related to attracting, making preparations for, and conducting certain statutorily identified events within the state. The new subchapter also incorporates amendments made to Texas Civil Statutes, Article 5190.14, §5A, by Senate Bill 1515, 81st Legislature, 2009. Changes are made to §2.100 adding a definition of trust fund estimate which was omitted from the proposed rule. The new rules prescribe definitions to be used in this subchapter, §2.100; eligibility criteria for participation in the Major Events Trust Fund program, §2.101; establishes procedures for requesting participation in the Major

Events Trust Fund, §2.102; provides reporting requirements for participating municipalities and counties, §2.103; provides reimbursement procedures for municipalities and counties to follow, §2.104; and establishes special procedures for certain large events estimated to generate over $15 million in state and local tax revenue, §2.105.

The comptroller received comments on the proposed rules.

A representative of the City of San Antonio--Convention and Sport Facilities (San Antonio) comments that the process of reaching a final determination of the incremental increase in tax revenue associated with hosting an event would be significantly improved if the comptroller were to provide a preliminary or draft determination before the final determination is made. San Antonio argues that even a three-day comment period before the determination is made final would allow a community to correct any egregious errors. The comptroller believes that no change to the rule is necessary. The comptroller's office, as a matter of course, routinely communicates with the contact person representing a host community when any apparent mistakes or obvious omissions are identified by comptroller staff in the materials submitted by or for the host community. Creating a formalized comment period on a preliminary estimate would require increased staffing in order to administer. The 30-day review and estimate period authorized by Senate Bill 1515 will allow sufficient time for the current informal practice to accomplish the goals described in the comment, consequently, no formal comment period is needed.

San Antonio also requests that the comptroller consider additional provisions in the rules to clarify that the incremental increase in tax revenue is to be determined within the market area. The City argues that there would be no reason to utilize the market area concept if the only issue is to determine the incremental tax revenue to the State. The comptroller believes that no change to the rules is necessary based on this comment. According to the governing statutes, the state's deposit into the trust fund may not exceed "the incremental increase in the receipts to the state from taxes imposed...within the market areas...that is directly attributable...to the preparation for and presentation of the event and related activities." (Article 5190.14, §5A(b)(1)). The phrase "incremental increase in receipts to the state" refers to the increase from taxes paid in Texas that would not have been paid in Texas had the event not been held here. The statutory language is clear that the upper limit of the state's deposit is determined by the incremental increase in tax revenues to the state, not the incremental increase within the market areas.

A representative of the City of Arlington (Arlington) requests clarification of proposed §2.104(c) regarding the deadlines for submission to the comptroller of a local entity's plan of withholding and a copy of the event support contract. The City of Arlington points out that under the statute, the comptroller must begin retaining and depositing local tax revenue with the first distribution of the tax revenue that occurs after the first day of the one-year period, and also points out that the first day of the one-year period is two months prior to the date of the event. Arlington asks whether under the rules an endorsing municipality participating in the Major Events Trust Fund has until the date of the event to provide the comptroller with the city's agreement with the local organizing committee as well as the city's plan of withholding. The comptroller believes that no change to the rules is necessary. The current wording of the rules gives the comptroller the flexibility to accommodate the situation described by the City of Arlington. The requirement that the event support contract and withholding plan be submitted "no later than the date of the event" allows the submission to be made prior to the event if that is the endorsing entity's preference.

The new rules are adopted under Texas Civil Statutes, Article 5190.14, §5A(v), as added by Senate Bill 1515, 81st Legislature, 2009, which allows the comptroller to adopt rules to implement the provisions of Texas Civil Statutes, Article 5190.14, §5A.

The new rules implement Texas Civil Statutes, Article 5190.14, §5A, as amended by Senate Bill 1515, 81st Legislature, 2009.

§2.100. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Endorsing county--A county that contains a site selected by a site selection organization for one or more events, or a county that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(3) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events, or a municipality that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(4) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization.

(5) Event--A Super Bowl, a National Collegiate Athletic Association Final Four tournament game, the National Basketball Association All-Star Game, the National Hockey League All-Star Game, the Major League Baseball All-Star Game, a National Collegiate Athletic Association Bowl Championship Series game, a World Cup Soccer game, the World Games, a national collegiate championship of an amateur sport sanctioned by the national governing body of the sport that is recognized by the United States Olympic Committee, an Olympic activity, including a Junior or Senior activity, training program, or feeder program sanctioned by the United States Olympic Committee's Community Olympic Development Program, the Breeders' Cup World Championships, or a Formula One automobile race. The term includes any activities related to or associated with the event.

(6) Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas after considering one or more sites that are not located in Texas; and

(C) shall not select the site for the event more than one time in a calendar year.

(7) Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(8) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(9) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively.

(10) Site selection organization--The National Football League, the National Collegiate Athletic Association, the National Basketball Association, the National Hockey League, Major League Baseball, the Federation Internationale de Football Association (FIFA), the International World Games Association, the United States Olympic Committee or the national governing body of a sport that is recognized by the United States Olympic Committee, the National Thoroughbred Racing Association, Formula One Management Limited, or the Federation Internationale de l'Automobile.

(11) Trust fund--The Major Events Trust Fund.

(12) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.104. Reimbursement.

(a) Reimbursement payments from the trust fund shall be used to finance costs of the event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) making the preparations necessary and desirable for the conduct of an event in this state, including the construction or renovation of facilities to the extent authorized by law; and

(3) conducting an event in this state.

(b) Reimbursement payments from the trust fund may not be used to make payments to a site selection organization or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Payments to a site selection organization or any other entity are subject to verification or audit by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a copy of the event support contract, any amendment to the contract, and any related documentation; and

(2) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be disbursed to an endorsing municipality or endorsing county, the request must be submitted to the comptroller, with a proposed local funds withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller form AP-152 *Texas Application for Payee Identification Number* for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving reimbursement directly from the comptroller;

(2) the amount to be reimbursed;

(3) a general explanation of the expenses the reimbursement represents;

(4) a statement that the money was not used to solicit the relocation of a professional sports franchise located in the state;

(5) information indicating whether payment will be made by direct deposit or by warrant;

(6) a detailed list of expenditures for reimbursement;

(7) copies of invoices for expenditures;

(8) supporting documentation showing payment of invoices; and

(9) a signed statement indicating that all payroll expenditures submitted for reimbursement have been paid.

(f) The comptroller shall return any local funds remaining unexpended in the trust fund after the reimbursement of expenditures is completed to an endorsing municipality and/or endorsing county in proportion to their initial contribution to the fund.

(g) The comptroller may request supporting documentation regarding any expenditures submitted for reimbursement.

This agency 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 January 4, 2010.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER B. EVENTS TRUST FUND

34 TAC §§2.200 - 2.204

The Comptroller of Public Accounts (comptroller) adopts new Chapter 2, concerning Sports and Events Trust Funds, with changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6436). New Chapter 2 is necessary to implement Senate Bill 1515, 81st Legislature, 2009. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 2, new Subchapter B, Events Trust Fund. The new rules are adopted with a change to

§2.202(c) to add language regarding a request for market area designation. New §2.202(c) will be relettered as §2.202(d) and the remaining subsections shall be relettered accordingly and other conforming changes are made. A corresponding change is made to §2.200(8) adding a definition of "Market area" and relettering that section accordingly.

Subchapter B implements provisions of Texas Civil Statutes, Article 5190.14, §5C, which provides for the creation of the Events Trust Fund and provides for the deposit of state and local tax revenues into the trust fund for the purposes of paying costs related to attracting, making preparations for, and conducting certain qualifying sporting and non-sporting events within the state. The new subchapter also incorporates amendments made to Texas Civil Statutes, Article 5190.14, §5C, by Senate Bill 1515, 81st Legislature, 2009. The new rules prescribe definitions to be used in this subchapter, §2.200; eligibility criteria for participation in the Events Trust Fund program, §2.201; establishes procedures for requesting participation in the Events Trust Fund, §2.202; provide reporting requirements for participating municipalities and counties, §2.203; and provides reimbursement procedures for municipalities and counties to follow, §2.204.

The comptroller received comments on the proposed rules.

An individual commented that §2.202(h) which applies a reduction to the estimated incremental increase in tax revenue for events held within the state for the previous five years should be modified such that the reduction is applied only in cases where the multiple years are consecutive. The commentor states that if the multiple years are not consecutive and if the event has gone through a site selection process and if the event were actually awarded to another state, the fact that the event is returning to Texas should result in the event being treated like a new event. The comptroller does not believe that the comment requires any change to the rules. Section 2.202(h) as proposed gives the comptroller the discretion and flexibility to make the appropriate adjustments to the estimated incremental increase in tax revenue based on language in this subsection that such adjustments may be made "to the extent the comptroller determines is necessary to reflect changes to the character, timing, or location of the event."

An attorney representing the Texas Alliance for Sporting and Other Events Development (the Alliance) commented that §2.201 should be amended to establish a procedure by which the comptroller can make a binding, written determination in advance of a particular event as to whether the event is eligible for participation in the Events Trust Fund. The Alliance states that without an assurance that an event is eligible for funding under the Events Trust Fund, some local entities may decide not to incur the cost of bidding for an event. The comptroller believes that no change to the proposed rule is necessary. Local entities are able to make such requests already. Questions regarding eligibility or other issues are often currently discussed and resolved informally. A formal, binding process would add unnecessary administrative cost.

The Alliance also commented that the proposed four-month deadline in §2.202(e) for a request for participation to be submitted to the comptroller should be changed to three months consistent with §2.102(f) of the Major Events Trust Fund rules. According to Alliance, having two different deadlines may create confusion and an unnecessary potential for requestors to inadvertently miss the deadline. The comptroller does not believe that a change to the proposed rules is necessary based on this comment. The deadlines for both the Events Trust Fund and the Major Events Trust Fund should remain unchanged consistent with the statutes. Senate Bill 1515 removed the requirement that the comptroller's estimate for Major Events Trust Fund requests needs to be released no later than three months before an event begins. The law created a window for requests to be submitted-between one year before and three months before the event begins. In addition, the law authorizes the comptroller's office to have up to 30 days to process the request and release its estimate. Therefore, an estimate for a request received three months before an event begins could be released as late as two months before an event begins. Senate Bill 1515 left intact for the Events Trust Fund the requirement that the comptroller's estimate be released no later than three months before an event begins. Senate Bill 1515 also authorizes the comptroller to have up to 30 days to process an Events Trust Fund request and release its estimate. Consequently, for an estimate to be released three months before an event begins, requests need to be submitted to the comptroller four months before an event begins. With the anticipated increase in the number of requests, the 30-day time period is necessary to effectively administer each program.

A representative of the City of San Antonio--Convention and Sport Facilities ("San Antonio") comments that the process of reaching a final determination of the incremental increase in tax revenue associated with hosting an event would be significantly improved if the comptroller were to provide a preliminary or draft determination before the final determination is made. San Antonio argues that even a three-day comment period before the determination is made final would allow a community to correct any egregious errors. The comptroller believes that no change to the rule is necessary. The comptroller's office, as a matter of course, routinely communicates with the contact person representing a host community when any apparent mistakes or obvious omissions are identified by comptroller staff in the materials submitted by or for the host community. Creating a formalized comment period on a preliminary estimate would require increased staffing in order to administer. The 30-day review and estimate period authorized by Senate Bill 1515 will allow sufficient time for the current informal practice to accomplish the goals described in the comment, consequently, no formal comment period is needed.

San Antonio also requests that the comptroller consider additional provisions in the rules to clarify that the incremental increase in tax revenue is to be determined within the market area. The City argues that there would be no reason to utilize the market area concept if the only issue is to determine the incremental tax revenue to the State. The comptroller believes that no change to the rules is necessary based on this comment. According to the governing statutes, the state's deposit into the trust fund may not exceed "the incremental increase in the receipts to this state from taxes imposed...within the market areas...that is directly attributable...to the preparation for and presentation of the event and related activities." (Article 5190.14, §5C(b)(1)). The phrase "incremental increase in receipts to this state" refers to the increase from taxes paid in Texas that would not have been paid in Texas had the event not been held here. The statutory language is clear that the upper limit of the state's deposit is determined by the incremental increase in tax revenues to the state, not the incremental increase within the market areas.

San Antonio notes that language regarding procedures for designation of a market area that are included in the Major Events Trust Fund §2.102(c) are not also included in §2.202 of the Events Trust Fund rules. The City suggests that it would be helpful to the comptroller to also include these provisions

in the Events Trust Fund rules. The comptroller agrees to add language regarding the designation of a market area to §2.202 of the Events Trust Fund rules and to make an additional conforming change by adding a definition of "market area" to §2.200 of the Events Trust Fund rules.

The City of San Antonio seeks clarification on the proposed rules relating to eligibility under §2.201 and how it impacts situations where a local entity applies for and is awarded a series of events. San Antonio requests that the rule clarify that the award occurs at the time the community applies for and wins the bid for a series of events. The City states that a local entity should not be required to submit a subsequent request to the comptroller for a determination, all that should be required is an update of previously submitted information. The comptroller believes that no change to the rules is necessary. The Events Trust Fund statute grants eligibility to events based on the fact that they are held just once each year, among other criteria. The law also requires a local match of funds as a condition for the creation of a particular trust fund. Given the state's budget cycle of two years and one-year budget cycles for cities, a continued re-commitment by requesting cities appears to be an appropriate requirement. In addition, the statutory eligibility of an event may change after the first event is held and before subsequent events in the series. For example, a sponsor of an otherwise eligible event may add similar events within the state or in bordering states, thus rendering the original event ineligible under Texas Civil Statutes Article 5190.14, §5C(a-1). A comptroller commitment that extended beyond a one-year period, as suggested, could result in a conflict with the statute.

The new rules are adopted under Texas Civil Statutes, Article 5190.14, §5C(p) as added by Senate Bill 1515, 81st Legislature, 2009, which allows the comptroller to adopt rules to implement the provisions of Texas Civil Statutes, Article 5190.14, §5C.

The new rules implement Texas Civil Statutes, Article 5190.14, §5C, as amended by Senate Bill 1515, 81st Legislature, 2009.

§2.200. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Endorsing county--A county that contains a site selected by a site selection organization for one or more events.

(3) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events.

(4) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization.

(5) Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(6) Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas or an adjoining state; and

(C) shall not select the site for the event more than one time in a calendar year.

(7) Local organizing committee--A nonprofit corporation or its successor that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(8) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(9) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively.

(10) Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(11) Trust fund--The Events Trust Fund.

(12) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.202. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization selecting the site in Texas; and

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas including a listing of and data for any related activities.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as

projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not later than four months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

(i) If the comptroller determines that the event has been held in the state within the previous five years, the estimated incremental increase in tax revenue will be reduced according to the following percentages, subject to adjustment to the extent the comptroller determines is necessary to reflect changes to the character, timing or location of the event:

Figure: 34 TAC §2.202(i)

This agency 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 January 4, 2010.

TRD-201000002
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: January 24, 2010
Proposal publication date: September 18, 2009
For further information, please call: (512) 475-0387

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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: 34 TAC §2.202(i)

Number of Years the Event was Held in Texas in Last Five Years	Percent of Revenue Impact Used in Trust Fund Estimate
0	100.0%
1	85.5%
2	74.6%
3	66.2%
4	59.5%
5	54.1%

Figure: 34 TAC §3.121(b)(1)(B)(i)

FY2010

Tax rate per ounce	$1.10
Total ounces in can or package	Tax for an individual can or package
1.2 or less	$1.32
1.3	$1.43
1.4	$1.54
1.5	$1.65
1.6	$1.76
1.7	$1.87
1.8	$1.98
1.9	$2.09
2.0	$2.20

Figure: 34 TAC §3.121(b)(1)(B)(ii)

FY2011

Tax rate per ounce	$1.13
Total ounces in can or package	Tax for an individual can or package
1.2 or less	$1.36
1.3	$1.47
1.4	$1.58
1.5	$1.70
1.6	$1.81
1.7	$1.92
1.8	$2.03
1.9	$2.15
2.0	$2.26

Figure: 34 TAC §3.121(b)(1)(B)(iii)

FY2012

Tax rate per ounce	$1.16
Total ounces in can or package	Tax for an individual can or package
1.2 or less	$1.39
1.3	$1.51
1.4	$1.62
1.5	$1.74
1.6	$1.86
1.7	$1.97
1.8	$2.09
1.9	$2.20
2.0	$2.32

Figure: 34 TAC §3.121(b)(1)(B)(iv)

FY2013

Tax rate per ounce	$1.19
Total ounces in can or package	Tax for an individual can or package
1.2 or less	$1.43
1.3	$1.55
1.4	$1.67
1.5	$1.79
1.6	$1.90
1.7	$2.02
1.8	$2.14
1.9	$2.26
2.0	$2.38

Figure: 34 TAC §3.121(b)(1)(B)(v)

FY2014 and Each Subsequent State Fiscal Year

Tax rate per ounce	$1.22
Total ounces in can or package	Tax for an individual can or package
1.2 or less	$1.46
1.3	$1.59
1.4	$1.71
1.5	$1.83
1.6	$1.95
1.7	$2.07
1.8	$2.20
1.9	$2.32
2.0	$2.44

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/11/10 - 01/17/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/11/10 - 01/17/10 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 01/01/10 - 01/31/10 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 01/01/10 - 01/31/10 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-201000013
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 4, 2010

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Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2010 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2010 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than October 31, 2010; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

The State of Texas (Texas Education Agency) has chosen to submit a 2010 State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at http://www.tea.state.tx.us/special.ed/eligdoc/index.html. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of IDEA Coordination at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of IDEA Coordination, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2010 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 10, 2010.

For more information, contact the TEA Division of IDEA Coordination by mail at 1701 North Congress Avenue, Room 6-127, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at sped@tea.state.tx.us.

TRD-201000030
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 6, 2010

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Employees Retirement System of Texas

Revised Notice - Request for Proposals to Conduct Eligibility Audits

This Notice takes place of the previous Notice published on December 18, 2009, issue of the *Texas Register* (34 TexReg 9247), TRD-200905557.

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform dependent eligibility audits of the participants enrolled in the health programs of the Texas Employees Group Benefits Program ("GBP"). A qualified provider of auditing services ("Auditor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that

are in the best interest of ERS, the GBP health programs, their participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

As provided in Chapter 1551 of the Texas Insurance Code, ERS is the administrator for the GBP which provides health benefits to over 264,000 state agency and certain higher education employees, retirees, and approximately 198,000 dependents. ERS is responsible for contracting with health carriers and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP have been broken into two separate scopes of audit services: 1) an initial 100% dependent eligibility audit, and 2) an ongoing annual audit for newly added dependents enrolled in the GBP health programs. Qualified Auditors shall submit a proposal and bid response materials to provide services for both audit scopes. An Auditor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Auditors.

The RFP will be available on or after February 11, 2010, from ERS' website and will include documents for the Auditor's review and response. To access the secured portion of the RFP website, interested Auditors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Auditor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently. The RFP will be discussed at a web conference scheduled for Wednesday, March 3, 2010, beginning at 2:00 p.m. (CT). Auditors interested in bidding are required to register for participation in the web conference no later than close of business on Wednesday, February 24, 2010, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, all Auditors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include a fully executed signature page and Business Associate Agreement, **signed in blue ink,** and without amendment or revision. Two (2) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. The remaining three (3) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on Wednesday, March 24, 2010.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP health programs, their participants, or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP health programs, their participants or the state of Texas.

TRD-201000029
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 6, 2010

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 15, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 15, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Blanca Cruz dba Las Mananitas Mexican Restaurant; DOCKET NUMBER: 2009-0695-PWS-E; TCEQ ID NUMBER: RN104709944; LOCATION: 9702 State Highway 16 South, Pipe Creek, Bandera County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine coliform samples for the months of July 2008 - January 2009, and failing to provide public notification of the failure to sample for July 2008 - January 2009; PENALTY: $2,535; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2009-0221-AIR-E; TCEQ ID NUMBER: RN100209857; LOCATION: 2001 South Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: ethylene production plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(F) and (G), §122.143(4), Federal Operating Permit (FOP) Number O-01235, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2, and

THSC, §382.085(b), by failing to report an emissions event properly; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit (NSRP) Number 21101, General Condition (GC) Number 8, Special Condition (SC) Number 8, FOP Number O-01235, GTC and STC Number 21, and THSC, §382.085(b), by failing to prevent the unauthorized release of 5,205.52 pounds (lbs) of nitrogen oxide (NO_x), 38,345.29 lbs of carbon monoxide (CO), and 20,059.83 lbs of volatile organic compound (VOC) from Flare 24 during an emissions event starting on June 9, 2008 and lasting 20 hours and 29 minutes; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSRP Number 21101, GC Number 8, SC Number 8, FOP Number O-01235, GTC and STC Number 21, and THSC, §382.085(b), by failing to prevent the unauthorized release of 3,028.02 lbs of (NO_x), 21,899.59 lbs of CO, and 23,101.95 lbs of VOC from Flare 24 during an emissions event starting on July 29, 2008 and lasting 24 hours; PENALTY: $20,278; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC 175, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys; DOCKET NUMBER: 2007-0649-PST-E; TCEQ ID NUMBER: RN102281268; LOCATION: 6240 Synott Road, Houston, Harris County; TYPE OF FACILITY: out-of-service petroleum storage tank facility; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing underground storage tank (UST) system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $7,620; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: City International, Ltd. dba Snappy Mart 3; DOCKET NUMBER: 2008-0680-PWS-E; TCEQ ID NUMBER: RN101458057; LOCATION: 10214 Garth Road, Baytown, Harris County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement to cover all land within 150 feet of the well; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data before placing the well into service; and 30 TAC §290.40(a), by failing to cease operations on the receipt of a written notification of the executive director; PENALTY: $520; STAFF ATTORNEY: Gary Shiu, Litigation Division, R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2008-0734-AIR-E; TCEQ ID NUMBER: RN102212925; LOCATION: 3525 Decker Drive, Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: THSC, §382.085(b), 30 TAC §116.715(a), and Flexible Permit Number 3452, SC Number 1, by failing to prevent avoidable and excessive unauthorized emissions; PENALTY: $30,000; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: Hina Enterprises, Inc. dba OJS Mobil Mart; DOCKET NUMBER: 2008-1667-PST-E; TCEQ ID NUMBER: RN101914026; LOCATION: 9508 Highway 12, Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.10(b)(2)(B), by failing to maintain the UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the station; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition and are inspected and serviced as per manufacturer's specifications; 30 TAC §115.222(3) and §115.242(4) and THSC, §382.085(b), by failing to comply with vapor control requirements by failing to eliminate any avoidable gasoline leaks, as detected by sight, sound, or smell, anywhere in the liquid transfer or vapor balance system; PENALTY: $10,297; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Magnum Blue Ribbon Feeds, Inc.; DOCKET NUMBER: 2009-1113-AIR-E; TCEQ ID NUMBER: RN101925196; LOCATION: 3510 United States Highway 385, Hereford, Deaf Smith County; TYPE OF FACILITY: cattle feed supplement production plant; RULES VIOLATED: 30 TAC §106.147(a)(1)(B) and §111.111(a)(1)(B) and THSC, §382.085(b), by failing to comply with the visible emissions opacity limit of 20% and the Permit By Rule Registration Number 37018 opacity limit of 5%; PENALTY: $1,550; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Nhat Q. Tran dba Wallisville Market; DOCKET NUMBER: 2009-0588-PST-E; TCEQ ID NUMBER: RN100916659; LOCATION: 9711 Wallisville Road, Houston, Harris County; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at the station; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: $7,720; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Nick Sublett dba Uphill Dairy; DOCKET NUMBER: 2007-1140-AGR-E; TCEQ ID NUMBER: RN101527893; LOCATION: 910 East Farm-to-Market Road 219, Hico, Hamilton County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §321.33(b)(4), by failing to obtain authorization under an individual water quality permit for a CAFO where any part of the production area or land management units are located in a watershed of a segment listed on the current United States Environmental Protection Agency approved §303(d) list of impaired water bodies and where a total maximum daily load implementation plan has been adopted; PENALTY: $1,010; STAFF ATTORNEY:

Gary Shiu, Litigation Division, MR-12, (713) 422-8916; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Rapid Environmental Services L.L.C.; DOCKET NUMBER: 2009-0782-MSW-E; TCEQ ID NUMBER: RN105644421; LOCATION: 3505 Lee Boulevard, El Paso, El Paso County; TYPE OF FACILITY: used oil and used oil filter handling facility; RULES VIOLATED: 30 TAC §324.4(2)(C)(i) and §328.24(a), by failing to have a valid registration with the TCEQ prior to storing, processing, recycling or disposing of used oil and used oil filters; PENALTY: $475; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(11) COMPANY: Wajed Enterprises, Inc. dba Bonjour Food Store; DOCKET NUMBER: 2009-0308-PST-E; TCEQ ID NUMBER: RN102474939; LOCATION: 4400 Yale Street, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and (A)(i)(III) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST system and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $10,729; STAFF ATTORNEY: Gary Shiu, Litigation Division, R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-201000021
Jeffrey J. Huhn
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 5, 2010

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 15, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 15, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Curtis J. Shupak dba Village Water; DOCKET NUMBER: 2009-0361-MLM-E; TCEQ ID NUMBER: RN101191708; LOCATION: 3.2 miles south of Farm-to-Market Road 60 East off Park Road 57, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(d)(3), by failing to equip the facility's pressure tank with a device to readily determine air-water-volume; 30 TAC §290.45(b)(1)(A)(i), by failing to provide a well capacity of 1.5 gallons per minute (gpm); 30 TAC §290.46(f)(3)(D)(i), by failing to make available for review the results of microbiological analyses; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of Well Number 1; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank as well as an inspection of the interior of the pressure tank within the prior five years; 30 TAC §290.46(j), by failing to complete customer service inspection certificates prior to providing continuous water service to new construction, or any existing service either when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist, or any material improvement, correction, or addition to the private water distribution facilities; 30 TAC §290.42(1), by failing to provide a plant operations manual and keep it up to date for operator review and reference; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90260042 for Fiscal Years 2001 - 2008 to the TCEQ in a timely manner; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to submit and adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $2,141; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: D M Ventures, Inc.; DOCKET NUMBER: 2009-1059-PWS-E; TCEQ ID NUMBER: RN103128468; LOCATION: 12455 Cutten Road, Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis during the months of April - December 2008, February 2009, and March 2009, and failing to provide public notification of failure to sample for months of April - December 2008, February 2009, and March 2009; PENALTY: $4,540; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Jaime Vela; DOCKET NUMBER: 2009-0062-PST-E; TCEQ ID NUMBER: RN101729044; LOCATION: Highway 83 South, approximately five miles south of Zapata, Zapata County; TYPE

OF FACILITY: former retail gasoline station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, an underground storage tank system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding underground storage tanks (USTs) within 30 days from the date of occurrence of the change or addition; PENALTY: $6,300; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Ruben Rios; DOCKET NUMBER: 2009-0943-PST-E; TCEQ ID NUMBER: RN101730497; LOCATION: northeast corner of the intersection of State Highway 44 and Simmons Avenue, Agua Dulce, Nueces County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.10(b)(1)(A), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0008106U for Fiscal Years 1988 - 2002; PENALTY: $7,700; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Bldg., Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201000023

Jeffrey J. Huhn

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 5, 2010

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 15, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 15, 2010.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: D. Lakhani Inc. dba Kwik Stop Center; DOCKET NUMBER: 2009-0689-PST-E; TCEQ ID NUMBER: RN102834009; LOCATION: 339 South Industrial Boulevard, Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2)(A) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(iii)(II) and TWC, §26.3475(c)(1), by failing to have an accurate means of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is

permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to ensure that a spill containment device is designed to prevent the release of regulated substances to the environment when the transfer hose or line is detached from the spill pipe; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: $21,761; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Mark E. Blackwell dba Blackies Grab N Go; DOCKET NUMBER: 2008-1822-PST-E; TCEQ ID NUMBER: RN101431831; LOCATION: 3702 Bowie Street, San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.10(b), by failing to maintain the required USTs' records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.49(c)(4), and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I), by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: $19,915; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201000022
Jeffrey J. Huhn
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 5, 2010

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 55, 60, and 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed amendments to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 60, Compliance History; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking addresses EPA's evaluation of Texas' SIP and corresponding rules regarding public participation for New Source Review permits, and EPA's November 26, 2008, proposed limited approval and limited disapproval of submitted rules in Chapters 39 and 55. This rulemaking is intended to address EPA's concerns and correct the identified deficiencies in the rules to obtain full SIP approval from EPA. Specifically, the commission is proposing withdrawal of certain rules previously submitted as SIP submissions, as well as proposing new and amended rules as new revisions to the SIP.

The commission will hold a public hearing on this proposal in Austin on January 25, 2010, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. **The comment period closes February 16, 2010.** Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

TRD-200906084
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 31, 2009

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Notice of Water Rights Applications

Notices issued December 29, 2009 through December 30, 2009.

APPLICATION NO. 14-1616A; Pursuant to an Option to Acquire, Chanas Ranch, LP, 550 W. Texas Ave. Suite 945, Midland, Texas 79701, has applied to amend Certificate of Adjudication No. 14-1616 to change the diversion point and the place of use for a 200-acre-foot portion of water from the Llano River, Colorado River Basin and add the use of an existing off-channel reservoir. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on January 26, 2009. Additional information and fees were received on April 22, and December 11, 2009. The application was declared administratively complete and accepted for filing on December 15, 2009. 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 January 19, 2010.

APPLICATION NO. 4301B; Greater Texoma Utility Authority (GTUA or Applicant), 5100 Airport Drive, Denison, Texas 75020-8448, seeks an amendment to Water Use Permit No. 4301 (Application No. 2006) to appropriate storage within the existing conservation pool of Lake Texoma, located on the Red River, Red River Basin, and to divert and use additional water made available from that storage for municipal, industrial, and agricultural purposes within GTUA's Service Area located in Cooke, Fannin, and Grayson Counties, Red River Basin and that portion of those counties in the Trinity River Basin through an exempt interbasin transfer. Applicant further seeks authorization to reuse the return flows that will be associated with the use of the additional water. More information on the application and how to participate in the permitting process is given below. The application and a portion of the fees were received on July 24, 2009. Additional information and fees were received on August 20, October 22, October 30, November 3, and November 20, 2009. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 24, 2009. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12470; Rowan Companies Inc., 2800 Post Oak Blvd., Suite 5450, Houston, Texas 77056, Applicant, has applied for a Water Use Permit to divert and use not to exceed 250 acre-feet of water per year from the Sabine Pass Channel, Neches-Trinity River Basin, for industrial purposes in Jefferson County, Texas. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 10, 2009. Additional information and fees were received on September 3, September 25, October 12, November 20, and November 30, and December 9, 2009. The application was accepted for filing and declared administratively complete on November 25, 2009. 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.

APPLICATION NO. 12-3573D; Michael R. Bingham, 1251 County Road 184, Comanche, Texas 76442, Applicant, has applied for an amendment to Certificate of Adjudication No. 12-3573 to extend the expiration date of December 31, 2009 to divert and use 60 acre-feet of water from a reservoir on an unnamed tributary of Copperas (Rush) Creek, Brazos River Basin in Comanche County, Texas. More information on the application and how to participate in the permitting process is given below. The application was received on March 5, 2009. Additional information and fees were received on May 21, June 12, and August 14, 2009. The application was accepted for filing and declared administratively complete on December 18, 2009. 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.

APPLICATION NO. 12486; Golden Pass LNG Terminal LLC, 3752 South Gulfway Drive, Sabine Pass, Texas 77665, applicant, has applied for a Water Use Permit to divert and use not to exceed 10 acre feet of water per year for industrial purposes from the Port Arthur Ship Channel, Neches-Trinity Coastal Basin, in Jefferson County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on August 21, 2009, and additional information and fees were received on November 13, 2009. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 18, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201000034
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 6, 2010

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Texas Facilities Commission

Request for Proposals #303-0-10619

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-0-10619. TFC seeks a 10 year lease of approximately 4,000 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is January 29, 2010, and the deadline for proposals is February 12, 2010, at 3:00 p.m. The award date is March 26, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=86599.*

TRD-200906083
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 30, 2009

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Burnet	Zetex Enterprise L.L.C.	L06295	Burnet	00	12/21/09
Longview	Westlake Longview Corporation	L06294	Longview	00	12/21/09
Throughout TX	RCOA Imaging Services	L06091	Houston	00	12/22/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	13	12/18/09
Arlington	Diagnostic Health Centers of Texas L.P.	L05033	Arlington	23	12/17/09
Arlington	Metroplex Hematology Oncology Associates dba Arlington Cancer Center	L03211	Arlington	85	12/16/09
Austin	Austin Diagnostic Clinic	L05646	Austin	13	12/14/09
Austin	Seton Healthcare dba Dell Children's Medical Center of Central Texas	L06065	Austin	16	12/22/09
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	93	12/22/09
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	120	12/23/09
Beaumont	Christus Health Southeast Texas dba Christus Hospital - St. Elizabeth	L00269	Beaumont	108	12/30/09
Carrollton	Trinity MC L.L.C. dba Baylor Medical Center at Carrollton	L03765	Carrollton	59	12/29/09
College Station	Texas A&M University	L05683	College Station	13	12/18/09
Comanche	Comanche County Consolidated Hospital District dba Comanche County Medical Center	L06200	Comanche	04	12/09/09
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	103	12/14/09
Cypress	N. Cypress Medical Center Operating Company L.L.C.	L06020	Cypress	18	12/21/09
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	72	12/14/09
Dallas	Cardinal Health	L05610	Dallas	15	12/18/09
Denton	TTHR Limited Partnership dba Presbyterian Hospital of Denton	L04003	Denton	45	12/18/09
Fort Worth	Fort Worth Heart P.A.	L05480	Fort Worth	31	12/28/09
Frisco	Tenet Hospital Ltd. dba Centennial Medical Center	L05768	Frisco	10	12/22/09
Galveston	The University of Texas Medical Branch	L01299	Galveston	84	12/21/09
Glen Rose	Glen Rose Medical Foundation Inc. dba Glen Rose Medical Center	L03225	Glen Rose	26	12/22/09
Houston	Memorial City Cardiology Associates dba Katy Cardiology Associates	L05713	Houston	12	12/16/09
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	04	12/16/09
Houston	University of Houston	L01886	Houston	62	12/21/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	60	12/17/09
Houston	The Houston Proton Therapy Center - Houston Ltd. L.L.P. dba The M.D. Anderson Cancer Proton Therapy Center	L05859	Houston	03	12/18/09
Houston	New Medical Horizons II Ltd. dba Cypress Fairbanks Medical Center	L03424	Houston	34	12/22/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	08	12/22/09
Houston	CCNWHI L.P. dba Cy Fair Cancer Center	L06050	Houston	04	12/29/09
Irving	Las Colinas Oncology MSO L.P. dba Las Colinas Cancer Center	L06078	Irving	05	12/22/09
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	29	12/22/09
Lufkin	The Heart Institute of East Texas P.A.	L04147	Lufkin	19	12/15/09
McAllen	McAllen Hospitals L.P. dba McAllen Medical Heart Hospital	L04902	McAllen	19	12/28/09
McKinney	Complete Heart Care P.A.	L05935	McKinney	05	12/18/09
Mesquite	Texas Oncology P.A. dba Texas Cancer Center - Mesquite	L05741	Mesquite	08	12/29/09
Nassau Bay	Christus Health dba Christus St. John Hospital	L03291	Nassau Bay	32	12/18/09
Odessa	Texas Oncology P.A. dba West Texas Cancer Center	L05140	Odessa	12	12/28/09
Plano	Columbia Medical Center of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	92	12/18/09
Plano	Texas Health Presbyterian Hospital - Plano	L04467	Plano	55	12/22/09
Plano	Medical Edge Healthcare Group P.A. dba Heart First	L05555	Plano	26	12/22/09
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	08	12/11/09
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	180	12/22/09
San Antonio	Christus Santa Rosa Healthcare	L02237	San Antonio	114	12/22/09
Stafford	Aloki Enterprise Inc.	L06257	Stafford	02	12/21/09
Throughout TX	Global X-Ray & Testing Corporation	L03663	Aransas Pass	110	12/28/09
Throughout TX	Global X-Ray & Testing Corporation	L03663	Aransas Pass	111	12/31/09
Throughout TX	Kleinfelder Central Inc.	L01351	Austin	67	12/28/09
Throughout TX	N-spec Quality Services Inc.	L05113	Corpus Christi	39	12/16/09
Throughout TX	National Inspection Services L.L.C.	L05930	Crowley	28	12/22/09
Throughout TX	IRISNDT Inc.	L04769	Deer Park	86	12/31/09
Throughout TX	Speesoil Inc.	L05619	El Paso	04	12/17/09
Throughout TX	Probe Technology Services Inc.	L05112	Fort Worth	23	12/16/09
Throughout TX	Proportional Technologies Inc.	L04747	Houston	26	12/18/09
Throughout TX	Metco	L03018	Houston	205	12/31/09
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	29	12/16/09
Throughout TX	Acuren Inspection Inc.	L01774	La Porte	262	12/11/09
Throughout TX	Hi-Tech Testing Service Inc.	L05021	Longview	82	12/14/09
Throughout TX	American Surveys Inc.	L02086	Manvel	16	12/23/09
Throughout TX	Turner Industries Group L.L.C. dba Pipe Fabrication Division Texas Operations	L05237	Paris	24	12/22/09
Throughout TX	Fugro Consultants Inc.	L04322	Pasadena	104	12/14/09
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	177	12/17/09
Throughout TX	Turner Industries Group, Inc.	L06235	Pasadena	04	12/08/09
Tyler	East Texas Medical Center	L00977	Tyler	143	12/22/09
Wichita Falls	United Regional Health Care System Inc.	L00350	Wichita Falls	107	12/22/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Cedar Creek	Agilent Technologies	L05214	Cedar Creek	09	12/17/09
College Station	O. I. Analytical	L04238	College Station	15	12/16/09
Throughout TX	Ellerbee-Walczak Inc.	L04440	Haltom City	14	12/15/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Open Imaging Arlington L.L.C. dba Arlington Medical Imaging	L05575	Arlington	07	12/18/09
Austin	Eye Physicians of Austin P.A.	L00570	Austin	22	12/28/09
San Antonio	Christus Santa Rosa Surgery Center L.L.P. dba Christus Santa Rosa Surgery Center	L05805	San Antonio	09	12/21/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201000016
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 4, 2010

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Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of State Health Services (DSHS) announces the release of a sole source procurement (537-10-69927) for "Consulting Services to Provide a Trauma Facility Study." DSHS seeks to assess the need for additional Level I and Level II trauma facilities in the state.

As directed by the 81st legislative session, Senate Bill 1, Rider 90, DSHS must conduct a study with the production of two reports: (1) a detailed written assessment of the need for Level I and Level II trauma facilities; and (2) a detailed written assessment of the components of the trauma system, including a focus on integration and function and the identification of opportunities for further trauma system development and enhancement within Texas.

The sole source procurement is located in full on the Electronic State Business Daily link at http://esbd.cpa.state.tx.us on or about 1/15/2010.

The contractor is expected to provide the following services.

- Assess the need for additional trauma centers, of all levels in Texas, particularly focusing on Level I and Level II trauma facilities in the state.

- Assess the utilization of Level III and Level IV trauma centers in urban areas across the state.

- Conduct a review of the state wide trauma system using the guidelines set forth by the American College of Surgeons: *Regional Trauma Systems: Optimal Elements, Integration, and Assessment, American College of Surgeons Committee on Trauma: Systems Consultation Guide.*

- Completed trauma systems assessment will provide a detailed perspective on all components of the trauma system and their integration and function, leading to the identification of opportunities for trauma system development and enhancement.

- Produce two reports: (1) a detailed written assessment regarding the need for Level I and Level II trauma facilities and (2) a detailed written assessment of the components of the trauma system, including a focus on integration and function, and the identification of opportunities for further trauma system development and enhancement within Texas.

- Conduct the onsite consultation/assessment visit with the regular Governor's EMS/Trauma Advisory Council (GETAC) and trauma stakeholders from throughout the state during the GETAC meeting, May 18 - 21, 2010, in Austin, Texas.

- Finalized reports listed above shall be provided to DSHS by August 31, 2010 in hard copy and electronic format.

Health and Human Services Commission's Sole Point-Of-Contact for Procurement: The sole point of contact for inquiries concerning this procurement is: Texas Health and Human Services Commission, Enterprise Contracts and Procurement Services, 4405 North Lamar Boulevard Austin, Texas 78756-3422, Attention: Elizabeth Ward, Contract Administrator, telephone (512) 206-5416 or email: Elizabeth.ward@hhsc.state.tx.us.

DSHS intends to award the contract to the American College of Surgeons as a sole source procurement unless another potential vendor submits a proposal from a competent, knowledgeable, and qualified consultant at a reasonable rate.

All proposals must be received at the above-referenced address on or before 2:00 p.m. Central Standard Time on February 16, 2010. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the ability to perform the services outlined above. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this procurement.

TRD-201000037
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 6, 2010

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Texas Commission on Jail Standards

Request for Proposals

Pursuant to the Texas Government Code, Title 10, Article 2254, Subchapter B, the Commission on Jail Standards invites proposals for consulting services from qualified individuals to advise and assist TCJS in a survey of jails across the state under the terms of the Juvenile Justice and Delinquency Prevention Act, Public Law 93-415, as modified.

The individual selected will conduct analyses of records for county and municipal jails and prepare required documentation and reports to verify compliance information regarding the removal of juveniles from the facilities. The selected consultant shall report directly to Brandon S. Wood at the Texas Commission on Jail Standards.

All work performed under this contract shall be reimbursed on an hourly basis and is expected to be completed by August 31, 2010.

Travel expenses, if incurred, shall be reimbursed upon state per diem rates with direct operating expenses provided by TCJS.

Detailed specifications are contained in the Consultant Proposal Request available from the Texas Commission on Jail Standards, 300 W. 15th Street, Suite 503, Austin, Texas between the hours of 8:30 a.m. and 4:30 p.m., Monday-Friday. For detailed information, contact Brandon S. Wood at (512) 463-8236.

Responses will be accepted only if actually received in writing in the Texas Commission on Jail Standards office no later than February 15, 2010, no later than 5:00 p.m., Central Daylight Time on this date. The Texas Commission on Jail Standards reserves the right to reject any or all proposals.

All proposals submitted by the deadline will be reviewed and interviews with the top rated proposers may be requested. Based on proposer's response, availability, experience, qualifications and demonstrated ability to work independently, the executive director will select the individual most qualified to provide services.

TRD-201000032
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Filed: January 6, 2010

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Texas Department of Licensing and Regulation

Public Notice - Updated Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation ("Commission") provides this public notice that, at their regularly scheduled meeting held December 16, 2009, the Commission adopted the Texas Department of Licensing and Regulation's ("Department") updated Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 1005, 81st Legislature, Regular Session (2009), transferred the regulation of polygraph examiners from the Polygraph Examiners Board to the Texas Department of Licensing and Regulation effective May 13, 2009, and amended Texas Occupations Code, Chapter 1703 relating to the regulation of polygraph examiners.

Also, Senate Bill 778, 81st Legislature, Regular Session (2009), created a new chapter under Texas Occupations Code, Chapter 1306 regarding identity recovery service contract providers and administrators and Senate Bill 1095 created a new chapter under Texas Occupations Code, Chapter 2309, regarding the licensing and regulation of used automotive parts recyclers and used automotive parts employees engaged in the buying of vehicles and the selling of used automotive parts.

The updated Criminal Conviction Guidelines include Polygraph Examiners and Trainees, Identity Recovery Service Contract Providers, and Used Automotive Parts Recyclers and Employees, and will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the guidelines applicable to polygraph examiners to the Polygraph Examiners Advisory Committee at their meeting of December 7, 2009, and received the Committee's recommendation of approval. The Department also presented the guidelines to the Used Automotive Parts Recyclers Advisory Board at their meeting of December 9, 2009, and received the Board's recommendation of approval.

A copy of the updated Criminal Conviction Guidelines is posted on the Department's website and may be downloaded at www.license.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@license.state.tx.us to obtain a copy of the updated guidelines.

TRD-201000005
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 4, 2010

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 28, 2009, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Buford Media Group, LLC, d/b/a Alliance Communications Network II for a State-Issued Certificate of Franchise Authority, Project Number 37829 before the Public Utility Commission of Texas.

The requested CFA service area includes the municipal boundaries of the City of Aspermont, City of Caddo Mills, Town of Ladonia, City of Leonard, Town of Lone Oak, City of Naples, City of Omaha, Town of Rule, City of Stamford, Town of West Tawakoni, City of Crowell, City of Haskell, Town of Knox City, City of O'Brien, County of Hunt: Unincorporated areas known as Brinwood Estates, Panorama Estates Subdivision, Rolling Oaks Subdivision, and South Tawakoni; County of Van Zandt: Unincorporated area known as Waco Bay (Home Owners Association).

Information on the application may be obtained by contacting 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 (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) (800) 735-2989. All inquiries should reference Project Number 37829.

TRD-201000018
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 5, 2010

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 30, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Dallam, Hartley, Oldham, and Potter Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Dallam, Hartley, Oldham, and Potter Counties, Docket Number 37771.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed 230-kV transmission line initially operated at 115-kV is designated as the Dallam County Substation to Channing Substation to Northwest Substation Transmission Line Project. The proposed transmission line project is presented in two segments. Segment I Dallam County Substation to Channing Substation and Segment II Channing Substation to Northwest Substation. Segment I is approximately 35 miles in length and Segment II is approximately 47 miles depending on the route approved.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is February 15, 2010. 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 37771.

TRD-201000020
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 5, 2010

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Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on December 23, 2009 with the Public Utility Commission of Texas for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Comanche County Telephone Company, Inc. for an Amendment to its Certificate of Convenience and Necessity to Change Name to Totelcom Communications, LLC. Docket Number 37828.

The Application: Comanche County Telephone Company, Inc. (Comanche County) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) No. 40019 for name change only. Comanche County seeks to change its name to Totelcom Communications, LLC.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by January 22, 2010, 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 37828.

TRD-201000017
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 5, 2010

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On December 31, 2009, Globalcom, Inc. d/b/a GCI Globalcom, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60218. Applicant intends to relinquish its certificate. The commission's records indicate that SPCOA No. 60218 is currently held by First Communications, LLC. The application is restyled to reflect the current certificate holder.

The Application: Application of First Communications, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 37839.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 3, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37839.

TRD-201000019
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 5, 2010

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Texas Department of Transportation

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of a traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These goals and strategies form the basis for the Fiscal Year 2011 (FY11) Highway Safety Performance Plan (HSPP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 U.S.C. §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). Traffic Safety is an integral part of the department and works through the department's 25 districts for local projects. The program is administered at the state level by the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

The following information relates to the Fiscal Year 2011 Traffic Safety Grants - Request for Proposals. Please review the FY 2011 Request for Proposals (RFP) located on the department's Internet site at

https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP

for details. Proposals for Highway Safety Funding are due to the department no later than 5:00 p.m. on **February 19, 2010.**

All questions regarding the development of proposals must be submitted by sending an email to TRF_RFP@dot.state.tx.us by 5:00 p.m. on January 29, 2010. A list of the questions with answers (Q&A document) will be posted on this website by 5:00 p.m. on February 5, 2010.

Video conference training on submitting proposals through eGrants will be offered at various department locations across the state. Please contact a department Traffic Safety Specialist in your area or send a note to trf_rfp@dot.state.tx.us to learn about locations near you. Training sessions will be specific to the type of grant proposal being submitted, either Selective Traffic Enforcement Program (STEP) or General Traffic Safety. Potential subgrantees should attend the class appropriate to the type of grant proposal they intend to submit: **January 27, 2010 - STEP Grant training; January 28, 2010 - General Traffic Safety Grant training.**

The Program Needs section of the RFP includes a chart showing Performance Measures outlining the goals, strategies, and performance measures for each of the Traffic Safety Program Areas. The department is seeking proposals in all program areas, but is particularly interested in proposals that address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs section of the RFP.

The proposal must be completed on-line through the eGrants system which is available on the department eGrants website located at:

https://www.txdot.gov/apps/egrants.

TRD-201000033
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 6, 2010

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The Texas A&M University System

Award of a Major Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System (TAMUS) has entered into a consulting contract for energy consulting services. The consultant will perform the duties of consultant for the purpose of assisting with coordination of the procurement and delivery of natural gas and electricity for certain members of the A&M System.

The Name and Address of the consultant is follows: Fowler Energy Company, 4520 Spicewood Springs Road, Austin, Texas 78759.

The A&M System will pay an unspecified amount greater than $25,000.00 to this consultant over the course of the contract. The contract will begin upon execution and shall terminate in January 2013 unless renewed for an additional two years.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-201000025
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: January 5, 2010

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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 34 (2009) is cited as follows: 34 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 "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 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 website subscription information, call the Texas Register at (512) 463-5561.

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 and Parts (using Arabic 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 (800-356-6548), and West Publishing Company (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 ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).