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# TEXAS REGISTER

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

...

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

# THE GOVERNOR

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

## Appointments

### Appointments for April 6, 2010

Appointed to the Central Texas Regional Review for a term at the pleasure of the Governor, James F. Enyeart of Morgan's Point Resort (replacing Marvin Fischer of Morgan's Point Resort).

Appointed to the Lower Rio Grande Regional Review for a term at the pleasure of the Governor, Steve Brewer of La Feria (replacing Carlos Cantu of La Feria).

Appointed to the Lower Rio Grande Regional Review for a term at the pleasure of the Governor, Eziquiel D. Cavazos of Raymondville (replacing Lois Shreve of Harlingen).

Appointed to the Lower Rio Grande Regional Review for a term at the pleasure of the Governor, Barbara J. Collum of Los Fresnos (replacing David Winstead of Los Fresnos).

Appointed to the Nortex Regional Review for a term at the pleasure of the Governor, Pat Martin of Archer City (replacing Carolyn Sue Steinberger of Windthorst).

Appointed to the Rio Grande Regional Review for a term at the pleasure of the Governor, Albert W. Miller of Valentine (replacing Diane Lacy of Fort Davis).

Rick Perry, Governor

TRD-201001598



### Proclamation 41-3235

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Brian McCall has caused a vacancy to exist in the Texas House of Representatives District No. 66 which consists of part of Collin County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such vacancy; and

WHEREAS, Section 3.003 of the Texas Election Code, requires the election to be ordered by proclamation of the Governor;

NOW THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in House District No. 66 on Saturday, May 8, 2010, for the purpose of electing a State Representative to serve out the unexpired term of the Honorable Brian McCall.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on April 7, 2010.

Early voting by personal appearance shall begin on April 26, 2010, in accordance with Section 85.001(e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Collin County; and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 66 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 2nd day of April, 2010.

Rick Perry, Governor of Texas

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201001599



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Draft  
Commission Proposal

**SP-10 Revised.** Whether, in light of the United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, the Texas Ethics Commission can enforce the prohibition on direct campaign expenditures, whether the Texas Ethics Commission can enforce the requirements to include certain disclosures on political advertising, and whether disclosure of certain direct campaign expenditures is required.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201001600  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: April 7, 2010





# 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 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

##### DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

###### 16 TAC §25.193

The Public Utility Commission of Texas (commission) proposes an amendment to §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF). The amendment allows a distribution service provider (DSP) to reflect in its rates an adjustment that credits or charges to the DSP's ratepayers the difference between (1) the amount of transmission service providers' commission-approved wholesale transmission costs that are paid by the DSP and not included in the base rates of the DSP, and (2) the revenues recovered through the DSP's TCRF. The amendment reflects any such adjustment in the DSP's subsequent TCRF update and provides for the crediting or charging of associated carryings costs based on the over/underbilling interest rate established pursuant to §25.28, relating to Bill Payment and Adjustments. Additionally, the amendment deletes the provisions in subsection (b) regarding compliance tariffs. However, the commission intends to include a requirement for compliance tariffs in its order adopting the amendment. Project Number 37909 is assigned to this proceeding.

In addition to comments on the proposed rule, the commission requests that parties specifically address the following question:

Are the provisions in this rule sufficient to provide certainty and predictability regarding price changes to both retail electric providers and customers?

Darryl Tietjen, Director of the Rate Regulation Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Tietjen has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a more accurate matching of DSPs' costs and revenues related to investments in the Electric Reliability Council of Texas (ERCOT) electricity transmission system, particularly those attributable to the integration of renewable energy resources into the ERCOT grid. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Tietjen has also determined that for each year of the first five years the amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Initial comments on the amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by May 17, 2010 (31 days after publication). Reply comments may be submitted by May 31, 2010 (45 days after publication). Sixteen copies of comments on the amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 37909.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the Public Utility Commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §35.004(d), which allows the commission to approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment; §35.006(a), which requires that the commission adopt

rules relating to wholesale transmission service, rates and access; §36.001(a), which allows the commission to establish and regulate rates of an electric utility; and §39.203(a), relating to transmission and distribution service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 35.004(d), 35.006(a), 36.001(a), and 39.203(a).

*§25.193. Distribution Service Provider Transmission Cost Recovery Factors (TCRF).*

(a) Application. The provisions of this section apply to all investor-owned distribution service providers (DSPs) providing distribution service within the Electric Reliability Council of Texas (ERCOT) region to retail electric providers and other customers of the distribution system.

(b) TCRF authorized.

(1) A DSP [distribution service provider] subject to this section that is billed for transmission service by a transmission service provider (TSP) pursuant to §25.192 of this title (relating to Transmission Service Rates) shall be allowed to include within its tariff a TCRF clause that [which] authorizes the DSP [distribution service provider] to charge or credit its customers [customer] for the amount [cost] of wholesale transmission cost changes approved or allowed by the commission [service] to the extent that such costs vary from the transmission service cost utilized to fix the base rates of the DSP [distribution provider]. The DSP may [only] update its TCRF only twice per [a] year on March 1 and September 1 of each year to pass through the wholesale transmission cost changes billed [for] by a TSP. The DSP shall file a request to update its TCRF no later than January 15 for the March 1 update and no later than July 18 for the September 1 update. To facilitate rate certainty for retail electric providers, if the commission approves a TCRF amount different from the amount requested by the DSP, the commission will order the DSP to temporarily implement the requested amount until its subsequent TCRF filing, at which time any difference between the commission-approved final amount and the implemented amount shall be trued-up and credited or charged, with associated carrying costs, to the DSP's ratepayers as provided in paragraph (2) of this subsection. [The terms and conditions of such TCRF clause shall be approved by an order of the commission. Compliance tariffs shall be filed with the commission 30 days after the approval of this section.]

(2) The difference between the amount of the TSPs' commission-approved wholesale transmission costs that are paid by the DSP and not included in the base rates of the DSP, and the revenues recovered through the TCRF, shall be trued-up and credited or charged to the DSP's ratepayers in the DSP's next TCRF update; however, in no event shall it result in the DSP recovering more than its actual cost of wholesale transmission services included in the TCRF. This true-up shall include costs paid and revenues recovered over a six-month period ending in November for a March 1 TCRF update and in May for a September 1 TCRF update. The over- or under-recovered balance shall also include any differences, pursuant to paragraph (1) of this subsection, between the TCRF amounts temporarily implemented and the TCRF final amounts approved by the commission, and such differences shall be trued-up and credited or charged, over a six-month period, to the DSP's ratepayers in the DSP's next TCRF update. Additionally, the DSP shall credit or recover carrying costs in an amount that shall be calculated by applying to the monthly over- or under-recovered balance the interest rate on over- and underbillings as established pursuant to §25.28 of this title (relating to Bill Payment and Adjustments).

(c) TCRF Formula. The TCRF for each class shall be computed pursuant to the following formula:

Figure: 16 TAC §25.193(c)

(d) TCRF charges. A DSP's TCRF charge shall remain in effect until adjusted under this section or until the DSP's [its] delivery rates change pursuant to a commission order in [following] a rate proceeding [that it or the commission initiates].

(e) Reports. The DSP [distribution service provider] shall maintain and provide to the commission[;] semi-annual reports containing all information required to monitor the costs recovered through the TCRF clause. This information includes, but is not limited to, the total estimated TCRF cost for each month, the actual TCRF cost on a cumulative basis, the amount of transmission costs included in base rates, [and] total revenues resulting from the TCRF, and the calculation of the amount to be recovered under subsection (b)(2) of this section. The reports shall [will] be filed by [on] March 31 and September 30 of each year.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001552

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 936-7223



## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.454 relating to Rate Reduction Program, §25.480 relating to Bill Payment and Adjustments, and §25.483 relating to Disconnection of Service. The purpose of these amendments is to modify eligibility requirements for deferred and level payment plans, protections for low-income customers and customers with medical conditions. To the extent a customer enters into an agreement with its REP and takes advantage of the deferred or level payment plan required by this rule, the rule also allows REPs to place a switch-hold to prevent the customer from changing retail providers without paying the deferred balance the customer owes to the REP.

Among other things, the amendments will help certain eligible customers who may not meet the existing payment plan requirements avoid disconnections as a result of high bills that result from hot or cold weather. The amendments would remove the requirement for REPs to offer deferred payment plans to customers during non-extreme weather. The current requirement to offer deferred payment plans at any time to any qualified customer requests is believed to contribute to high levels of non-payment and the commission believes that the more targeted provisions of the amendments will benefit more vulnerable customers that need additional time to pay a high bill while reducing the non-payment issues that have arisen under the current rules. REPs will now be required to make deferred payment plans available to all customers during extreme weather emergencies; during declared states of disaster; when a customer has been underbilled; and during the months of January, February, July, August, and September for certain eligible customers.

The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). Project Number 36131 is assigned to this proceeding.

Cliff Crouch, Retail Market Analyst, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Crouch has determined that for each year of the first five years the amendments are in effect the primary anticipated public benefits of the amendments will be the increased ability for certain customers to qualify for deferred payment plans under certain circumstances and the reduced non-payment of bills that have arisen under the current rules. No adverse economic effect is anticipated on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the amendments. These costs associated with retraining personnel to understand the amendments, modifications to payment system and managing new payment plans will vary from business to business, and are difficult to ascertain. However, it is believed that the benefits to the public and the REPs accruing from implementation of the amendments will outweigh these costs.

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

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, May 17, 2010. The request for a public hearing must be received within 20 days after publication of these amendments.

Initial comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by May 6, 2010 (20 days after publication) of these amendments. Reply comments may be submitted by May 21, 2010 (35 days after publication). Sixteen copies of initial comments and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 36131.

The commission is seeking comments on the proposed rules, as well as comments on the following questions, which may result in changes to the proposed rules:

Question 1. Are the provisions relating to unauthorized switch-holds appropriate? Please suggest any modifications.

Question 2. If the disconnection of customers designated as critical care is allowed, what additional protections and procedures should be in place to ensure that the loss of electricity will not result in the loss of life?

Question 3. Does the switch-hold provision in §25.480(l) of the provision rule contain sufficient protections to ensure that a customer's ESI ID is not subject to a switch-hold for a relatively small debt to the REP?

a. Should the rule include a minimum amount owed in order for a customer's ESI ID to be eligible for a switch-hold? If so, is \$500 the appropriate threshold?

b. If a threshold is not adopted, what are the ramifications to the competitive market if a significant portion of the ESI IDs in the market are subject to a switch-hold at any given time?

c. In §25.480(j)(1), the proposed rules require a REP to offer a deferred payment plan for bills that become due during an extreme weather emergency, and to customers in an area covered by a Governor's declaration of disaster. Should the rule also exempt such customers from the switch-hold? Should any other groups of customers--e.g., critical care, low-income, elderly--be exempt from the switch-hold?

Question 4. What are the costs and benefits of implementing the switch-hold as described in §25.480(l)? Are there alternative means for a REP to mitigate the business risk of a customer default, aside from imposing a switch-hold on the customer's ESI ID?

Question 5. Section 25.480(j) of the proposed rule specifies the minimum down payment and number of installments for a deferred payment plan made available to eligible customers during the months of July, August, and September (as well as during January and February, subject to certain weather conditions). Should the rule specify the minimum down payment and number of installments for deferred payment plans to be made available during the remaining months of the year?

Question 6. If the switch-hold is invalidated by legislative or judicial action, should the rest of the rule remain in effect?

## SUBCHAPTER Q. SYSTEM BENEFIT FUND

### 16 TAC §25.454

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.004 and §39.101, which authorize the commission to adopt and enforce rules that ensure various retail electric customer protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, and 39.101.

§25.454. *Rate Reduction Program.*

(a) - (f) (No change.)

(g) Responsibilities. In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

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

(3) A REP shall:

(A) - (D) (No change.)

(E) notify customers three times [twice] a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;

(F) - (G) (No change.)

(h) - (k) (No change.)

(l) Effective date. The effective date of this section is December 1, 2010.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001550

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 936-7223



## SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

### 16 TAC §25.480, §25.483

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.004 and §39.101, which authorize the commission to adopt and enforce rules that ensure various retail electric customer protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, and 39.101.

§25.480. *Bill Payment and Adjustments.*

(a) - (b) (No change.)

(c) Penalty on delinquent bills for electric service.

~~{(4)}~~ A REP may charge a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty, not to exceed 5.0%, may not be applied to any balance to which the penalty has already been applied.

~~{(2)}~~ A bill issued to a state agency, as defined in Texas Government Code, Chapter 2251, shall be due as provided in Chapter 2251.

(d) Overbilling.

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

~~{(5)}~~ A bill issued to a state agency shall bear interest if overdue as provided in Texas Government Code Chapter 2251.

(e) - (f) (No change.)

(g) Alternate payment programs or payment assistance.

(1) (No change.)

(2) Bill payment assistance programs.

(A) (No change.)

(B) In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)), each

REP shall summarize [Each REP shall provide an annual report on June 1 of each year to the commission summarizing]:

(i) - (ii) (No change.)

(iii) the assistance agency or agencies selected to disburse funds to residential customers; [and]

(iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; and[-]

(v) the number of customers who had a switch-hold applied during the year.

(C) (No change.)

(h) Level and average payment plans. A REP shall make [of-fer] a level or average payment plan available to its customers consistent with this subsection. A customer receiving service from a provider of last resort (POLR) may be required to select a competitive product offered by the POLR REP to receive the level or average payment plan. [who are not currently delinquent in payment to the REP. Consistent with the REP's terms of service, the REP may bill or credit any overbilling or underbilling, as appropriate, at least once every twelve months. A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a leveled or average payment program shall be disclosed in the customer's terms of service document.]

(1) A REP shall make level or average payment plan available to a residential customer eligible to receive a rate reduction pursuant to §25.454 of this title (relating to Rate Reduction Program). If the REP applies a switch-hold as a result of the customer entering into the level or average payment plan, the customer must be informed by the REP in writing that a switch-hold will apply and any balance deferred must be paid and the customer removed from the level or average payment plan before the customer will be allowed to change service to another provider. If the amount of the deferred balance does not appear on each bill the customer receives, the REP must inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.

(2) A REP shall make level or average payment plan available to a customer who is not currently delinquent in payment to the REP. Delinquent in payment shall mean:

(A) A customer whose normal billing arrangement provides for payment after the rendition of service is delinquent if the date specified for payment of a bill has passed and the customer has not paid the full amount due.

(B) A customer whose normal billing arrangement provides for payment before the rendition of service is delinquent if the customer has a negative balance on the account for electric service.

(3) A REP shall bill or credit any over- or under-recovery or apply the over- or under-recovery to the customer's level or average payment amount every six months. Alternatively, a REP may recalculate the customer's average consumption and adjust the customer's required minimum payment as frequently as every billing period. A REP may collect under-recovered costs from a customer upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers every six months, or upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a level or

average payment plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.

(i) (No change.)

(j) Deferred payment plans and other alternate payment arrangements.

(1) A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the current bill. A deferred payment plan may be established ~~[in person or]~~ by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

(A) ~~[(4)]~~ A REP shall offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, pursuant to §25.483(i)~~[(j)]~~ of this title.

(B) During a state of disaster declared by the governor pursuant to Texas Government Code §418.014, a REP shall offer a deferred payment plan to customers, upon request, in the area covered by the declaration.

(C) ~~[(2)]~~ A REP shall offer a deferred payment plan to a customer who has been underbilled, pursuant to ~~[as described in]~~ subsection (e) of this section.

(2) A REP shall make a payment plan available to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in July, August, or September. A REP shall make a payment plan available to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in January or February if in the prior month ERCOT records a peak in demand that is higher than the winter peak that existed prior to the winter of 2009-2010. A REP is not required to offer a payment plan if the customer is on an existing payment plan pursuant to this paragraph.

(A) The following residential customers are eligible for a deferred payment plan under this paragraph:

(i) customers receiving, or eligible to receive, the LITE-UP discount pursuant to §25.454 of this title, unless the customer is already enrolled on an average or level payment plan pursuant to subsection (h)(1) of this section;

(ii) customers designated as critical care and chronic condition customers under §25.497 of this title (relating to Critical Care and Chronic Condition Customers); or

(iii) customers who have expressed an inability to pay unless the customer:

(I) has been disconnected during the preceding 12 months;

(II) has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or

(III) has received service from the REP for less than three months, and the customer lacks:

(-a-) sufficient credit; or

(-b-) a satisfactory history of payment for electric service from a previous REP or utility.

(B) The REP shall make available, at the customer's option, the plans described in clauses (i) and (ii) of this subparagraph.

(i) A deferred payment plan with the initial payment amount no greater than 50% of the amount due. The deferred amount

shall be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments.

(ii) The opportunity to pay based on a level or average payment plan instead of the balance then currently due. If the customer is on a level or average payment plan, no additional deferral beyond the terms of the level or average payment plan is required. If the REP applies a switch-hold as a result of the customer entering into the level or average payment plan, the customer must be informed by the REP that a switch-hold will apply and any balance deferred must be paid and the customer removed from the level or average payment plan before the customer will be allowed to change service to another provider. If the amount of the deferred balance does not appear on each bill the customer receives, the REP must inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.

(C) The REP shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph.

~~[(3)] For customers who have expressed an inability to pay, a REP shall offer a deferred payment plan unless the customer:}~~

~~{(A) has been issued more than two termination or disconnection notices during the preceding 12 months; or}~~

~~{(B) has received service from the REP for less than three months, and the customer lacks:}~~

~~{(i) sufficient credit; or}~~

~~{(ii) a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).}~~

(3) ~~[(4)]~~ A ~~[Any deferred payment plan offered by a]~~ REP shall not refuse ~~[a]~~ customer participation in a deferred payment plan ~~[such a program]~~ on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(4) ~~[(5)]~~ A REP may voluntarily offer a deferred payment plan to ~~[offered by a REP for]~~ customers who have expressed an inability to pay and have received a disconnection notice ~~[shall provide that the delinquent amount be paid in equal installments over at least three billing cycles, unless the customer requests a lesser number of installments. A REP may require an initial payment not to exceed 25% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles].~~

(5) ~~[(6)]~~ A copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in a clear and conspicuous type, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name of REP). By entering into this agreement, you understand that you must pay the total amount of your deferred payment plan before you will be able to change service to another provider." In addition, where the customer and the REP's representative or agent meets in person, the representative shall read the preceding statement to the customer;

(B) may include the one-time ~~[a]~~ penalty in accordance with subsection (c) of this section ~~[not to exceed 5.0% for late payment]~~ but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid under the plan;

(E) shall state the specific amount of each installment;

(F) shall allow for the disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection; and

(G) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(6) [(7)] A REP may pursue disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)(2)[(3)] of this section shall not apply with respect to a customer who has received notice of a disconnection due to failure to meet the terms of a deferred payment plan.

(k) (No change.)

(l) Switch-hold.

(1) While a customer is on a deferred payment plan or level or average payment plan pursuant to subsection (j) or (h)(1) of this section, the REP may request that the TDU place a switch-hold on the ESI ID, which shall prevent a switch transaction from being completed for the ESI ID and shall prevent a move-in transaction from being completed pending documentation that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title, the switch-hold shall continue to remain in place. The switch-hold shall remain in effect until the REP of record notifies the TDU to remove the switch-hold because the customer has satisfied the deferred payment plan or has been removed from the level or average payment plan after paying any balance owed, or until such time as removal of the switch-hold is otherwise authorized or required. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

(A) The REP via a standard market process may request a switch-hold.

(B) The REP via a standard market process shall submit a request to remove the switch-hold when the terms of a deferred payment plan are satisfied and when a customer has been removed from level or average payment plan after paying any balance owed.

(C) When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(D) At the time of a mass transition, the TDU shall remove the switch-hold flag for any ESI ID that is transitioned to a provider of last resort (POLR) provider.

(E) When the applicant for electric service is shown to be a new occupant not associated with the customer for which the switch-hold was imposed using the switch-hold process described in §25.126 of this title (relating to Adjustments Due to Meter Errors, Meter Tampering or Theft in Areas in Which Customer Choice is Available), the switch-hold flag shall be removed.

(F) For a move-in transaction sent by ERCOT indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.

(2) Paragraph (1) of this subsection shall be effective June 1, 2011.

(3) In the next TX SET release, market transactions shall be developed that support the following requirements.

(A) REPs may request a switch-hold while a customer is on a deferred payment plan or level or average payment plan pursuant to subsection (h)(1) or (j) of this section.

(B) TDUs shall provide indication of which ESI IDs have switch holds so that during a move-in enrollment a REP can identify whether a switch-hold applies and that specific documentation must be submitted to have the switch-hold removed. ERCOT shall make this information accessible to all REPs on the secure area of the ERCOT website.

(C) A move-in subject to a switch-hold can be submitted for processing when the customer initially requests the move-in and such transaction will be held in the system for final processing depending on the approval or rejection of the move-in documentation. The TDU shall notify the submitting REP that there is a switch-hold on the ESI ID.

(4) The requirements of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) shall continue to apply while a customer is subject to a switch-hold. The notice required by §25.475(e) of this title shall include a statement reminding the customer that if a switch-hold is in effect, the balance deferred must be paid in full before the customer will be able to change to a new provider.

(5) A customer who is subject to a switch-hold shall not be charged any separate fees for a switch-hold or any customer service or administrative fees related to the switch-hold.

(m) Unauthorized Placement or Continuation of a switch-hold.

(1) A REP may request a switch-hold only as allowed under this section and §25.126 of this title.

(2) A REP shall be responsible for requesting that the TDU remove a switch-hold after the customer's obligation to the REP related to the switch-hold is satisfied. If a customer's obligation to the REP is satisfied by 2:00 p.m. on a business day, the REP shall send a request to the TDU to remove the switch-hold by 6:00 p.m. of that same business day. The TDU shall remove the switch-hold by 2:00 p.m. of the following business day.

(3) If a REP erroneously places a switch-hold flag on an ESI ID and thus prevents a legitimate switch, the REP shall be considered to have committed a Class B Violation (as defined in §25.8(b) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers)) for purposes of any administrative penalties imposed by the commission.

(n) Effective date. Unless otherwise noted in this section, the effective date of this section is December 1, 2010.

§25.483. *Disconnection of Service.*

(a) - (f) (No change.)

(g) Disconnection of critical care or chronic condition residential customer [ill and disabled]. A REP having disconnection authority under the provisions of subsection (b) of this section shall not autho-

rize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a critical care or chronic condition residential customer pursuant to §25.497 of this title (relating to Critical Care and Chronic Condition Customers), except as provided in this subsection. [establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.]

(1) The REP shall notify the customer and secondary contact with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be sent by mail. Except as provided in this subsection, the notice shall comply with the requirements of subsections (k) and (l) of this section.

(2) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for designation as a critical care customer, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnection notice from the REP. Nothing in this paragraph should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.

(3) Prior to disconnecting a critical care residential customer, a TDU shall contact the customer and the secondary contact listed on the commission-approved application form. If the TDU does not reach the customer and secondary contact by phone, the TDU shall visit the premise, and, if there is no response, shall leave a door hanger containing the pending disconnection information.

(4) If the TDU refuses to disconnect a critical care residential customer pursuant to this subsection, it shall cease charging all transmission and distribution charges and surcharges for that premise to the REP.

~~{(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:}~~

~~{(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;}~~

~~{(B) Have the person's attending physician submit a written statement to the REP; and}~~

~~{(C) Enter into a deferred payment plan.}~~

~~{(2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.}~~

~~{(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a~~

~~disconnection, or to provide prior notice of the disconnection, when not otherwise required.}~~

(h) - (j) (No change.)

(k) Disconnection notices. A disconnection notice for nonpayment shall:

(1) (No change.)

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed or, if the customer has agreed to receive communications from the REP by email, be a separate email with the words "disconnection notice" or similar language in the subject line. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) - (4) (No change.)

(l) - (m) (No change.)

(n) Effective date. The effective date of this section is December 1, 2010.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001551

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 936-7223



## SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

The Public Utility Commission of Texas (commission) proposes the repeal of §25.497, relating to Critical Care Customers, and proposes new §25.497, relating to Critical Care and Chronic Condition Customers. The new rule will provide uniform requirements regarding residential customers with certain medical conditions who face disconnection of electric service by a transmission and distribution utility (TDU). The commission is separately proposing related amendments to §25.454 relating to Rate Reduction Program, §25.480 relating to Bill Payment and Adjustments, and §25.483 relating to Disconnection of Service that address protections for customers with serious medical conditions facing disconnection of electric service. New §25.497 is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37622 is assigned to this proceeding.

The commission is seeking comments on the repeal and proposed new rule listed above, as well as comments on the following questions, which may result in changes to the proposed rules:

(1) This proposal includes two designations: chronic condition and critical care residential customers. Some parties have suggested only one category. Please provide feedback on the benefits of each approach.

(2) If the commission proceeds with two designations, what is the proper treatment or transition mechanism for customers currently on the critical care list prior to their regular renewal date? Which protections should they be afforded? Should they be required to reapply before their regular renewal date?

(3) In the proposal, customers who are dependent upon an electric-powered medical device to sustain life and have battery back-up available are not classified as critical care. Should this provision be reconsidered? Please provide alternative recommendations.

Christine Wright, Senior Market Analyst, Competitive Markets Division, has determined that, for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Wright has determined that, for each year of the first five years the rules are in effect, the public benefits anticipated as a result of enforcing the rules will be consistent treatment of customers by retail electric providers and TDUs, and a more expeditious and effective process for individuals suffering from debilitating medical conditions to qualify as critical care customers. No adverse economic impact is anticipated on small businesses or micro-businesses as a result of enforcing the rules. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

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

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, May 17, 2010. The request for a public hearing must be received within 20 days after publication.

Initial comments on the repeal and new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by May 6, 2010, (20 days after publication). Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by May 21, 2010 (35 days after publication). Comments should be organized in a manner consistent with the organization of the new rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rules. The commission will consider the costs and benefits in deciding whether to adopt the rules. All comments should refer to Project Number 37622.

#### 16 TAC §25.497

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with

the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.101.

§25.497. *Critical Care Customers.*

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001548

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 936-7223

#### 16 TAC §25.497

The new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.101.

§25.497. *Critical Care and Chronic Condition Customers.*

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

(1) Critical load customer--A critical load public safety customer or a critical load industrial customer.

(2) Critical load public safety customer--A customer for whom electric service is considered crucial for the protection or maintenance of public safety, including but not limited to hospitals, police stations, fire stations, and critical water and wastewater facilities.

(3) Critical load industrial customer--An industrial customer for whom an interruption or suspension of electric service would create a dangerous or life-threatening condition on the customer's premises.

(4) Critical care industrial customer--An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical care industrial customer."



(5) Chronic condition residential customer--A residential customer or person who currently resides and has been in residence with that customer for the most recent three consecutive months who has been diagnosed by a physician with a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition. If the serious medical condition that impairs a major life function is diagnosed by the customer's physician as a life-long condition, the designation under this definition may apply up to one year. Otherwise, the designation under this definition shall apply for no longer than 90 days.

(6) Critical care residential customer--A residential customer or person who currently resides and has been in residence with that customer for the most recent three months who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. If a medical device has battery back-up available in the marketplace, the device is not considered to require electric service. A designation under this definition shall be for a two year period.

(b) Eligibility for protections. In order to be considered for designation as a critical care or chronic condition residential customer, a customer must submit the commission-approved application form to the transmission and distribution utility (TDU) that serves the customer's premises.

(c) Benefits for critical care and chronic condition customers. A critical care or chronic condition customer qualifies for notification of interruptions or suspensions of service, as provided in Sections 4.2.5 and 5.2.5, and protections against suspension or disconnection, as provided in Section 5.3.7.4(1)(D) and (E), of the TDU's tariff for retail electric delivery service. A customer for whom an application filed pursuant to this section is approved is also eligible for certain protections as described in §25.483 of this title (relating to Disconnection of Service).

(d) Notice to customers concerning critical care and chronic condition status.

(1) A Retail Electric Provider (REP) shall notify each residential applicant for service of the right to apply for critical care or chronic condition designation. This notice to an applicant for residential service shall be included in the terms of service documents.

(2) All REPs that serve residential customers shall provide information about critical care and chronic condition customer designation to each residential customer three times a year. The REP may include the information related to the low income rate reduction program in the same notification.

(3) Upon a customer's request, the REP shall provide to the customer the application form for critical care and chronic condition designation.

(e) Procedure for obtaining critical care or chronic condition residential customer designation.

(1) The commission-approved application form shall instruct the customer to have the physician electronically submit the application form to the TDU. If the physician submits the form to the REP, the REP shall forward it to the TDU electronically or by expedited mail, no later than two business days from receipt of the form. The application form shall include a telephone number that is answered by a person capable of responding to questions from a physician or customer about the form.

(2) After the TDU receives the form, it shall evaluate the form for completeness and shall verify information to the extent appropriate. If the form is materially incomplete, no later than two business days after receiving the form, the TDU shall return the form to the customer and explain in writing what information is needed to complete the form.

(3) If the TDU has not approved or disapproved the application or returned the form as materially incomplete within two business days from receipt of the form, the application shall be considered approved on a temporary basis pending final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.

(4) If the TDU determines that the form is materially complete, it nevertheless shall request any additional information that is necessary to make a final determination on the application. If the customer does not provide the requested information within 14 calendar days of the request, the application shall be considered denied. If the customer subsequently provides the requested information, the application shall again be considered approved on a temporary basis pending a final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.

(5) Reasons that a TDU shall consider a form materially incomplete for an application for critical care or chronic condition residential customer designation include the omission of the name, contact information (including a secondary contact), signature, and medical board license number of the customer's physician.

(6) The TDU shall not challenge the diagnosis of the physician, but shall ensure that any designation as a critical care or chronic condition residential customer is consistent with the information provided on the form and the definitions in this section. If there are inconsistencies, the TDU shall return the form to the customer and explain the inconsistencies in writing. If the customer or the physician does not provide the requested clarifications within 14 calendar days of the request, the application shall be considered denied. If the customer subsequently provides clarifications, the application shall again be considered approved on a temporary basis pending a final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.

(7) The TDU shall notify the customer's REP using a standard market transaction and the customer of its final determination concerning the customer's application for critical care or chronic condition residential customer designation, including the type of designation approved. The TDU shall provide the secondary contact information to the REP using a standard market transaction. If the customer switches to a different REP, the TDU shall provide the new REP with the secondary contact information using a standard market transaction.

(8) The TDU shall inform the customer of the customer's right to file a complaint with the commission pursuant to §22.242 of this title (relating to Complaints) at the same time the TDU notifies the customer of its final determination.

(9) The TDU shall notify critical care and chronic condition residential customers of the expiration of their designation in accordance with this paragraph.

(A) The TDU shall provide a renewal notice to a chronic condition residential customer whose designation was for a period longer than 90 days at least 45 days prior to the expiration date of the chronic condition residential customer designation. The renewal notice shall also be provided to the secondary contact included on the commission-approved application form. The renewal notice shall

include the application form and an explanation of how to reapply for critical care and chronic condition customer designation.

(B) The TDU shall provide a renewal notice to a critical care residential customer at least 45 days prior to the expiration date of the critical care customer designation. The renewal notice shall also be provided to the secondary contact included on the commission-approved application form. The renewal notice shall include the application form and an explanation of how to reapply for critical care and chronic condition customer designation.

(f) Effect of critical care and chronic condition status on payment obligations. A critical care or chronic condition customer designation pursuant to this section does not relieve a customer of the obligation to pay the REP for services provided, and a customer's service may be disconnected pursuant to §25.483 of this title.

(g) TX SET changes. In the next TX SET release, market transactions shall be developed to allow the automatic provision from the TDU to the REP of the secondary contact information included on a commission-approved application form for critical care and chronic care residential customer designation.

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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TRD-201001549

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

### 16 TAC §26.127

The Public Utility Commission of Texas (commission) proposes an amendment to §26.127, relating to Abbreviated Dialing Codes. The amendment will address the responsibility of the Texas Underground Facility Notification Corporation and limitations of liability by telecommunications providers whose 811 service is regulated by the commission. Project Number 35495 is assigned to this proceeding.

Janis Ervin, Senior Utility Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Ervin has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the clarification of the responsibility of the Texas Underground Facility Notification Corporation with respect to 811 service and appropriate limitations of liability by telecommunications providers whose 811 service

is regulated by the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

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

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, May 25, 2010, at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Initial comments may be filed by May 17, 2010 (31 days after publication) and reply comments may be submitted by May 31, 2010 (45 days after publication). Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 35495.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §§51.001 - 65.252, which grants the commission jurisdiction over telecommunications providers.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §§51.001 - 65.252.

§26.127. *Abbreviated Dialing Codes.*

(a) - (e) (No change.)

(f) 811 service.

(1) (No change.)

(2) Authority. Authority for One Call Excavation Notification resides with the Texas Underground Facility Notification Corporation (doing business as One Call Board of Texas and referred to herein as TUFNG) pursuant to Chapter [Section] 251 of the Texas Utilities Code.

(3) Customer Responsibility. TUFNG is a customer of 811 service. Telecommunications providers whose 811 service is regulated by the commission may require TUFNG to provide 60-days written notice for any call center number additions or changes to ensure timely numbered translations by the 811 service providers.

(4) Limitations of liability. Telecommunications providers whose 811 service is regulated by the commission may limit their liability for the provision of 811 service through the inclusion of liability

limitations in their tariffs. Liability for gross negligence or willful misconduct shall not be limited.

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

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

### 16 TAC §26.415

The Public Utility Commission of Texas (commission) proposes an amendment to §26.415, relating to the Specialized Telecommunications Assistance Program (STAP). The amendment will clarify the responsibilities of the commission, vendors, and service providers in the STAP and provide reimbursement guidelines. Project Number 34864 is assigned to this proceeding.

Eileen Alter, Relay Texas Administrator, Customer Protection Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Alter has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be better management of the STAP by (1) requiring vendors to maintain their commission registration, stay in good standing with the State of Texas, and stay better informed regarding STAP program updates, and (2) providing more specific guidelines for vendor reimbursement. The amendment should result in fewer vendor errors and improved STAP recipient service and satisfaction. It should also ensure that STAP recipients pay a similar price for a device or service as the general public for the same device.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

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

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on June 22, 2010. The re-

quest for a public hearing must be received within 30 days after publication.

Comments on the amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Initial comments may be filed by May 17, 2010, (31 days after publication), and reply comments may be submitted by May 31, 2010 (45 days after publication). Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 34864.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §56.153(c) and §56.154, which provides the commission with certain authority concerning STAP.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.153(c), and 56.154.

*§26.415. Specialized Telecommunications Assistance Program (STAP).*

- (a) (No change.)
- (b) Program responsibilities.

(1) Texas Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services (DHHS) [Commission for the Deaf and Hard of Hearing (TCDHH)] responsibilities. DHHS [TCDHH] is responsible for:

- (A) - (C) (No change.)
- (2) Commission responsibilities. The commission is responsible for:
  - (A) (No change.)
  - (B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program; ~~and~~
  - (C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC), in accordance with the Public Utility Regulatory Act (PURA), §56.110 and §56.112 if funding is available; and[-]
  - (D) Resolving disputes regarding the amount or propriety of the payment for a device or service or whether the device or service is appropriate or adequate to meet the need of the person to whom the DHHS issued a voucher.

(3) Vendor and service provider responsibilities. Vendors and service providers are responsible for adhering to the commission's STAP administration requirements as provided in subsection (c) of this section and with the commission's STAP procedures as posted and periodically updated on the commission's web site (www.puc.state.tx.us).

- (c) Program administration.

(1) Vendor and service provider registration. A vendor or service provider who accepts STAP vouchers shall register with the commission and agree to comply with this section and the commission's STAP procedures as posted and periodically updated on the commission's web site. A vendor's or service provider's STAP registration shall include its

[(A)] [To facilitate the timely reimbursement of STAP vouchers, the TUSF administrator may specify that a vendor or service provider who accepts STAP vouchers shall register with the administrator by providing their] name, contact person, address, telephone number, facsimile number (if available), and information sufficient to permit the commission's STAP administrator to reimburse the vendor or service provider by direct deposit rather than by check. If a vendor's or service provider's registration information is not complete or accurate, the STAP administrator shall notify the vendor or service provider, by certified mail, and the administrator of the Texas Universal Service Fund (TUSF) that the vendor or service provider is no longer eligible to receive voucher reimbursements under this program. The commission is not responsible if the vendor or service provider has not provided a correct mailing address for receipt of this notice. Reimbursements for vouchers that are otherwise eligible will be resumed after the vendor or service provider has completed and corrected its registration.

(2) [(B)] Vendor and service provider in good standing. A vendor or service provider that [The commission will notify the TUSF administrator and instruct it not to accept registration information from a vendor or service provider if the vendor or service provider] is suspended or barred [debarred] from doing business with the State of Texas[, as determined by the Texas Building and Procurement Commission (formerly General Services Commission),] or with the federal government is not eligible to participate in the this program. If a vendor or service provider is registered under the STAP and becomes [is] barred from doing business with the State of Texas or the federal government, the STAP administrator [commission] shall notify the vendor or service provider, by certified mail [return receipt requested], and the TUSF administrator that the vendor or service provider is no longer eligible to receive voucher reimbursements under the STAP. The commission is not responsible if the vendor or service provider has not provided a correct mailing address for receipt of this notice. Reimbursements for vouchers that are otherwise eligible will be resumed if the vendor or service provider is returned to good standing with the State of Texas and federal government [this program].

(3) Vendor or service provider adherence to commission STAP procedures. Any vendor or service provider not in compliance with the commission's STAP procedures as posted and periodically updated on the commission's web site, within 30 days from the date the commission's procedures or changes thereto are posted, is not eligible to receive voucher reimbursements under the STAP. The STAP administrator may permanently bar, or suspend for a specified period of time, any vendor or service provider that the STAP administrator identifies as having billed the STAP for devices or services not provided to eligible customers.

(4) [(2)] Vendor or service provider reimbursement. A vendor or service provider who exchanges a STAP voucher for the purchase of approved equipment or services in accordance with the requirements of the STAP may request reimbursement by the commission. If all reimbursement requirements are met, the STAP administrator shall approve reimburse to the vendor or service provider in an amount that is the lesser of: the face value of the STAP voucher, the actual retail price of the equipment or service as charged by the vendor or service provider to all STAP and non-STAP customers for the same equipment or service, or 125% of the manufacturer's suggested retail price for the device actually provided to the STAP customer as

posted on the manufacturer's web site or provided by the manufacturer upon request [terms of the specialized telecommunications assistance program specified by TCDHH shall be eligible for reimbursement of the lesser of the face value of the STAP voucher or the actual standard retail price of the equipment or service as charged to all customers of that vendor for the same equipment].

(A) TUSF disbursements shall be made only upon receipt from the vendor or service provider of:

(i) The vendor's copy of the DHHS [TCDHH] voucher signed by the vendor, or an authorized representative, in the space provided thereon. By signing the voucher, the vendor is certifying that the device or service has been delivered to the voucher recipient, and that the device was new when delivered and was not used or re-conditioned.

(ii) The vendor's proof of delivery of the device or service to the voucher recipient. For proof of delivery, the vendor should seek the voucher recipient's signature on the voucher in the space provided thereon. If the vendor is unable to obtain the recipient's signature on the voucher, other evidence of delivery, such as a postal or private delivery service receipt, may be used for proof of delivery to the recipient. However, evidence of delivery to the voucher recipient must include the signature of the voucher recipient or the signature of the recipient's parent or guardian. The signature of an authorized agent will not suffice as a substitute for the signature of the recipient or the recipient's parent or guardian.

(iii) A receipt that contains a description of the device or service exchanged for the STAP voucher and the price charged to the customer for the device or service exchanged. The price charged to the customer for the device or service exchanged for the voucher cannot exceed the standard retail price charged by that vendor to all of its customers who purchase the same equipment or service.

(B) TUSF disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable, including investigation of whether the presentation of a STAP voucher represents a valid transaction for equipment or service under the STAP.

(C) If a dispute arises as to whether the submitted documentation is sufficient to create a presumption of a valid STAP sales transaction, the commission will be the sole judge of the sufficiency of the documentation.

(D) The TUSF administrator shall ensure that reimbursement to vendors for STAP vouchers shall be issued within 45 days after the STAP voucher and other documentation required under subparagraph (A) of this paragraph is received by the TUSF administrator.

(E) The commission may delay payment of a voucher to a vendor or [distributor of devices or a] service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the DHHS [TCDHH] issued the voucher until the dispute is resolved.

[(F)] The commission shall process a voucher for payment no sooner than ten working days from the date the STAP customer received the device or service.

[(F)] The vendor or service provider shall refund a reimbursement [The commission may provide that payment of the voucher is conditioned on the return of the payment] if the device is returned to the vendor [distributor] within 30 days of receipt or if the service is not used by the STAP customer [person to whom the voucher was issued] within 30 days of its availability. [The commission may

~~provide an alternative dispute resolution process for resolving a dispute regarding the equipment or service provided.]~~

(H) A STAP vendor or service provider will not be reimbursed for a voucher that is submitted to the STAP administrator more than six months after the voucher's expiration date.

(I) The commission may provide an alternative dispute resolution process for resolving a dispute regarding the equipment or service provided.

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

Filed with the Office of the Secretary of State on April 1, 2010.

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Adriana A. Gonzales

Rules Coordinator

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

The State Board of Education (SBOE) proposes amendments to §§113.1, 113.21, and 113.31 and new §§113.10 - 113.16, 113.17 - 113.20, and 113.40 - 113.48, concerning Texas essential knowledge and skills (TEKS) for social studies. The sections establish the TEKS for social studies courses in elementary, middle school, and high school. The proposed rule actions would establish revised social studies TEKS for implementation beginning with the 2011-2012 school year.

In January and February 2009, committees were convened to review the social studies and economics TEKS. On April 22, 2009, the SBOE Committee on Instruction held a work session to study the process for review of the TEKS, make recommendations to the SBOE Committee of the Full Board regarding adjustments to the process approved by the SBOE in July 2008, and provide guidance to Texas Education Agency (TEA) staff and social studies and economics TEKS review committees regarding next steps in the review of the social studies and economics TEKS. Information from the April SBOE Committee on Instruction meeting was discussed by the board at the May meeting. In June 2009, six expert reviewers appointed by the SBOE reviewed the current social studies and economics TEKS and submitted feedback to the SBOE.

In July 2009, committees were convened to complete initial drafts of recommended revisions to the social studies and economics TEKS. Initial drafts of the recommendations for revisions to the social studies and economics TEKS were posted on the TEA website for informal feedback. Initial drafts were also reviewed by the six expert reviewers. During the September 2009 meeting, expert reviewers and representatives from the TEKS review committees provided invited testimony.

The social studies and economics TEKS review committees met again in October 2009 to review feedback and complete recommendations for revisions to the social studies and economics TEKS. The recommendations from the review committees were presented to the SBOE Committee of the Full Board during a discussion item at the November 2009 meeting. The proposed revisions were presented for first reading and filing authorization at the January 2010 meeting, and a public hearing on the proposed revisions was held at that time. The SBOE Committee of the Full Board postponed action on the proposed revisions until the March 2010 SBOE meeting.

During its March 2010 meeting, the SBOE took action to approve for first reading and filing authorization proposed revisions to 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies, Subchapter A, Elementary, Subchapter B, Middle School, and Subchapter C, High School.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed rule actions are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed rule actions.

There will be costs associated with this process for the TEA to review and revise the social studies TEKS. There are also implications for the TEA for the development and implementation of professional development to help teachers and administrators understand the revised social studies TEKS. For fiscal year (FY) 2010, the estimated cost to the TEA for reviewing and revising the TEKS is \$51,300. The estimated cost for professional development is \$3.8 million for FY 2011 and \$475,000 for FYs 2012-2014.

There are anticipated fiscal implications for school districts and charter schools to implement the revised TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Ms. Givens has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. In conjunction with the regularly scheduled May 2010 State Board of Education meeting, a public hearing on the proposal will be held on Wednesday, May 19, 2010, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§113.1, 113.10 - 113.16

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

#### §113.1. Implementation of Texas Essential Knowledge and Skills for Social Studies, Elementary.

The provisions of §§113.2-113.7 of this subchapter shall be superseded by §§113.11-113.16 of this subchapter beginning with the 2011-2012 school year [implemented by school districts beginning September 1, 1998, and at the time shall supersede §75.32(h) (1) of this title (relating to Social Studies, Texas and United States History)].

#### §113.10. Implementation of Texas Essential Knowledge and Skills for Social Studies, Elementary, Beginning with School Year 2011-2012.

The provisions of §§113.11-113.16 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year and at that time shall supersede §§113.2-113.7 of this subchapter.

#### §113.11. Social Studies, Kindergarten, Beginning with School Year 2011-2012.

##### (a) Introduction.

(1) In Kindergarten, the study of the self, home, family, and classroom establishes the foundation for responsible citizenship in society. Students explore state and national heritage by examining the celebration of patriotic holidays and the contributions of individuals. The concept of chronology is introduced. Students apply geographic concepts of location and physical and human characteristics of places. Students identify basic human needs and ways people meet these needs. Students learn the purpose of rules and the role of authority figures in the home and school. Students learn customs, symbols, and celebrations that represent American beliefs and principles and contribute to our national identity. Students compare family customs and traditions and describe examples of technology in the home and school. Students acquire information from a variety of oral and visual sources. Students practice problem-solving, decision-making, and independent-thinking skills.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social

studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(5) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruction. Although Kindergarten is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Kindergarten Texas essential knowledge and skills include standards related to this patriotic observance.

##### (b) Knowledge and skills.

(1) History. The student understands that holidays are celebrations of special events. The student is expected to:

(A) explain the reasons for national patriotic holidays such as Presidents' Day, Veterans Day, and Independence Day; and

(B) identify customs associated with national patriotic holidays such as parades and fireworks on Independence Day.

(2) History. The student understands how historical figures, patriots, and good citizens helped to shape the community, state, and nation. The student is expected to:

(A) identify contributions of historical figures, including Stephen F. Austin, George Washington, Christopher Columbus, John Smith, and José Antonio Navarro, who helped to shape the state and nation; and

(B) identify contributions of patriots and good citizens who have shaped the community.

(3) History. The student understands the concept of chronology. The student is expected to:

(A) place events in chronological order; and

(B) use vocabulary related to time and chronology, including before, after, next, first, last, yesterday, today, and tomorrow.

(4) Geography. The student understands the concept of location. The student is expected to:

(A) use terms, including over, under, near, far, left, and right, to describe relative location;

(B) locate places on the school campus and describe their relative locations; and

(C) identify tools that aid in determining location, including maps and globes.

(5) Geography. The student understands physical and human characteristics. The student is expected to:

(A) identify the physical characteristics of places such as landforms, bodies of water, natural resources, and weather; and

(B) identify how the human characteristics of place such as ways of earning a living, shelter, clothing, food, and activities are based upon geographic location.

(6) Economics. The student understands that basic human needs and wants are met in many ways. The student is expected to:

(A) identify basic human needs of food, clothing, and shelter;

(B) explain the difference between needs and wants; and

(C) explain how basic human needs can be met such as through self-producing, purchasing, and trading.

(7) Economics. The student understands the value of jobs. The student is expected to:

(A) identify jobs in the home, school, and community; and

(B) explain why people have jobs.

(8) Government. The student understands the purpose of rules. The student is expected to:

(A) identify purposes for having rules; and

(B) identify rules that provide order, security, and safety in the home and school.

(9) Government. The student understands the role of authority figures. The student is expected to:

(A) identify authority figures in the home, school, and community; and

(B) explain how authority figures make and enforce rules.

(10) Citizenship. The student understands important symbols, customs, and responsibilities that represent American beliefs and principles and contribute to our national identity. The student is expected to:

(A) identify the flags of the United States and Texas;

(B) recite the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag;

(C) identify Constitution Day as a celebration of American freedom; and

(D) use voting as a method for group decision making.

(11) Culture. The student understands similarities and differences among people. The student is expected to:

(A) identify similarities and differences among people such as kinship, laws, and religion; and

(B) identify similarities and differences among people such as music, clothing, and food.

(12) Culture. The student understands the importance of family customs and traditions. The student is expected to:

(A) describe and explain the importance of family customs and traditions; and

(B) compare family customs and traditions.

(13) Science, technology, and society. The student understands ways technology is used in the home and school and how technology affects people's lives. The student is expected to:

(A) identify examples of technology used in the home and school;

(B) describe how technology helps accomplish specific tasks and meet people's needs; and

(C) describe how his or her life might be different without modern technology.

(14) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) obtain information about a topic using a variety of valid oral sources such as conversations, interviews, and music;

(B) obtain information about a topic using a variety of valid visual sources such as pictures, symbols, electronic media, print material, and artifacts; and

(C) sequence and categorize information.

(15) Social studies skills. The student communicates in oral and visual forms. The student is expected to:

(A) express ideas orally based on knowledge and experiences; and

(B) create and interpret visuals, including pictures and maps.

(16) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.12. Social Studies, Grade 1, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 1, students study their relationship to the classroom, school, and community to establish the foundation for responsible citizenship in society. Students develop concepts of time and chronology by distinguishing among past, present, and future events. Students identify anthems and mottoes of the United States and Texas. Students create simple maps to identify the location of places in the classroom, school, and community. Students explore the concepts of goods and services and the value of work. Students identify individuals who exhibit good citizenship. Students describe the importance of family customs and traditions and identify how technology has changed family life. Students sequence and categorize information. Students practice problem-solving, decision-making, and independent-thinking skills.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of

our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(5) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruction. Although Grade 1 is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Grade 1 Texas essential knowledge and skills include standards related to this patriotic observance.

(b) Knowledge and skills.

(1) History. The student understands the origins of customs, holidays, and celebrations. The student is expected to:

(A) describe the origins of customs, holidays, and celebrations of the community, state, and nation such as San Jacinto Day, Independence Day, and Veterans Day; and

(B) compare the observance of holidays and celebrations, past and present.

(2) History. The student understands how historical figures and other individuals helped to shape the community, state, and nation. The student is expected to:

(A) identify contributions of historical figures, including Sam Houston, George Washington, Abraham Lincoln, and Martin Luther King Jr., who have influenced the community, state, and nation;

(B) identify historical figures, including Alexander Graham Bell, Thomas Edison, Garrett Morgan, and Richard Allen, and other individuals who have exhibited individualism and inventiveness; and

(C) compare the similarities and differences among the lives and activities of historical figures and other individuals who have influenced the community, state, and nation.

(3) History. The student understands the concepts of time and chronology. The student is expected to:

(A) distinguish among past, present, and future;

(B) describe and measure calendar time by days, weeks, months, and years; and

(C) create a calendar and simple timeline.

(4) Geography. The student understands the relative location of places. The student is expected to:

(A) locate places using the four cardinal directions; and

(B) describe the location of self and objects relative to other locations in the classroom and school.

(5) Geography. The student understands the purpose of maps and globes. The student is expected to:

(A) create and use simple maps such as maps of the home, classroom, school, and community; and

(B) locate places of significance, including the local community, Texas, the state capital, the U.S. capital, major cities in Texas, the coast of Texas, Canada, Mexico, and the United States on maps and globes.

(6) Geography. The student understands various physical and human characteristics. The student is expected to:

(A) identify and describe the physical characteristics of places such as landforms, bodies of water, natural resources, and weather;

(B) identify examples of and uses for natural resources in the community, state, and nation; and

(C) identify and describe how the human characteristics of places such as shelter, clothing, food, and activities are based upon geographic location.

(7) Economics. The student understands how families meet basic human needs. The student is expected to:

(A) describe ways that families meet basic human needs; and

(B) describe similarities and differences in ways families meet basic human needs.

(8) Economics. The student understands the concepts of goods and services. The student is expected to:

(A) identify examples of goods and services in the home, school, and community;

(B) identify ways people exchange goods and services; and

(C) identify the role of markets in the exchange of goods and services.

(9) Economics. The student understands the condition of not being able to have all the goods and services one wants. The student is expected to:

(A) identify examples of people wanting more than they can have;

(B) explain why wanting more than they can have requires that people make choices; and

(C) identify examples of choices families make when buying goods and services.

(10) Economics. The student understands the value of work. The student is expected to:

(A) describe the components of various jobs and the characteristics of a job well performed; and

(B) describe how specialized jobs contribute to the production of goods and services.

(11) Government. The student understands the purpose of rules and laws. The student is expected to:

(A) explain the purpose for rules and laws in the home, school, and community; and

(B) identify rules and laws that establish order, provide security, and manage conflict.

(12) Government. The student understands the role of authority figures, public officials, and citizens. The student is expected to:

(A) identify the responsibilities of authority figures in the home, school, and community;

(B) identify and describe the roles of public officials in the community, state, and nation; and

(C) identify and describe the role of a good citizen in maintaining a constitutional republic and in keeping elected officials responsive to the wishes of the people.

(13) Citizenship. The student understands characteristics of good citizenship as exemplified by historical figures and other individuals. The student is expected to:



(A) identify characteristics of good citizenship, including truthfulness, respect for others and oneself, responsibility in daily life, and participation in government by educating oneself about the issues, holding public officials to their word, and voting;

(B) identify historical figures such as Nathan Hale, Benjamin Franklin, Francis Scott Key, and Eleanor Roosevelt who have exemplified good citizenship; and

(C) identify other individuals who exemplify good citizenship.

(14) Citizenship. The student understands important symbols, customs, and celebrations that represent American beliefs and principles and contribute to our national identity. The student is expected to:

(A) explain state and national patriotic symbols, including the United States and Texas flags, the Liberty Bell, the Statue of Liberty, and the Alamo;

(B) recite and explain the meaning of the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag;

(C) identify anthems and mottoes of Texas and the United States;

(D) explain and practice voting as a way of making choices and decisions;

(E) explain how patriotic customs and celebrations reflect American individualism and freedom; and

(F) identify Constitution Day as a celebration of American freedom.

(15) Culture. The student understands the importance of family and community beliefs, customs, language, and traditions. The student is expected to:

(A) describe and explain the importance of various beliefs, customs, language, and traditions of families and communities; and

(B) explain the way folktales and legends such as Aesop's fables reflect beliefs, customs, language, and traditions of communities.

(16) Science, technology, and society. The student understands how technology affects daily life, past and present. The student is expected to:

(A) describe how technology changes the ways families live;

(B) describe how technology changes communication, transportation, and recreation; and

(C) describe how technology changes the way people work.

(17) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) obtain information about a topic using a variety of valid oral sources such as conversations, interviews, and music;

(B) obtain information about a topic using a variety of valid visual sources such as pictures, symbols, electronic media, maps, literature, and artifacts; and

(C) sequence and categorize information.

(18) Social studies skills. The student communicates in oral, visual, and written forms. The student is expected to:

(A) express ideas orally based on knowledge and experiences; and

(B) create and interpret visual and written material.

(19) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.13. Social Studies, Grade 2, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 2, students focus on a study of their local community by examining the impact of significant individuals and events on the history of the community as well as on the state and nation. Students begin to develop the concepts of time and chronology. The relationship between the physical environment and human activities is introduced as are the concepts of consumers and producers. Students identify functions of government as well as services provided by the local government. Students continue to acquire knowledge of customs, symbols, and celebrations that represent American beliefs and principles. Students identify the significance of works of art in the local community and explain how technological innovations have changed transportation and communication. Students communicate what they have learned in written, oral, and visual forms.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material such as nonfiction texts, primary sources, biographies, folklore, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, online tours, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruction. Although Grade 2 is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Grade 2 Texas essential knowledge and skills include standards related to this patriotic observance.

(b) Knowledge and skills.

(1) History. The student understands the historical significance of landmarks and celebrations in the community, state, and nation. The student is expected to:

(A) explain the significance of various community, state, and national celebrations such as Veterans Day, Memorial Day, Independence Day, and Thanksgiving; and

(B) identify and explain the significance of various community, state, and national landmarks such as monuments and government buildings.

(2) History. The student understands the concepts of time and chronology. The student is expected to:

(A) describe the order of events by using designations of time periods such as historical and present times;

(B) apply vocabulary related to chronology, including past, present, and future; and

(C) create and interpret timelines for events in the past and present.

(3) History. The student understands how various sources provide information about the past and present. The student is expected to:

(A) identify several sources of information about a given period or event such as reference materials, biographies, newspapers, and electronic sources; and

(B) describe various evidence of the same time period using primary sources such as photographs, journals, and interviews.

(4) History. The student understands how historical figures and other individuals helped shape the community, state, and nation. The student is expected to:

(A) identify contributions of historical figures, including Thurgood Marshall, Irma Rangel, John Hancock, and Theodore Roosevelt, who have influenced the community, state, and nation;

(B) identify historical figures, including Amelia Earhart, Robert Fulton, George Washington Carver, and W. E. B. DuBois, who have exhibited individualism and inventiveness; and

(C) explain how people and events have influenced local community history.

(5) Geography. The student uses simple geographic tools such as maps and globes. The student is expected to:

(A) interpret information on maps and globes using basic map elements such as title, orientation (north, south, east, west), and legend/map keys; and

(B) create maps to show places and routes within the home, school, and community.

(6) Geography. The student understands the locations and characteristics of places and regions in the community, state, and nation. The student is expected to:

(A) identify major landforms and bodies of water, including each of the continents and each of the oceans, on maps and globes;

(B) locate the community, Texas, and the United States on maps and globes; and

(C) examine information from various sources about places and regions.

(7) Geography. The student understands how physical characteristics of places and regions affect people's activities and settlement patterns. The student is expected to:

(A) describe how weather patterns and seasonal patterns affect activities and settlement patterns;

(B) describe how natural resources and natural hazards affect activities and settlement patterns;

(C) explain how people depend on the physical environment and natural resources to meet basic needs; and

(D) identify the characteristics of different communities, including urban, suburban, and rural, and how they affect activities and settlement patterns.

(8) Geography. The student understands how humans use and modify the physical environment. The student is expected to:

(A) identify ways in which people depend on the physical environment and natural resources to meet their basic needs;

(B) identify ways in which people have modified the physical environment such as building roads, clearing land for urban development and agricultural use, and drilling for oil;

(C) identify benefits and consequences of human modification of the physical environment such as the use of irrigation to improve crop yields; and

(D) identify ways people can conserve and replenish natural resources.

(9) Economics. The student understands the value of work. The student is expected to:

(A) explain how work provides income to purchase goods and services; and

(B) explain the choices people in the U.S. free enterprise system can make about earning, spending, and saving money and where to live and work.

(10) Economics. The student understands the roles of producers and consumers in the production of goods and services. The student is expected to:

(A) distinguish between producing and consuming;

(B) identify ways in which people are both producers and consumers; and

(C) examine the development of a product from a natural resource to a finished product.

(11) Government. The student understands the purpose of governments. The student is expected to:

(A) identify functions of governments such as establishing order, providing security, and managing conflict;

(B) identify governmental services in the community such as police and fire protection, libraries, schools, and parks and explain their value to the community; and

(C) describe how governments tax citizens such as through income taxes, property taxes, and sales taxes to pay for services and projects voted on by elected officials.

(12) Government. The student understands the role of public officials. The student is expected to:

(A) name current public officials, including mayor, governor, and president;

(B) compare the roles of public officials, including mayor, governor, and president;

(C) identify ways that public officials are selected, including election and appointment to office; and

(D) identify how citizens participate in their own governance through staying informed of what public officials are doing, providing input to them, holding them accountable, volunteering to participate in government functions, and voting.

(13) Citizenship. The student understands characteristics of good citizenship as exemplified by historical figures and other individuals. The student is expected to:

(A) identify characteristics of good citizenship, including truthfulness, equality, respect for others and oneself, responsibility in daily life, and participation in government by educating oneself about the issues, holding public officials to their word, and voting;

(B) identify historical figures, including Paul Revere, Abigail Adams, World War II Women Airforce Service Pilots (WASPs) and Navajo Code Talkers, and Sojourner Truth, who have exemplified good citizenship;

(C) identify other individuals who exemplify good citizenship; and

(D) identify ways to actively practice good citizenship, including involvement in community service.

(14) Citizenship. The student identifies customs, symbols, and celebrations that represent American beliefs and principles that contribute to our national identity. The student is expected to:

(A) recite the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag;

(B) identify selected patriotic songs such as "The Star Spangled Banner" and "America the Beautiful";

(C) identify selected symbols such as state and national birds and flowers and patriotic symbols such as the U.S. and Texas flags and Uncle Sam; and

(D) identify how selected customs, symbols, and celebrations reflect an American love of individualism, inventiveness, and freedom.

(15) Culture. The student understands the significance of works of art in the local community. The student is expected to:

(A) identify selected stories, poems, statues, paintings, and other examples of the local cultural heritage; and

(B) explain the significance of selected stories, poems, statues, paintings, and other examples of the local cultural heritage.

(16) Culture. The student understands ethnic and/or cultural celebrations. The student is expected to:

(A) identify the significance of various ethnic and/or cultural celebrations; and

(B) compare ethnic and/or cultural celebrations.

(17) Science, technology, and society. The student understands how science and technology have affected life, past and present. The student is expected to:

(A) describe how science and technology change communication, transportation, and recreation; and

(B) explain how science and technology change the ways in which people meet basic needs.

(18) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) obtain information about a topic using a variety of valid oral sources such as conversations, interviews, and music;

(B) obtain information about a topic using a variety of valid visual sources such as pictures, maps, electronic sources, literature, reference sources, and artifacts;

(C) use various parts of a source, including the table of contents, glossary, and index, as well as keyword Internet searches to locate information;

(D) sequence and categorize information; and

(E) interpret oral, visual, and print material by identifying the main idea, predicting, and comparing and contrasting.

(19) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) express ideas orally based on knowledge and experiences; and

(B) create written and visual material such as stories, poems, maps, and graphic organizers to express ideas.

(20) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.14. Social Studies, Grade 3, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 3, students learn how diverse individuals have changed their communities and world. Students study the effects inspiring heroes have had on communities, past and present. Students learn about the lives of heroic men and women who made important choices, overcame obstacles, sacrificed for the betterment of others, and embarked on journeys that resulted in new ideas, new inventions, new technologies, and new communities. Students expand their knowledge through the identification and study of people who made a difference, influenced public policy and decision making, and participated in resolving issues that are important to all people. Throughout Grade 3, students develop an understanding of the economic, cultural, and scientific contributions made by individuals.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material such as biographies, founding documents, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(b) Knowledge and skills.

(1) History. The student understands how individuals, events, and ideas have influenced the history of various communities. The student is expected to:

(A) describe how individuals, events, and ideas have changed communities, past and present;

(B) identify individuals, including Pierre-Charles L'Enfant, Benjamin Banneker, and Benjamin Franklin, who have helped to shape communities; and

(C) describe how individuals, including Daniel Boone, Christopher Columbus, the Founding Fathers, and Juan de Oñate, have contributed to the expansion of existing communities or to the creation of new communities.

(2) History. The student understands common characteristics of communities, past and present. The student is expected to:

(A) identify reasons people have formed communities, including a need for security, religious freedom, law, and material well-being;

(B) identify ways in which people in the local community and other communities meet their needs for government, education, communication, transportation, and recreation; and

(C) compare ways in which various other communities meet their needs.

(3) History. The student understands the concepts of time and chronology. The student is expected to:

(A) use vocabulary related to chronology, including past, present, and future times;

(B) create and interpret timelines; and

(C) apply the terms year, decade, and century to describe historical times.

(4) Geography. The student understands how humans adapt to variations in the physical environment. The student is expected to:

(A) describe and explain variations in the physical environment, including climate, landforms, natural resources, and natural hazards;

(B) identify and compare how people in different communities adapt to or modify the physical environment in which they live such as deserts, mountains, wetlands, and plains;

(C) describe the effects of physical processes such as volcanoes, hurricanes, and earthquakes in shaping the landscape;

(D) describe the effects of human processes such as building new homes, conservation, and pollution in shaping the landscape; and

(E) identify and compare the human characteristics of various regions.

(5) Geography. The student understands the concepts of location, distance, and direction on maps and globes. The student is expected to:

(A) use cardinal and intermediate directions to locate places on maps and globes such as the Rocky Mountains, the Mississippi River, and Austin, Texas, in relation to the local community;

(B) use a scale to determine the distance between places on maps and globes;

(C) identify and use the compass rose, grid system, and symbols to locate places on maps and globes; and

(D) create and interpret maps of places and regions that contain map elements, including a title, compass rose, legend, scale, and grid system.

(6) Economics. The student understands the purposes of spending, saving, and donating money. The student is expected to:

(A) identify ways of earning, spending, saving, and donating money; and

(B) create a simple budget that allocates money for spending, saving, and donating.

(7) Economics. The student understands the concept of the free enterprise system. The student is expected to:

(A) define and identify examples of scarcity;

(B) explain the impact of scarcity on the production, distribution, and consumption of goods and services; and

(C) explain the concept of a free market as it relates to the U.S. free enterprise system.

(8) Economics. The student understands how businesses operate in the U.S. free enterprise system. The student is expected to:

(A) identify examples of how a simple business operates;

(B) explain how supply and demand and local, state, and federal taxes affect the price of a good or service;

(C) explain how the cost of production and selling price affect profits; and

(D) identify individuals, past and present, including Henry Ford and other entrepreneurs in the community such as Mary Kay Ash, Wallace Amos, Milton Hershey, and Sam Walton, who have started new businesses.

(9) Government. The student understands the basic structure and functions of various levels of government. The student is expected to:

(A) describe the basic structure of government in the local community, state, and nation;

(B) identify local, state, and national government officials and explain how they are chosen;

(C) identify services commonly provided by local, state, and national governments; and

(D) explain how local, state, and national government services are financed.

(10) Government. The student understands important ideas in historical documents at various levels of government. The student is expected to:

(A) identify the purposes of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights; and

(B) describe and explain the importance of the concept of "consent of the governed" as it relates to the functions of local, state, and national government.

(11) Citizenship. The student understands characteristics of good citizenship as exemplified by historical and contemporary figures. The student is expected to:

(A) identify characteristics of good citizenship, including truthfulness, equality, respect for others and oneself, responsibility in daily life, and participation in government by educating oneself about the issues, holding public officials to their word, and voting;

(B) identify historical and contemporary figures, including Helen Keller and Clara Barton, who have exemplified good citizenship;

(C) identify individuals, including military and first responders, who exemplify good citizenship; and

(D) identify and explain the importance of individual acts of civic responsibility, including obeying laws, serving the community, and voting.

(12) Citizenship. The student understands the impact of individual and group decisions on communities in a constitutional republic. The student is expected to:

(A) give examples of community changes that result from individual or group decisions;

(B) identify examples of actions individuals and groups can take to improve the community; and

(C) identify examples of nonprofit and/or civic organizations such as the Red Cross and explain how they serve the common good.

(13) Culture. The student understands ethnic and/or cultural celebrations of the local community and other communities. The student is expected to:

(A) explain the significance of various ethnic and/or cultural celebrations in the local community and other communities; and

(B) compare ethnic and/or cultural celebrations in the local community with other communities.

(14) Culture. The student understands the role of heroes in shaping the culture of communities, the state, and the nation. The student is expected to:

(A) identify and compare the heroic deeds of state and national heroes, including Hector P. Garcia, Harriet Tubman, James A. Lovell, Juliette Gordon Low, Todd Beamer, Ellen Ochoa, John "Danny" Olivas, and other contemporary heroes; and

(B) identify and analyze the heroic deeds of individuals, including military and first responders such as the Four Chaplains.

(15) Culture. The student understands the importance of writers and artists to the cultural heritage of communities. The student is expected to:

(A) identify various individual writers and artists such as Kadir Nelson, Tomie dePaola, and Phillis Wheatley and their stories, poems, statues, and paintings and other examples of cultural heritage from other communities; and

(B) explain the significance of various individual writers and artists, including Carmen Lomas Garza, Laura Ingalls Wilder, and Bill Martin Jr. and their stories, poems, statues, and paintings, and other examples of cultural heritage to other communities.

(16) Science, technology, and society. The student understands how individuals have created or invented new technology and affected life in communities around the world, past and present. The student is expected to:

(A) identify scientists and inventors, including Jonas Salk, Maria Mitchell, and others who have discovered scientific breakthroughs or created or invented new technology such as Cyrus McCormick, Bill Gates, and Louis Pasteur; and

(B) identify the impact of scientific breakthroughs and new technology in computers, pasteurization, and medical vaccines on communities around the world.

(17) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) research information, including historical and current events, and geographic data, about the community and world, using a variety of valid print, oral, visual, and Internet resources;

(B) sequence and categorize information;

(C) interpret oral, visual, and print material by identifying the main idea, distinguishing between fact and opinion, identifying cause and effect, and comparing and contrasting;

(D) use various parts of a source, including the table of contents, glossary, and index as well as key word Internet searches, to locate information;

(E) interpret and create visuals, including graphs, charts, tables, timelines, illustrations, and maps; and

(F) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(18) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) express ideas orally based on knowledge and experiences;

(B) use technology to create written and visual material such as stories, poems, pictures, maps, and graphic organizers to express ideas; and

(C) use standard grammar, spelling, sentence structure, and punctuation.

(19) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.15. Social Studies, Grade 4, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 4, students examine the history of Texas from the early beginnings to the present within the context of influences of North America. Historical content focuses on Texas history, including the Texas Revolution, establishment of the Republic of Texas, and subsequent annexation to the United States. Students discuss important issues, events, and individuals of the 19th, 20th, and 21st centuries. Students conduct a thorough study of regions in Texas and North America resulting from human activity and from physical features. The location, distribution, and patterns of economic activities and settlement in Texas further enhance the concept of regions. Students describe how early American Indians in Texas and North America met their basic economic needs. Students identify motivations for European exploration and colonization and reasons for the establishment of Spanish settlements and missions. Students explain how American Indians governed themselves and identify characteristics of Spanish colonial and Mexican governments in Texas. Students recite and explain the meaning of the Pledge to the Texas Flag. Students identify the contributions of people of various racial, ethnic, and religious groups to Texas and describe the impact of science and technology on life in the state. Students use critical-thinking skills to identify cause-and-effect relationships, compare and contrast, and make generalizations and predictions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as documents, biographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Where appropriate, local topics should be included. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(b) Knowledge and skills.

(1) History. The student understands the origins, similarities, and differences of American Indian groups in Texas and North America before European exploration. The student is expected to:

(A) explain the possible origins of American Indian groups in Texas and North America;

(B) identify American Indian groups in Texas and North America before European exploration such as the Lipan Apache and the Karankawa;

(C) describe the regions in which American Indians lived; and

(D) compare the ways of life of American Indian groups in Texas and North America before European exploration.

(2) History. The student understands the causes and effects of European exploration and colonization of Texas and North America. The student is expected to:

(A) summarize motivations for European exploration and settlement of Texas, including economic opportunity, the search for freedom, and the desire for expansion;

(B) identify the accomplishments and explain the impact of significant explorers, including Cabeza de Vaca; Francisco Coronado; and René Robert Cavalier, Sieur de la Salle, on the settlement of Texas;

(C) explain when, where, and why the Spanish established settlements and Catholic missions in Texas as well as important individuals such as José de Escandón;

(D) identify Texas' role in the Mexican War of Independence and the war's impact on the development of Texas; and

(E) identify the accomplishments and explain the economic motivations and impact of significant empresarios, including Stephen F. Austin and Martín de León, on the settlement of Texas.

(3) History. The student understands the importance of the Texas Revolution, the Republic of Texas, and the annexation of Texas to the United States. The student is expected to:

(A) analyze the causes, major events, and effects of the Texas Revolution, including the Battle of the Alamo, the Texas Declaration of Independence, the Runaway Scrape, and the Battle of San Jacinto;

(B) summarize the significant contributions of individuals such as Texians William B. Travis, James Bowie, David Crockett, George Childress, and Sidney Sherman; Tejanos Juan N. Seguín, Plácido Benavides, and Francisco Ruiz; Mexicans Antonio López de Santa Anna and Vicente Filisola; and non-combatants Susanna Dickinson and Enrique Esparza;

(C) identify leaders important to the founding of Texas as a republic and state, including José Antonio Navarro, Sam Houston, Mirabeau Lamar, and Anson Jones;

(D) describe the successes, problems, and organizations of the Republic of Texas such as the establishment of a constitution, economic struggles, relations with American Indians, and the Texas Rangers; and

(E) explain the events that led to the annexation of Texas to the United States, including the impact of the U.S.-Mexican War.

(4) History. The student understands the political, economic, and social changes in Texas during the last half of the 19th century. The student is expected to:

(A) describe the impact of the Civil War and Reconstruction on Texas;

(B) explain the growth, development, and impact of the cattle industry, including contributions made by Charles Goodnight, Richard King, and Lizzie Johnson;

(C) identify the impact of railroads on life in Texas, including changes to cities and major industries; and

(D) examine the effects upon American Indian life resulting from changes in Texas, including the Red River War, building of U.S. forts and railroads, and loss of buffalo.

(5) History. The student understands important issues, events, and individuals of the 20th century in Texas. The student is expected to:

(A) identify the impact of various issues and events on life in Texas such as urbanization, increased use of oil and gas, the Great Depression, the Dust Bowl, and World War II;

(B) explain the development and impact of the oil and gas industry upon industrialization and urbanization in Texas, including important places and people such as Spindletop and Pattillo Higgins; and

(C) identify the accomplishments of notable individuals such as John Tower, Scott Joplin, Audie Murphy, Cleto Rodríguez, Stanley Marcus, Bessie Coleman, Raul A. Gonzales, and other local notable individuals.

(6) Geography. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) apply geographic tools, including grid systems, legends, symbols, scales, and compass roses, to construct and interpret maps; and

(B) translate geographic data, population distribution, and natural resources into a variety of formats such as graphs and maps.

(7) Geography. The student understands the concept of regions. The student is expected to:

(A) describe a variety of regions in Texas and the United States such as political, population, and economic regions that result from patterns of human activity;

(B) identify, locate, and compare the geographic regions of Texas (Mountains and Basins, Great Plains, North Central Plains, Coastal Plains), including their landforms, climate, and vegetation; and

(C) compare the geographic regions of Texas (Mountains and Basins, Great Plains, North Central Plains, Coastal Plains) with regions of the United States and other parts of the world.

(8) Geography. The student understands the location and patterns of settlement and the geographic factors that influence where people live. The student is expected to:

(A) identify and explain clusters and patterns of settlement in Texas at different time periods such as prior to the Texas Revolution, after the building of the railroads, and following World War II;

(B) describe and explain the location and distribution of various towns and cities in Texas, past and present; and

(C) explain the geographic factors such as landforms and climate that influence patterns of settlement and the distribution of population in Texas, past and present.

(9) Geography. The student understands how people adapt to and modify their environment. The student is expected to:

(A) describe ways people have adapted to and modified their environment in Texas, past and present, such as timber clearing, agricultural production, wetlands drainage, energy production, and construction of dams;

(B) identify reasons why people have adapted to and modified their environment in Texas, past and present, such as the use of natural resources to meet basic needs, facilitate transportation, and enhance recreational activities;

(C) compare the positive and negative consequences of human modification of the environment in Texas, past and present, such as economic development and the impact on habitats and wildlife as well as air and water quality; and

(D) describe the positive impact of private, voluntary conservation efforts and wildlife management practices in preserving natural environments and protecting native species.

(10) Economics. The student understands the basic economic activities of early societies in Texas and North America. The student is expected to:

(A) explain the economic activities various early American Indian groups in Texas and North America used to meet their needs and wants such as farming, trading, and hunting; and

(B) explain the economic activities early immigrants to Texas used to meet their needs and wants.

(11) Economics. The student understands the characteristics and benefits of the free enterprise system in Texas. The student is expected to:

(A) describe the development of the free enterprise system in Texas;

(B) describe how the free enterprise system works, including supply and demand; and

(C) give examples of the benefits of the free enterprise system such as choice and opportunity.

(12) Economics. The student understands patterns of work and economic activities in Texas. The student is expected to:

(A) explain how people in different regions of Texas earn their living, past and present, through a subsistence economy and providing goods and services;

(B) explain how geographic factors such as climate, transportation, and natural resources have influenced the location of economic activities in Texas;

(C) analyze the effects of exploration, immigration, migration, and limited resources on the economic development and growth of Texas;

(D) describe the impact of mass production, specialization, and division of labor on the economic growth of Texas;

(E) explain how developments in transportation and communication have influenced economic activities in Texas; and

(F) explain the impact of American ideas about progress and equality of opportunity on the economic development and growth of Texas.

(13) Economics. The student understands how Texas, the United States, and other parts of the world are economically interdependent. The student is expected to:

(A) identify ways in which technological changes in areas such as transportation and communication have resulted in increased interdependence among Texas, the United States, and the world;

(B) identify oil and gas, agricultural, and technological products of Texas that are purchased to meet needs in the United States and around the world; and

(C) explain how Texans meet some of their needs through the purchase of products from the United States and the rest of the world.

(14) Government. The student understands how people organized governments in different ways during the early development of Texas. The student is expected to:

(A) compare how various American Indian groups such as the Caddo and the Comanche governed themselves; and

(B) identify and compare characteristics of the Spanish colonial government and the early Mexican governments and their influence on inhabitants of Texas.

(15) Government. The student understands important ideas in historical documents of Texas and the United States. The student is expected to:

(A) identify the purposes and explain the importance of the Texas Declaration of Independence, the Texas Constitution, and other documents such as the Meusebach-Comanche Treaty;

(B) identify and explain the basic functions of the three branches of government according to the Texas Constitution; and

(C) identify the intent, meaning, and importance of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights (Celebrate Freedom Week).

(16) Citizenship. The student understands important customs, symbols, and celebrations of Texas. The student is expected to:

(A) explain the meaning of various patriotic symbols and landmarks of Texas, including the six flags that flew over Texas, the San Jacinto Monument, the Alamo, and various missions;

(B) sing or recite "Texas, Our Texas";

(C) recite and explain the meaning of the Pledge to the Texas Flag; and

(D) describe the origins and significance of state celebrations such as Texas Independence Day and Juneteenth.

(17) Citizenship. The student understands the importance of active individual participation in the democratic process. The student is expected to:

(A) identify important individuals who have participated voluntarily in civic affairs at state and local levels, including Adina de Zavala and Clara Driscoll;

(B) explain how individuals can participate voluntarily in civic affairs at state and local levels through activities such as holding public officials to their word, writing letters, and participating in historic preservation and service projects;

(C) explain the duty of the individual in state and local elections such as being informed and voting;

(D) identify the importance of historical figures and important individuals who modeled active participation in the democratic process, including Sam Houston, Barbara Jordan, Lorenzo de Zavala, Ann Richards, Sam Rayburn, Henry B. González, James A. Baker III, and other local individuals; and

(E) explain how to contact elected and appointed leaders in state and local governments.



(18) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) identify leaders in state, local, and national governments, including the governor, local members of the Texas Legislature, the local mayor, U.S. senators, local U.S. representatives, and Texans who have been president of the United States; and

(B) identify leadership qualities of state and local leaders, past and present.

(19) Culture. The student understands the contributions of people of various racial, ethnic, and religious groups to Texas. The student is expected to:

(A) identify the similarities and differences among various racial, ethnic, and religious groups in Texas;

(B) identify customs, celebrations, and traditions of various cultural, regional, and local groups in Texas such as Cinco de Mayo, Oktoberfest, the Strawberry Festival, and Fiesta San Antonio; and

(C) summarize the contributions of people of various racial, ethnic, and religious groups in the development of Texas such as the norteño music of Lydia Mendoza and Chelo Silva.

(20) Science, technology, and society. The student understands the impact of science and technology on life in Texas. The student is expected to:

(A) identify famous inventors and scientists such as Gail Borden, Joseph Glidden, Michael DeBakey, and Millie Hughes-Fulford and their contributions;

(B) describe how scientific discoveries and innovations such as in aerospace, agriculture, energy, and technology have benefited individuals, businesses, and society in Texas; and

(C) predict how future scientific discoveries and technological innovations might affect life in Texas.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as computer software; interviews; biographies; oral, print, and visual material; documents; and artifacts to acquire information about the United States and Texas;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information in outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify different points of view about an issue, topic, historical event, or current event; and

(E) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication;

(C) express ideas orally based on research and experiences;

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies; and

(E) use standard grammar, spelling, sentence structure, and punctuation.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.16. Social Studies, Grade 5, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 5, students survey the history of the United States from 1565 to the present. Historical content includes the colonial period, the American Revolution, the establishment of the U.S. Constitution and American identity, westward expansion, the Civil War and Reconstruction, immigration and industrialization, and the 20th and 21st centuries. Students study a variety of regions in the United States that result from physical features and human activity and identify how people adapt to and modify the environment. Students explain the characteristics and benefits of the free enterprise system and describe economic activities in the United States. Students identify the roots of representative government in this nation as well as the important ideas in the Declaration of Independence and the U.S. Constitution. Students study the fundamental rights guaranteed in the Bill of Rights. Students examine the importance of effective leadership in a constitutional republic and identify important leaders in the national government. Students recite and explain the meaning of the Pledge of Allegiance to the United States Flag. Students describe the cultural impact of various racial, ethnic, and religious groups in the nation and identify the accomplishments of notable individuals in the fields of science and technology. Students explain symbols, traditions, and landmarks that represent American beliefs and principles. Students use critical-thinking skills to sequence, categorize, and summarize information and to draw inferences and conclusions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as documents, biographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social

studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(b) Knowledge and skills.

(1) History. The student understands the causes and effects of European colonization in the United States beginning in 1565, the founding of St. Augustine. The student is expected to:

(A) explain when, where, and why groups of people explored, colonized, and settled in the United States, including the search for religious freedom and economic gain; and

(B) describe the accomplishments of significant individuals during the colonial period, including William Bradford, Anne Hutchinson, William Penn, John Smith, John Wise, and Roger Williams.

(2) History. The student understands how conflict between the American colonies and Great Britain led to American independence. The student is expected to:

(A) identify and analyze the causes and effects of events prior to and during the American Revolution, including the French and Indian War and the Boston Tea Party;

(B) identify the Founding Fathers and Patriot heroes, including John Adams, Samuel Adams, Benjamin Franklin, Nathan Hale,

Thomas Jefferson, the Sons of Liberty, and George Washington, and their motivations and contributions during the revolutionary period; and

(C) summarize the results of the American Revolution, including the establishment of the United States and the development of the U.S. military.

(3) History. The student understands the events that led from the Articles of Confederation to the creation of the U.S. Constitution and the government it established. The student is expected to:

(A) identify the issues that led to the creation of the U.S. Constitution, including the weaknesses of the Articles of Confederation; and

(B) identify the contributions of individuals, including James Madison, George Mason, Charles Pinckney, and Roger Sherman, who helped create the U.S. Constitution.

(4) History. The student understands political, economic, and social changes that occurred in the United States during the 19th century. The student is expected to:

(A) describe the causes and effects of the War of 1812;

(B) identify and explain how changes resulting from the Industrial Revolution led to conflict among sections of the United States;

(C) identify reasons people moved west;

(D) identify significant events and concepts associated with U.S. territorial expansion, including the Louisiana Purchase, the expedition of Lewis and Clark, and Manifest Destiny;

(E) identify the causes of the Civil War, including sectionalism, states' rights, and slavery, and the effects of the Civil War, including Reconstruction and the 13th, 14th, and 15th amendments to the U.S. Constitution;

(F) explain how industry and the mechanization of agriculture changed the American way of life; and

(G) identify the challenges, opportunities, and contributions of people from various American Indian and immigrant groups.

(5) History. The student understands important issues, events, and individuals in the United States during the 20th and 21st centuries. The student is expected to:

(A) analyze various issues and events of the 20th century such as industrialization, urbanization, increased use of oil and gas, the Great Depression, the world wars, the civil rights movement, and military actions such as those in which the Tuskegee Airmen participated;

(B) analyze various issues and events of the 21st century such as the War on Terror and the 2008 presidential election; and

(C) identify the accomplishments of individuals, including Jane Addams, Susan B. Anthony, Dwight Eisenhower, Martin Luther King Jr., Rosa Parks, Cesar Chavez, Franklin D. Roosevelt, Ronald Reagan, and Colin Powell, who have made contributions to society in the areas of civil rights, women's rights, military actions, and politics.

(6) Geography. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) apply geographic tools, including grid systems, legends, symbols, scales, and compass roses, to construct and interpret maps; and

(B) translate geographic data into a variety of formats such as raw data to graphs and maps.

(7) Geography. The student understands the concept of regions in the United States. The student is expected to:

(A) describe a variety of regions in the United States such as political, population, and economic regions that result from patterns of human activity;

(B) describe a variety of regions in the United States such as landform, climate, and vegetation regions that result from physical characteristics such as the Great Plains, Rocky Mountains, and Coastal Plains;

(C) locate on a map important political features such as the ten largest urban areas in the United States, the 50 states and their capitals, and regions such as the Northeast, the Midwest, and the Southwest; and

(D) locate on a map important physical features such as the Rocky Mountains, Mississippi River, and Great Plains.

(8) Geography. The student understands the location and patterns of settlement and the geographic factors that influence where people live. The student is expected to:

(A) identify and describe the types of settlement and patterns of land use in the United States;

(B) explain the geographic factors that influence patterns of settlement and the distribution of population in the United States, past and present; and

(C) analyze the reasons for the location of cities in the United States, including capital cities, and explain their distribution, past and present.

(9) Geography. The student understands how people adapt to and modify their environment. The student is expected to:

(A) describe how and why people have adapted to and modified their environment in the United States, past and present, such as the use of human resources to meet basic needs; and

(B) analyze the benefits and consequences of human modification of the environment in the United States, past and present.

(10) Economics. The student understands the basic economic patterns of early societies in the United States. The student is expected to:

(A) explain the economic patterns of early European colonists; and

(B) identify major industries of colonial America.

(11) Economics. The student understands the development, characteristics, and benefits of the free enterprise system in the United States. The student is expected to:

(A) describe the development of the free enterprise system in colonial America and the United States;

(B) describe how the free enterprise system works in the United States; and

(C) give examples of the benefits of the free enterprise system in the United States.

(12) Economics. The student understands the impact of supply and demand on consumers and producers in a free enterprise system. The student is expected to:

(A) explain how supply and demand affects consumers in the United States; and

(B) evaluate the effects of supply and demand on business, industry, and agriculture, including the plantation system, in the United States.

(13) Economics. The student understands patterns of work and economic activities in the United States. The student is expected to:

(A) compare how people in different parts of the United States earn a living, past and present;

(B) identify and explain how geographic factors have influenced the location of economic activities in the United States;

(C) analyze the effects of immigration, migration, and limited resources on the economic development and growth of the United States;

(D) describe the impact of mass production, specialization, and division of labor on the economic growth of the United States; and

(E) explain the impact of American ideas about progress and equality of opportunity on the economic development and growth of the United States.

(14) Government. The student understands the organization of governments in colonial America. The student is expected to:

(A) identify and compare the systems of government of early European colonists, including representative government and monarchy; and

(B) identify examples of representative government in the American colonies, including the Mayflower Compact and the Virginia House of Burgesses.

(15) Government. The student understands important ideas in the Declaration of Independence, the U.S. Constitution, and the Bill of Rights. The student is expected to:

(A) identify the purposes and explain the importance of the Declaration of Independence;

(B) identify the key elements of the Declaration of Independence;

(C) explain the purposes of the U.S. Constitution as identified in the Preamble; and

(D) explain the reasons for the creation of the Bill of Rights and its importance.

(16) Government. The student understands the framework of government created by the U.S. Constitution of 1787. The student is expected to:

(A) identify and explain the basic functions of the three branches of government;

(B) identify the reasons for and describe the system of checks and balances outlined in the U.S. Constitution; and

(C) distinguish between national and state governments and compare their responsibilities in the U.S. federal system.

(17) Citizenship. The student understands important symbols, customs, celebrations, and landmarks that represent American beliefs and principles and contribute to our national identity. The student is expected to:

(A) explain various patriotic symbols, including Uncle Sam, and political symbols such as the donkey and elephant;

(B) sing or recite "The Star-Spangled Banner" and explain its history;

(C) recite and explain the meaning of the Pledge of Allegiance to the United States Flag;

(D) describe the origins and significance of national celebrations such as Memorial Day, Independence Day, Labor Day, Constitution Day, Columbus Day, and Veterans Day; and

(E) explain the significance of important landmarks, including the White House, the Statue of Liberty, and Mount Rushmore.

(18) Citizenship. The student understands the importance of individual participation in the democratic process at the local, state, and national levels. The student is expected to:

(A) explain the duty individuals have to participate in civic affairs at the local, state, and national levels; and

(B) explain how to contact elected and appointed leaders in local, state, and national governments.

(19) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) explain the contributions of the Founding Fathers to the development of the national government;

(B) identify past and present leaders in the national government, including the president and various members of Congress, and their political parties; and

(C) identify and compare leadership qualities of national leaders, past and present.

(20) Citizenship. The student understands the fundamental rights of American citizens guaranteed in the Bill of Rights and other amendments to the U.S. Constitution. The student is expected to:

(A) describe the fundamental rights guaranteed by each amendment in the Bill of Rights, including freedom of religion, speech, and press; the right to assemble and petition the government; the right to keep and bear arms; the right to trial by jury; and the right to an attorney; and

(B) describe various amendments to the U.S. Constitution such as those that extended voting rights of U.S. citizens.

(21) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) identify significant examples of art, music, and literature from various periods in U.S. history such as the painting *American Progress*, "Yankee Doodle," and "Paul Revere's Ride"; and

(B) explain how examples of art, music, and literature reflect the times during which they were created.

(22) Culture. The student understands the contributions of people of various racial, ethnic, and religious groups to the United States. The student is expected to:

(A) identify the similarities and differences within and among various racial, ethnic, and religious groups in the United States;

(B) describe customs and traditions of various racial, ethnic, and religious groups in the United States; and

(C) summarize the contributions of people of various racial, ethnic, and religious groups to our national identity.

(23) Science, technology, and society. The student understands the impact of science and technology on society in the United States. The student is expected to:

(A) identify the accomplishments of notable individuals in the fields of science and technology, including Benjamin Franklin, Eli Whitney, John Deere, Thomas Edison, Alexander Graham Bell, George Washington Carver, the Wright Brothers, and Neil Armstrong;

(B) identify how scientific discoveries, technological innovations, and the rapid growth of technology industries have advanced the economic development of the United States, including the transcontinental railroad and the space program;

(C) explain how scientific discoveries and technological innovations in the fields of medicine, communication, and transportation have benefited individuals and society in the United States; and

(D) predict how future scientific discoveries and technological innovations could affect society in the United States.

(24) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as computer software; interviews; biographies; oral, print, and visual material; documents; and artifacts to acquire information about the United States;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information in outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify different points of view about an issue, topic, or current event; and

(E) identify the historical context of an event.

(25) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication;

(C) express ideas orally based on research and experiences;

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies; and

(E) use standard grammar, spelling, sentence structure, and punctuation.

(26) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages

and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

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

Filed with the Office of the Secretary of State on April 5, 2010.

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Director, Policy Coordination

Texas Education Agency

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§113.17 - 113.21

The new sections and amendment are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c).

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.008.

§113.17. *Implementation of Texas Essential Knowledge and Skills for Social Studies, Middle School, Beginning with School Year 2011-2012.* The provisions of §§113.18-113.20 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year and at that time shall supersede §§113.22-113.24 of this subchapter.

§113.18. *Social Studies, Grade 6, Beginning with School Year 2011-2012.*

#### (a) Introduction.

(1) In Grade 6, students study people, places, and societies of the contemporary world. Societies for study are from the following regions of the world: Europe, Russia and the Eurasian republics, North America, Central America and the Caribbean, South America, South-west Asia-North Africa, Sub-Saharan Africa, South Asia, East Asia, Southeast Asia, Australia, and the Pacific realm. Students describe the influence of individuals and groups on historical and contemporary events in those societies and identify the locations and geographic characteristics of various societies. Students identify different ways of organizing economic and governmental systems. The concepts of limited and unlimited government are introduced, and students describe the nature of citizenship in various societies. Students compare institutions common to all societies such as government, education, and religious institutions. Students explain how the level of technology affects the development of the various societies and identify different points of view about events. The concept of frame of reference is introduced as an influence on an individual's point of view.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, art galleries, and historical sites.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

#### (b) Knowledge and skills.

(1) History. The student understands that historical events influence contemporary events. The student is expected to:

(A) trace characteristics of various contemporary societies in regions that resulted from historical events or factors such as invasion, conquests, colonization, immigration, and trade; and

(B) analyze the historical background of various contemporary societies to evaluate relationships between past conflicts and current conditions.

(2) History. The student understands the influences of individuals and groups from various cultures on various historical and contemporary societies. The student is expected to:

(A) identify and describe the influence of individual or group achievements on various historical or contemporary societies such as the classical Greeks on government and the American Revolution on the French Revolution; and

(B) evaluate the social, political, economic, and cultural contributions of individuals and groups from various societies, past and present.

(3) Geography. The student uses geographic tools to answer geographic questions. The student is expected to:

(A) pose and answer geographic questions, including: Where is it located? Why is it there? What is significant about its location? How is its location related to the location of other people, places, and environments?;

(B) pose and answer questions about geographic distributions and patterns for various world regions and countries shown on maps, graphs, charts, models, and databases;

(C) compare various world regions and countries using data from geographic tools, including maps, graphs, charts, databases, and models; and

(D) create thematic maps, graphs, charts, models, and databases depicting aspects such as population, disease, and economic activities of various world regions and countries.

(4) Geography. The student understands the factors that influence the locations and characteristics of locations of various contemporary societies on maps and globes and uses latitude and longitude to determine absolute locations. The student is expected to:

(A) locate various contemporary societies on maps and globes using latitude and longitude to determine absolute location;

(B) identify and explain the geographic factors responsible for patterns of population in places and regions;

(C) explain ways in which human migration influences the character of places and regions;

(D) identify and locate major physical and human geographic features such as landforms, water bodies, and urban centers of various places and regions;

(E) draw sketch maps that illustrate various places and regions; and

(F) identify the location of major world countries such as Canada, Mexico, France, Germany, the United Kingdom, Italy, Spain, Norway, Sweden, Russia, South Africa, Nigeria, Iraq, Afghanistan, Israel, Iran, India, Pakistan, the People's Republic of China, the Republic of China (Taiwan), Japan, North and South Korea, Indonesia, and Australia.

(5) Geography. The student understands how geographic factors influence the economic development, political relationships, and policies of societies. The student is expected to:

(A) identify and explain the geographic factors responsible for the location of economic activities in places and regions;

(B) identify geographic factors such as location, physical features, transportation corridors and barriers, and distribution of natural resources that influence a society's ability to control territory; and

(C) explain the impact of geographic factors on economic development and the domestic and foreign policies of societies.

(6) Geography. The student understands that geographical patterns result from physical environmental processes. The student is expected to:

(A) describe and explain the effects of physical environmental processes such as erosion, ocean currents, and earthquakes on Earth's surface;

(B) identify the location of renewable and nonrenewable natural resources such as fresh water, fossil fuels, fertile soils, and timber; and

(C) analyze the effects of the interaction of physical processes and the environment on humans.

(7) Geography. The student understands the impact of interactions between people and the physical environment on the development and conditions of places and regions. The student is expected to:

(A) identify and analyze ways people have adapted to the physical environment in various places and regions;

(B) identify and analyze ways people have modified the physical environment such as mining, irrigation, and transportation infrastructure; and

(C) describe ways in which technology influences human interactions with the environment such as humans building dams for flood control.

(8) Economics. The student understands the factors of production in a society's economy. The student is expected to:

(A) describe ways in which the factors of production (natural resources, labor, capital, and entrepreneurs) influence the economies of various contemporary societies;

(B) identify problems and issues that may arise when one or more of the factors of production is in relatively short supply; and

(C) explain the impact of relative scarcity of resources on international trade and economic interdependence among and within societies.

(9) Economics. The student understands the various ways in which people organize economic systems. The student is expected to:

(A) compare ways in which various societies organize the production and distribution of goods and services;

(B) identify and differentiate among free enterprise, socialist, and communist economies in various contemporary societies, including the benefits of the U.S. free enterprise system;

(C) understand the importance of morality and ethics in maintaining a functional free enterprise system; and

(D) understand the poor record of collectivist, non-free market economic systems to deliver improved economic development over numerous contemporary and historical societies.

(10) Economics. The student understands categories of economic activities and the data used to measure a society's economic level. The student is expected to:

(A) define and give examples of agricultural, wholesale, retail, manufacturing (goods), and service industries;

(B) describe levels of economic development of various societies using indicators such as life expectancy, gross domestic product (GDP), GDP per capita, and literacy; and

(C) identify and describe the effects of increasing government regulation and taxation on economic development and business planning.

(11) Government. The student understands the concepts of limited and unlimited governments. The student is expected to:

(A) identify and describe examples of limited and unlimited governments such as constitutional (limited) and totalitarian (unlimited);

(B) compare the characteristics of limited and unlimited governments;

(C) identify reasons for limiting the power of government; and

(D) review the record of human rights abuses of unlimited governments such as the oppression of Christians in Sudan.

(12) Government. The student understands various ways in which people organize governments. The student is expected to:

(A) identify and give examples of governments with rule by one, few, or many;

(B) compare ways in which various societies such as China, Germany, India, and Russia organize government and how they function; and

(C) identify historical origins of democratic forms of government such as Ancient Greece.

(13) Citizenship. The student understands that the nature of citizenship varies among societies. The student is expected to:

(A) describe roles and responsibilities of citizens in various contemporary societies, including the United States;

(B) explain how opportunities for citizens to participate in and influence the political process vary among various contemporary societies; and

(C) compare the role of citizens in the United States with the role of citizens from various contemporary societies with representative and nonrepresentative governments.

(14) Citizenship. The student understands the relationship among individual rights, responsibilities, duties, and freedoms in societies with representative governments. The student is expected to:

(A) identify and explain the duty of civic participation in societies with representative governments; and

(B) explain relationships among rights, responsibilities, and duties in societies with representative governments.

(15) Culture. The student understands the similarities and differences within and among cultures in various societies. The student is expected to:

(A) define culture and the common traits that unify a culture region;

(B) identify and describe common traits that define cultures;

(C) define a multicultural society and consider both the positive and negative qualities of multiculturalism;

(D) analyze the experiences and evaluate the contributions of diverse groups to multicultural societies;

(E) analyze the similarities and differences among various world societies; and

(F) identify and explain examples of conflict and cooperation between and among cultures.

(16) Culture. The student understands that all societies have basic institutions in common even though the characteristics of these institutions may differ. The student is expected to:

(A) identify institutions basic to all societies, including government, economic, educational, and religious institutions;

(B) compare characteristics of institutions in various contemporary societies; and

(C) analyze the efforts and activities institutions use to sustain themselves over time such as the development of an informed citizenry through education and the use of monumental architecture by religious institutions.

(17) Culture. The student understands relationships that exist among world cultures. The student is expected to:

(A) identify and describe how culture traits such as trade, travel, and war spread;

(B) identify and describe factors that influence cultural change such as improved communication, transportation, and economic development;

(C) evaluate the impact of improved communication technology among cultures;

(D) identify and define the impact of cultural diffusion on individuals and world societies; and

(E) identify examples of positive and negative effects of cultural diffusion.

(18) Culture. The student understands the relationship that exists between the arts and the societies in which they are produced. The student is expected to:

(A) explain the relationships that exist between societies and their architecture, art, music, and literature;

(B) relate ways in which contemporary expressions of culture have been influenced by the past;

(C) describe ways in which contemporary issues influence creative expressions; and

(D) identify examples of art, music, and literature that have transcended the boundaries of societies and convey universal themes such as religion, justice, and the passage of time.

(19) Culture. The student understands the relationships among religion, philosophy, and culture. The student is expected to:

(A) explain the relationship among religious ideas, philosophical ideas, and cultures; and

(B) explain the significance of religious holidays and observances such as Christmas, Easter, Ramadan, the annual hajj, Yom Kippur, Rosh Hashanah, Diwali, and Vaisakhi in various contemporary societies.

(20) Science, technology, and society. The student understands the influences of science and technology on contemporary societies. The student is expected to:

(A) give examples of scientific discoveries and technological innovations, including the roles of scientists and inventors, that have transcended the boundaries of societies and have shaped the world;

(B) explain how resources, belief systems, economic factors, and political decisions have affected the use of technology; and

(C) make predictions about future social, political, economic, cultural, and environmental impacts that may result from future scientific discoveries and technological innovations.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including electronic technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as computer software; interviews; biographies; oral, print, and visual material; and artifacts to acquire information about various world cultures;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify different points of view about an issue or current topic;

(E) identify the elements of frame of reference that influenced participants in an event; and

(F) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication based on research;

(C) express ideas orally based on research and experiences;

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies based on research;

(E) use standard grammar, spelling, sentence structure, and punctuation; and

(F) use proper citations to avoid plagiarism.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.19. Social Studies, Grade 7, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 7, students study the history of Texas from early times to the present. Content is presented with more depth and breadth than in Grade 4. Students examine the full scope of Texas history, including Natural Texas and its People; Age of Contact; Spanish Colonial; Mexican National; Revolution and Republic; Early Statehood; Texas in the Civil War and Reconstruction; Cotton, Cattle, and Railroads; Age of Oil; Texas in the Great Depression and World War II; Civil Rights and Conservatism; and Contemporary Texas eras. The focus in each era is on key individuals, events, and issues and their impact. Students identify regions of Texas and the distribution of population within and among the regions and explain the factors that caused Texas to change from an agrarian to an urban society. Students describe the structure and functions of municipal, county, and state governments, explain the influence of the U.S. Constitution on the Texas Constitution, and examine the rights and responsibilities of Texas citizens. Students use primary and secondary sources to examine the rich and diverse cultural background of Texas as they identify the different racial and ethnic groups that settled in Texas to build a republic and then a state. Students analyze the impact of scientific discoveries and technological innovations on the development of Texas in various industries such as agricultural, energy, medical, computer, and aerospace. Students use primary and secondary sources to acquire information about Texas.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, novels, speeches, letters, diaries, poetry, songs, and images is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of



the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(b) Knowledge and skills.

(1) History. The student understands traditional historical points of reference in Texas history. The student is expected to:

(A) identify the major eras in Texas history, describe their defining characteristics, and explain why historians divide the past into eras, including Natural Texas and its People; Age of Contact; Spanish Colonial; Mexican National; Revolution and Republic; Early Statehood; Texas in the Civil War and Reconstruction; Cotton, Cattle, and Railroads; Age of Oil; Texas in the Great Depression and World War II; Civil Rights and Conservatism; and Contemporary Texas;

(B) apply absolute and relative chronology through the sequencing of significant individuals, events, and time periods; and

(C) explain the significance of the following dates: 1519, mapping of the Texas coast and first mainland Spanish settlement; 1718, founding of San Antonio; 1821, independence from Spain; 1836, Texas independence; 1845, annexation; 1861, Civil War begins; 1876, adoption of current state constitution; and 1901, discovery of oil at Spindletop.

(2) History. The student understands how individuals, events, and issues through the Mexican National Era shaped the history of Texas. The student is expected to:

(A) compare the cultures of American Indians in Texas prior to European colonization such as Gulf, Plains, Puebloan, and Southeastern;

(B) identify important individuals, events, and issues related to European exploration of Texas such as Alonso Álvarez de Pineda, Alvar Núñez Cabeza de Vaca and his writings, the search for gold, and the conflicting territorial claims between France and Spain;

(C) identify important events and issues, including the establishment of Catholic missions, towns, and ranches, and individuals such as Fray Damián Massanet, José de Escandón, Antonio Margil de Jesús, and Francisco Hidalgo related to European colonization of Texas;

(D) identify the issues and events related to Mexico becoming an independent nation and its impact on Texas, including Texas involvement in the fight for independence, the Battle of Medina, the Mexican Federal Constitution of 1824, the merger of Texas and Coahuila as a state, the State Colonization Law of 1825, and slavery;

(E) identify the contributions of significant individuals, including Moses Austin, Stephen F. Austin, Erasmo Seguin, José Gutiérrez de Lara, Martín De Leon, and Green DeWitt, during the Mexican settlement of Texas; and

(F) contrast Spanish, Mexican, and Anglo purposes for and methods of settlement in Texas.

(3) History. The student understands how individuals, events, and issues related to the Texas Revolution shaped the history of Texas. The student is expected to:

(A) trace the development of events that led to the Texas Revolution, including the Fredonian Rebellion, the Mier y Terán Report, the Law of April 6, 1830, the Turtle Bayou Resolutions, and the arrest of Stephen F. Austin;

(B) explain the roles played by significant individuals during the Texas Revolution, including George Childress, Lorenzo de Zavala, James Fannin, Sam Houston, Antonio López de Santa Anna, Juan N. Seguin, and William B. Travis;

(C) explain the issues surrounding significant events of the Texas Revolution, including the Battle of Gonzales, William B. Travis's letter "To the People of Texas and All Americans in the World," the siege of the Alamo and the 189 heroes who gave their lives there, the Constitutional Convention of 1836, Fannin's surrender at Goliad, and the Battle of San Jacinto; and

(D) explain how victory at the Battle of San Jacinto brought civil, political, and religious freedom to Texas.

(4) History. The student understands how individuals, events, and issues shaped the history of the Republic of Texas and early Texas statehood. The student is expected to:

(A) identify individuals, events, and issues during the administrations of Republic of Texas Presidents Houston, Lamar, and Jones such as the Texas Rangers, Jack Coffee Hayes, Chief Bowles, William Goyens, Mary Maverick, José Antonio Navarro, the Cordova Rebellion, the Council House Fight, the Sante Fe Expedition, public debt, and the roles of racial and ethnic groups;

(B) describe the development and history of the Texas Navy;

(C) analyze the causes of and events leading to Texas annexation; and

(D) identify individuals, events, and issues during early Texas statehood, including the U.S.-Mexican War, the Treaty of Guadalupe-Hidalgo, population growth, and the Compromise of 1850.

(5) History. The student understands how events and issues shaped the history of Texas during the Civil War and Reconstruction. The student is expected to:

(A) explain reasons for the involvement of Texas in the Civil War such as states' rights, slavery, sectionalism, and tariffs; and

(B) analyze the political, economic, and social effects of the Civil War and Reconstruction in Texas.

(6) History. The student understands how individuals, events, and issues shaped the history of Texas from Reconstruction through the beginning of the 20th century. The student is expected to:

(A) identify significant individuals, events, and issues from Reconstruction through the beginning of the 20th century, including the factors leading to the expansion of the Texas frontier, the effects of westward expansion on American Indians, the buffalo soldiers, and Quanah Parker;

(B) identify significant individuals, events, and issues from Reconstruction through the beginning of the 20th century, including the development of the cattle industry from its Spanish beginnings and the myths and realities of the cowboy way of life;

(C) identify significant individuals, events, and issues from Reconstruction through the beginning of the 20th century, including the effects of the growth of railroads and the contributions of James Hogg; and

(D) explain the political, economic, and social impact of the agricultural industry and the development of West Texas resulting from the close of the frontier.

(7) History. The student understands how individuals, events, and issues shaped the history of Texas during the 20th and early 21st centuries. The student is expected to:

(A) explain the political, economic, and social impact of the oil industry on the industrialization of Texas;

(B) define and trace the impact of "boom-and-bust" cycles of leading Texas industries throughout the 20th and early 21st centuries such as farming, oil and gas production, cotton, ranching, real estate, banking, and computer technology;

(C) describe and compare the impact of the Progressive and other reform movements in Texas in the 19th and 20th centuries such as the Populists, women's suffrage, agrarian groups, labor unions, and the evangelical movement of the late 20th century;

(D) describe and compare the civil rights and equal rights movements of various groups in Texas in the 20th century and identify key leaders in these movements, including James L. Farmer Jr., Hector P. Garcia, Oveta Culp Hobby, Lyndon B. Johnson, the League of United Latin American Citizens (LULAC), Jane McCallum, and Lulu Belle Madison White;

(E) analyze the political, economic, and social impact of major events, including World War I, the Great Depression, and World War II, on the history of Texas; and

(F) analyze the political, economic, and social impact of major events in the latter half of the 20th and early 21st centuries such as major conflicts, the emergence of a two-party system, political and economic controversies, immigration, and migration.

(8) Geography. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create and interpret thematic maps, graphs, charts, models, and databases representing various aspects of Texas during the 19th, 20th, and 21st centuries; and

(B) analyze and interpret geographic distributions and patterns in Texas during the 19th, 20th, and 21st centuries.

(9) Geography. The student understands the location and characteristics of places and regions of Texas. The student is expected to:

(A) locate the Mountains and Basins, Great Plains, North Central Plains, and Coastal Plains regions and places of importance in Texas during the 19th, 20th, and 21st centuries such as major cities, rivers, natural and historic landmarks, political and cultural regions, and local points of interest;

(B) compare places and regions of Texas in terms of physical and human characteristics; and

(C) analyze the effects of physical and human factors such as climate, weather, landforms, irrigation, transportation, and communication on major events in Texas.

(10) Geography. The student understands the effects of the interaction between humans and the environment in Texas during the 19th, 20th, and 21st centuries. The student is expected to:

(A) identify ways in which Texans have adapted to and modified the environment and analyze the benefits and consequences of the modifications; and

(B) explain ways in which geographic factors such as the Galveston Hurricane of 1900, the Dust Bowl, limited water resources, and alternative energy sources have affected the political, economic, and social development of Texas.

(11) Geography. The student understands the characteristics, distribution, and migration of population in Texas in the 19th, 20th, and 21st centuries. The student is expected to:

(A) analyze why immigrant groups came to Texas and where they settled;

(B) analyze how immigration and migration to Texas in the 19th, 20th, and 21st centuries have influenced Texas;

(C) analyze the effects of the changing population distribution and growth in Texas during the 20th and 21st centuries and the additional need for education, health care, and transportation; and

(D) describe the structure of the population of Texas using demographic concepts such as growth rate and age distribution.

(12) Economics. The student understands the factors that caused Texas to change from an agrarian to an urban society. The student is expected to:

(A) explain economic factors that led to the urbanization of Texas;

(B) trace the development of major industries that contributed to the urbanization of Texas such as transportation, oil and gas, and manufacturing; and

(C) explain the changes in the types of jobs and occupations that have resulted from the urbanization of Texas.

(13) Economics. The student understands the interdependence of the Texas economy with the United States and the world. The student is expected to:

(A) analyze the impact of national and international markets and events on the production of goods and services in Texas such as agriculture, oil and gas, and computer technology;

(B) analyze the impact of economic concepts within the free enterprise system such as supply and demand, profit, government regulation, and world competition on the economy of Texas; and

(C) analyze the impact of significant industries in Texas such as oil and gas, aerospace, medical, and computer technologies on local, national, and international markets.

(14) Government. The student understands the basic principles reflected in the Texas Constitution. The student is expected to:

(A) identify how the Texas Constitution reflects the principles of limited government, republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights; and

(B) compare the principles and concepts of the Texas Constitution to the U.S. Constitution, including the Texas and U.S. Bill of Rights.

(15) Government. The student understands the structure and functions of government created by the Texas Constitution. The student is expected to:

(A) describe the structure and functions of government at municipal, county, and state levels;

(B) identify major sources of revenue for state and local governments such as property tax, sales tax, and fees; and

(C) describe the structure, funding, and governance of Texas public education, including local property taxes, bond issues, and state and federal funding supported by state and federal taxpayers.

(16) Citizenship. The student understands the rights and responsibilities of Texas citizens in a constitutional republic. The student is expected to:

(A) identify rights of Texas citizens; and

(B) explain and analyze civic responsibilities of Texas citizens and the importance of civic participation.

(17) Citizenship. The student understands the importance of the expression of different points of view in a constitutional republic. The student is expected to:

(A) identify different points of view of political parties and interest groups on important Texas issues, past and present;

(B) describe the importance of free speech and press in a constitutional republic; and

(C) express and defend a point of view on an issue of historical or contemporary interest in Texas.

(18) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) identify the leadership qualities of elected and appointed leaders of Texas, past and present, including Texans who have been president of the United States; and

(B) identify the contributions of Texas leaders, including Lawrence Sullivan "Sul" Ross, John Nance Garner ("Cactus Jack"), James A. Baker III, Henry B. González, Kay Bailey Hutchison, Barbara Jordan, Raymond L. Telles, Sam Rayburn, and Raul A. Gonzalez.

(19) Culture. The student understands the concept of diversity within unity in Texas. The student is expected to:

(A) explain how the diversity of Texas is reflected in a variety of cultural activities, celebrations, and performances;

(B) describe how people from various racial, ethnic, and religious groups attempt to maintain their cultural heritage while adapting to the larger Texas culture;

(C) identify examples of Spanish influence and the influence of other cultures on Texas such as place names, vocabulary, religion, architecture, food, and the arts; and

(D) identify contributions to the arts by Texans such as Roy Bedichek, Diane Gonzales Bertrand, J. Frank Dobie, Scott Joplin, Elisabet Ney, Amado Peña Jr., Walter Prescott Webb, Horton Foote, and Tex Avery.

(20) Science, technology, and society. The student understands the impact of scientific discoveries and technological innovations on the political, economic, and social development of Texas. The student is expected to:

(A) compare types and uses of technology, past and present;

(B) identify Texas leaders in science and technology such as Walter Cunningham, Michael DeBakey, Denton Cooley, Benji Brooks, Michael Dell, and Howard Hughes Sr.;

(C) analyze the effects of various scientific discoveries and technological innovations on the development of Texas such as advancements in the agricultural, energy, medical, computer, and aerospace industries;

(D) evaluate the effects of scientific discoveries and technological innovations on the use of resources such as fossil fuels, water, and land; and

(E) analyze how scientific discoveries and technological innovations have resulted in an interdependence among Texas, the United States, and the world.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including electronic technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as computer software, databases, media and news services, biographies, interviews, and artifacts to acquire information about Texas;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify points of view from the historical context surrounding an event and the frame of reference that influenced the participants;

(E) support a point of view on a social studies issue or event;

(F) identify bias in written, oral, and visual material;

(G) evaluate the validity of a source based on language, corroboration with other sources, and information about the author; and

(H) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use standard grammar, spelling, sentence structure, punctuation, and proper citation of sources;

(C) transfer information from one medium to another, including written to visual and statistical to written or visual, using computer software as appropriate; and

(D) create written, oral, and visual presentations of social studies information.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.20. Social Studies, Grade 8, Beginning with School Year 2011-2012.

(a) Introduction.

(1) In Grade 8, students study the history of the United States from the early colonial period through Reconstruction. The knowledge and skills in subsection (b) of this section comprise the first part of a two-year study of U.S. history. The second part, comprising U.S. history from Reconstruction to the present, is provided in §113.41 of this title (relating to United States History Studies Since 1877 (One Credit), Beginning with School Year 2011-2012). The content in Grade 8 builds upon that from Grade 5 but provides more depth and breadth. Historical content focuses on the political, economic, religious, and social events and issues related to the colonial and revolutionary eras, the creation and ratification of the U.S. Constitution, challenges of the early republic, the age of Jackson, westward expansion, sectionalism, Civil War, and Reconstruction. Students describe the physical characteristics of the United States and their impact on population distribution and settlement patterns in the past and present. Students analyze the various economic factors that influenced the development of colonial America and the early years of the republic and identify the origins of the free enterprise system. Students examine the American beliefs and principles, including limited government, checks and balances, federalism, separation of powers, and individual rights, reflected in the U.S. Constitution and other historical documents. Students evaluate the impact of Supreme Court cases and major reform movements of the 19th century and examine the rights and responsibilities of citizens of the United States as well as the importance of effective leadership in a constitutional republic. Students evaluate the impact of scientific discoveries and technological innovations on the development of the United States. Students use critical-thinking skills, including the identification of bias in written, oral, and visual material.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as the complete text of the U.S. Constitution and the Declaration of Independence, landmark cases of the U.S. Supreme Court, biographies, autobiographies, novels, speeches, letters, diaries, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (b) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(b) Knowledge and skills.

(1) History. The student understands traditional historical points of reference in U.S. history through 1877. The student is expected to:

(A) identify the major eras and events in U.S. history through 1877, including colonization, revolution, drafting of the Declaration of Independence, creation and ratification of the Constitution, religious revivals such as the Second Great Awakening, early republic, the age of Jackson, westward expansion, reform movements, sectionalism, Civil War, and Reconstruction, and describe their causes and effects;

(B) apply absolute and relative chronology through the sequencing of significant individuals, events, and time periods; and

(C) explain the significance of the following dates: 1607, founding of Jamestown; 1620, arrival of the Pilgrims and signing of the Mayflower Compact; 1776, adoption of the Declaration of Independence; 1787, writing of the U.S. Constitution; 1803, Louisiana Purchase; and 1861-1865, Civil War.

(2) History. The student understands the causes of exploration and colonization eras. The student is expected to:

(A) identify reasons for European exploration and colonization of North America; and

(B) compare political, economic, religious, and social reasons for the establishment of the 13 English colonies.

(3) History. The student understands the foundations of representative government in the United States. The student is expected to:

(A) explain the reasons for the growth of representative government and institutions during the colonial period;

(B) analyze the importance of the Mayflower Compact, the Fundamental Orders of Connecticut, and the Virginia House of Burgesses to the growth of representative government; and

(C) describe how religion and virtue contributed to the growth of representative government in the American colonies.

(4) History. The student understands significant political and economic issues of the revolutionary era. The student is expected to:

(A) analyze causes of the American Revolution, including the Proclamation of 1763, the Intolerable Acts, the Stamp Act, mercantilism, lack of representation in Parliament, and British economic policies following the French and Indian War;

(B) explain the roles played by significant individuals during the American Revolution, including Abigail Adams, John Adams, Wentworth Cheswill, Samuel Adams, Mercy Otis Warren, James Armistead, Benjamin Franklin, Bernardo de Gálvez, Crispus Attucks, King George III, Haym Salomon, Patrick Henry, Thomas Jefferson, the Marquis de Lafayette, Thomas Paine, and George Washington;

(C) explain the issues surrounding important events of the American Revolution, including declaring independence; writing the Articles of Confederation; fighting the battles of Lexington, Concord, Saratoga, and Yorktown; enduring the winter at Valley Forge; and signing the Treaty of Paris of 1783;

(D) analyze the issues of the Constitutional Convention of 1787, including the Great Compromise and the Three-Fifths Compromise; and

(E) analyze the arguments for and against ratification.

(5) History. The student understands the challenges confronted by the government and its leaders in the early years of the republic and the age of Jackson. The student is expected to:

(A) describe major domestic problems faced by the leaders of the new republic such as maintaining national security, building a military, creating a stable economic system, setting up the court system, and defining the authority of the central government;

(B) summarize arguments regarding protective tariffs, taxation, and the banking system;

(C) explain the origin and development of American political parties;

(D) explain the causes, important events, and effects of the War of 1812;

(E) identify the foreign policies of presidents Washington through Monroe and explain the impact of Washington's Farewell Address and the Monroe Doctrine;

(F) explain the impact of the election of Andrew Jackson, including expanded suffrage; and

(G) analyze the reasons for the removal and resettlement of Cherokee Indians during the Jacksonian era, including the Indian Removal Act, Worcester v. Georgia, and the Trail of Tears.

(6) History. The student understands westward expansion and its effects on the political, economic, and social development of the nation. The student is expected to:

(A) explain how the Northwest Ordinance established principles and procedures for orderly expansion of the United States;

(B) explain the political, economic, and social roots of Manifest Destiny;

(C) analyze the relationship between the concept of Manifest Destiny and the westward growth of the nation;

(D) explain the causes and effects of the U.S.-Mexican War and their impact on the United States; and

(E) identify areas that were acquired to form the United States, including the Louisiana Purchase.

(7) History. The student understands how political, economic, and social factors led to the growth of sectionalism and the Civil War. The student is expected to:

(A) analyze the impact of tariff policies on sections of the United States before the Civil War;

(B) compare the effects of political, economic, and social factors on slaves and free blacks;

(C) analyze the impact of slavery on different sections of the United States; and

(D) identify the provisions and compare the effects of congressional conflicts and compromises prior to the Civil War, including the roles of John Quincy Adams, John C. Calhoun, Henry Clay, and Daniel Webster.

(8) History. The student understands individuals, issues, and events of the Civil War. The student is expected to:

(A) explain the roles played by significant individuals and heroes during the Civil War, including Jefferson Davis, Ulysses S. Grant, Robert E. Lee, Abraham Lincoln, and congressional Medal of Honor recipients William Carney and Philip Bazaar;

(B) explain the issues surrounding significant events of the Civil War, including the firing on Fort Sumter; the battles of Antietam, Gettysburg, and Vicksburg; the announcement of the Emancipation Proclamation; Lee's surrender at Appomattox Court House; and the assassination of Abraham Lincoln; and

(C) analyze the ideas contained in Jefferson Davis' inaugural address and Abraham Lincoln's ideas about liberty, equality, union, and government as contained in his first and second inaugural addresses and the Gettysburg Address.

(9) History. The student understands the effects of Reconstruction on the political, economic, and social life of the nation. The student is expected to:

(A) evaluate legislative reform programs of the Radical Reconstruction Congress and reconstructed state governments;

(B) explain the economic, political, and social problems during Reconstruction and evaluate their impact on different groups; and

(C) identify the effects of legislative acts such as the Homestead Act, the Dawes Act, and the Morrill Act.

(10) Geography. The student understands the location and characteristics of places and regions of the United States, past and present. The student is expected to:

(A) locate places and regions of importance in the United States during the 17th, 18th, and 19th centuries;

(B) compare places and regions of the United States in terms of physical and human characteristics; and

(C) analyze the effects of physical and human geographic factors on major historical and contemporary events in the United States.

(11) Geography. The student understands the physical characteristics of North America and how humans adapted to and

modified the environment through the mid-19th century. The student is expected to:

(A) analyze how physical characteristics of the environment influenced population distribution, settlement patterns, and economic activities in the United States during the 17th, 18th, and 19th centuries;

(B) describe the benefits and consequences of human modification of the physical environment of the United States; and

(C) describe how different immigrant groups interacted with the environment in the United States during the 17th, 18th, and 19th centuries.

(12) Economics. The student understands why various sections of the United States developed different patterns of economic activity. The student is expected to:

(A) identify economic differences among different regions of the United States;

(B) explain reasons for the development of the plantation system, the Atlantic Triangular trade, and the spread of slavery;

(C) explain the reasons for the increase in factories and urbanization; and

(D) analyze the causes and effects of economic differences among different regions of the United States at selected times in U.S. history.

(13) Economics. The student understands how various economic forces resulted in the Industrial Revolution in the 19th century. The student is expected to:

(A) analyze the War of 1812 as a cause of economic changes in the nation; and

(B) identify the economic factors that brought about rapid industrialization and urbanization.

(14) Economics. The student understands the origins and development of the free enterprise system in the United States. The student is expected to:

(A) explain why a free enterprise system of economics developed in the new nation, including minimal government intrusion, taxation, and property rights; and

(B) describe the characteristics and the benefits of the U.S. free enterprise system during the 18th and 19th centuries.

(15) Government. The student understands the American beliefs and principles reflected in the U.S. Constitution and other important historic documents. The student is expected to:

(A) identify the influence of ideas from historic documents, including Magna Carta, the English Bill of Rights, the Mayflower Compact, *The Wealth of Nations*, the Declaration of Independence, the Federalist Papers, and selected anti-federalist writings, on the U.S. system of government;

(B) summarize the strengths and weaknesses of the Articles of Confederation;

(C) identify colonial grievances listed in the Declaration of Independence and explain how those grievances were addressed in the U.S. Constitution and the Bill of Rights; and

(D) analyze how the U.S. Constitution reflects the principles of limited government, republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights.

(16) Government. The student understands the process of changing the U.S. Constitution and the impact of amendments on American society. The student is expected to:

(A) summarize the purposes for and process of amending the U.S. Constitution; and

(B) describe the impact of 19th-century amendments, including the 13th, 14th, and 15th amendments, on life in the United States.

(17) Government. The student understands the dynamic nature of the powers of the national government and state governments in a federal system. The student is expected to:

(A) analyze the arguments of the Federalists and Anti-Federalists, including those of Alexander Hamilton, Patrick Henry, James Madison, and George Mason; and

(B) explain constitutional issues arising over the issue of states' rights, including the Nullification Crisis and the Civil War.

(18) Government. The student understands the impact of landmark Supreme Court cases. The student is expected to:

(A) identify the origin of judicial review and analyze examples of congressional and presidential responses;

(B) summarize the issues, decisions, and significance of landmark Supreme Court cases, including *Marbury v. Madison*, *McCulloch v. Maryland*, and *Gibbons v. Ogden*; and

(C) evaluate the impact of selected landmark Supreme Court decisions, including *Dred Scott v. Sandford*, on life in the United States.

(19) Citizenship. The student understands the rights and responsibilities of citizens of the United States. The student is expected to:

(A) define and give examples of unalienable rights;

(B) summarize rights guaranteed in the Bill of Rights;

(C) explain the importance of personal responsibilities, including accepting responsibility for one's behavior and supporting one's family;

(D) identify examples of responsible citizenship, including obeying rules and laws, staying informed on public issues, voting, and serving on juries;

(E) summarize the criteria and explain the process for becoming a naturalized citizen of the United States; and

(F) explain how the rights and responsibilities of U.S. citizens reflect our national identity.

(20) Citizenship. The student understands the importance of voluntary individual participation in the democratic process. The student is expected to:

(A) explain the role of significant individuals, including Thomas Hooker, Charles de Montesquieu, John Locke, William Blackstone, and William Penn, in the development of self-government in colonial America;

(B) evaluate the contributions of the Founding Fathers as models of civic virtue; and

(C) analyze reasons for and the impact of selected examples of civil disobedience in U.S. history such as the Boston Tea Party and Henry David Thoreau's refusal to pay a tax.

(21) Citizenship. The student understands the importance of the expression of different points of view in a constitutional republic. The student is expected to:

(A) identify different points of view of political parties and interest groups on important historical and contemporary issues;

(B) describe the importance of free speech and press in a constitutional republic; and

(C) summarize a historical event in which compromise resulted in a peaceful resolution.

(22) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) analyze the leadership qualities of elected and appointed leaders of the United States such as George Washington, John Marshall, and Abraham Lincoln; and

(B) describe the contributions of significant political, social, and military leaders of the United States such as Frederick Douglass, John Paul Jones, James Monroe, Stonewall Jackson, Susan B. Anthony, and Elizabeth Cady Stanton.

(23) Culture. The student understands the relationships between and among people from various groups, including racial, ethnic, and religious groups, during the 17th, 18th, and 19th centuries. The student is expected to:

(A) identify selected racial, ethnic, and religious groups that settled in the United States and explain their reasons for immigration;

(B) explain the relationship between urbanization and conflicts resulting from differences in religion, social class, and political beliefs;

(C) identify ways conflicts between people from various racial, ethnic, and religious groups were resolved;

(D) analyze the contributions of people of various racial, ethnic, and religious groups to our national identity; and

(E) identify the political, social, and economic contributions of women to American society.

(24) Culture. The student understands the major reform movements of the 19th century. The student is expected to:

(A) describe the historical development of the abolitionist movement; and

(B) evaluate the impact of reform movements, including educational reform, temperance, the women's rights movement, prison reform, abolition, the labor reform movement, and care of the disabled.

(25) Culture. The student understands the impact of religion on the American way of life. The student is expected to:

(A) trace the development of religious freedom in the United States;

(B) describe religious motivation for immigration and influence on social movements, including the impact of the first and second Great Awakenings; and

(C) analyze the impact of the First Amendment guarantees of religious freedom on the American way of life.

(26) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) describe developments in art, music, and literature that are unique to American culture such as the Hudson River School artists, John James Audubon, "Battle Hymn of the Republic," transcendentalism, and other cultural activities in the history of the United States;

(B) identify examples of American art, music, and literature that reflect society in different eras; and

(C) analyze the relationship between fine arts and continuity and change in the American way of life.

(27) Science, technology, and society. The student understands the impact of science and technology on the economic development of the United States. The student is expected to:

(A) explain the effects of technological and scientific innovations such as the steamboat, the cotton gin, and interchangeable parts;

(B) analyze the impact of transportation and communication systems on the growth, development, and urbanization of the United States;

(C) analyze how technological innovations changed the way goods were manufactured and marketed, nationally and internationally; and

(D) explain how technological innovations brought about economic growth such as how the factory system contributed to rapid industrialization and the Transcontinental Railroad led to the opening of the west.

(28) Science, technology, and society. The student understands the impact of scientific discoveries and technological innovations on daily life in the United States. The student is expected to:

(A) compare the effects of scientific discoveries and technological innovations that have influenced daily life in different periods in U.S. history; and

(B) identify examples of how industrialization changed life in the United States.

(29) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including electronic technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as computer software, databases, media and news services, biographies, interviews, and artifacts to acquire information about the United States;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify points of view from the historical context surrounding an event and the frame of reference which influenced the participants;

(E) support a point of view on a social studies issue or event;

(F) identify bias in written, oral, and visual material;

(G) evaluate the validity of a source based on language, corroboration with other sources, and information about the author;

(H) use appropriate mathematical skills to interpret social studies information such as maps and graphs;

(I) create thematic maps, graphs, charts, models, and databases representing various aspects of the United States; and

(J) pose and answer questions about geographic distributions and patterns shown on maps, graphs, charts, models, and databases.

(30) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use standard grammar, spelling, sentence structure, punctuation, and proper citation of sources;

(C) transfer information from one medium to another, including written to visual and statistical to written or visual, using computer software as appropriate; and

(D) create written, oral, and visual presentations of social studies information.

(31) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

*§113.21. Implementation of Texas Essential Knowledge and Skills for Social Studies, Middle School.*

The provisions of §§113.22-113.24 of this subchapter shall be superseded by §§113.18-113.20 of this subchapter beginning with the 2011-2012 school year [implemented by school districts beginning September 1, 1998, and at that time shall supersede §75.32(m) and §75.48 of this title (relating to Social Studies, Texas and United States History)].

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001563

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 475-1497



## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§113.31, 113.40 - 113.48

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the

SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c); and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment and new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.008, and 28.025.

*§113.31. Implementation of Texas Essential Knowledge and Skills for Social Studies, High School.*

The provisions of §§113.32-113.39 of this subchapter shall be superseded by §§113.41-113.48 of this subchapter beginning with the 2011-2012 school year [implemented by school districts beginning September 1, 1998, and at that time shall supersede §75.68 of this title (relating to Social Studies, Texas and United States History)].

*§113.40. Implementation of Texas Essential Knowledge and Skills for Social Studies, High School, Beginning with School Year 2011-2012.*

The provisions of §§113.41-113.48 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year and at that time shall supersede §§113.32-113.39 of this subchapter.

*§113.41. United States History Studies Since 1877 (One Credit), Beginning with School Year 2011-2012.*

(a) General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(b) Introduction.

(1) In United States History Studies Since 1877, which is the second part of a two-year study that begins in Grade 8, students study the history of the United States from 1877 to the present. The course content is based on the founding documents of the U.S. government, which provide a framework for its heritage. Historical content focuses on the political, economic, and social events and issues related to industrialization and urbanization, major wars, domestic and foreign policies, and reform movements, including civil rights. Students examine the impact of geographic factors on major events and eras and analyze their causes and effects. Students examine the impact of constitutional issues on American society, evaluate the dynamic relationship of the three branches of the federal government, and analyze efforts to expand the democratic process. Students describe the relationship between the arts and popular culture and the times during which they were created. Students analyze the impact of technological innovations on American life. Students use critical-thinking skills and a variety of primary and secondary source material to explain and apply different methods that historians use to understand and interpret the past, including multiple points of view and historical context.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.



(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) History. The student understands the principles included in the Celebrate Freedom Week program. The student is expected to:

(A) identify and analyze the text, intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights and the full text of the first three paragraphs of the preamble of the Declaration of Independence;

(B) identify and analyze the application of these founding principles to historical events in U.S. History; and

(C) explain the contributions of the Founding Fathers such as Benjamin Rush, John Hancock, John Jay, John Witherspoon, John Peter Muhlenberg, Charles Carroll, and Jonathan Trumbull.

(2) History. The student understands traditional historical points of reference in U.S. history from 1877 to the present. The student is expected to:

(A) identify the major characteristics that define an historical era;

(B) identify the major eras in U.S. history from 1877 to the present and describe their defining characteristics;

(C) apply absolute and relative chronology through the sequencing of significant individuals, events, and time periods; and

(D) explain the significance of the following years as turning points: 1898 (Spanish-American War), 1914-1918 (World War I), 1929 (the Great Depression begins), 1939-1945 (World War II), 1957 (Sputnik launch ignites U.S.-Soviet space race), 1968-1969 (Martin Luther King Jr. assassination and U.S. lands on the moon), 1991 (Cold War ends), 2001 (terrorist attacks on World Trade Center and the Pentagon), and 2008 (election of first black president).

(3) History. The student understands the political, economic, and social changes in the United States from 1877 to 1898. The student is expected to:

(A) analyze political issues such as Indian policies, the growth of political machines, civil service reform, and the beginnings of Populism;

(B) analyze economic issues such as industrialization, the growth of railroads, the growth of labor unions, farm issues, the cattle industry boom, and the rise of entrepreneurship, free enterprise, and big business; and

(C) analyze social issues affecting women, minorities, children, immigrants, urbanization, the Social Gospel, and philanthropy of industrialists.

(4) History. The student understands the emergence of the United States as a world power between 1898 and 1920. The student is expected to:

(A) explain why significant events, policies, and individuals such as the Spanish-American War, U.S. expansionism, Henry Cabot Lodge, Alfred Thayer Mahan, Theodore Roosevelt, Samuel Dole, and missionaries moved the United States into the position of a world power;

(B) evaluate American expansionism, including near- and long-term responses from the United States, and acquisitions such as Guam, Hawaii, Cuba, the Philippines, and Puerto Rico;

(C) identify the causes of World War I and reasons for U.S. entry;

(D) understand the contributions of the American Expeditionary Forces (AEF) led by General John J. Pershing;

(E) analyze the impact of significant technological innovations in World War I such as machine guns, airplanes, tanks, poison gas, and trench warfare that resulted in the stalemate on the Western Front;

(F) analyze major issues such as isolationism and neutrality raised by U.S. involvement in World War I, Woodrow Wilson's Fourteen Points, and the Treaty of Versailles; and

(G) analyze significant events such as the Battle of Argonne Forest.

(5) History. The student understands the effects of reform and third-party movements in the early 20th century. The student is expected to:

(A) evaluate the impact of Progressive Era reforms, including initiative, referendum, recall, and the passage of the 16th, 17th, 18th, and 19th amendments;

(B) evaluate the impact of muckrakers and reform leaders such as Upton Sinclair, Susan B. Anthony, Ida B. Wells, and W. E. B. DuBois on American society; and

(C) evaluate the impact of third parties, including the Populist and Progressive parties.

(6) History. The student understands significant events, social issues, and individuals of the 1920s. The student is expected to:

(A) analyze causes and effects of events and social issues such as immigration, Social Darwinism, race relations, nativism, the Red Scare, Prohibition, and the changing role of women; and

(B) analyze the impact of significant individuals such as Clarence Darrow, William Jennings Bryan, Henry Ford, Glenn Curtiss, Marcus Garvey, and Charles A. Lindbergh.

(7) History. The student understands the domestic and international impact of U.S. participation in World War II. The student is expected to:

(A) identify reasons for U.S. involvement in World War II, including Italian, German, and Japanese dictatorships and their aggression, especially the attack on Pearl Harbor;

(B) evaluate the domestic and international leadership of Franklin D. Roosevelt and Harry Truman during World War II, including the U.S. relationship with its allies and domestic industry's rapid mobilization for the war effort;

(C) analyze the function of the U.S. Office of War Information;

(D) analyze major issues of World War II, including the Holocaust; the internment of Japanese, German, and Italian Americans; and the development of conventional and atomic weapons;

(E) analyze major military events of World War II, including the Battle of Midway, the U.S. military advancement through the Pacific Islands, the Bataan Death March, the invasion of Normandy, fighting the war on multiple fronts, and the liberation of concentration camps;

(F) evaluate the military contributions of leaders during World War II, including Omar Bradley, Dwight Eisenhower, Douglas MacArthur, Chester A. Nimitz, George Marshall, and George Patton; and

(G) explain the home front and how American patriotism inspired exceptional actions by citizens and military personnel, including high levels of military enlistment; volunteerism; the purchase of war bonds; Victory Gardens; the bravery and contributions of the Tuskegee Airmen, the Flying Tigers, and the Navajo Code Talkers; and opportunities and obstacles for women and ethnic minorities.

(8) History. The student understands the impact of significant national and international decisions and conflicts in the Cold War on the United States. The student is expected to:

(A) describe U.S. responses to Soviet aggression after World War II, including the Truman Doctrine, the Marshall Plan, the North Atlantic Treaty Organization, the Berlin airlift, and John F. Kennedy's role in the Cuban Missile Crisis;

(B) describe how McCarthyism, the House Un-American Activities Committee (HUAC), the arms race, and the space race

increased Cold War tensions and how the later release of the Venona Papers confirmed suspicions of communist infiltration in U.S. government;

(C) explain reasons and outcomes for U.S. involvement in the Korean Conflict and its relationship to the containment policy;

(D) explain reasons and outcomes for U.S. involvement in foreign countries and their relationship to the Domino Theory, including the Vietnam Conflict;

(E) analyze the major issues and events of the Vietnam Conflict such as the Tet Offensive, the escalation of forces, Vietnamization, and the fall of Saigon; and

(F) describe the responses to the Vietnam Conflict such as the draft, the 26th Amendment, the role of the media, the credibility gap, the Silent Majority, and the anti-war movement.

(9) History. The student understands the impact of the American civil rights movement. The student is expected to:

(A) trace the historical development of the civil rights movement in the 19th, 20th, and 21st centuries, including the 13th, 14th, 15th, and 19th amendments;

(B) describe the roles of political organizations that promoted civil rights, including ones from African American, Chicano, American Indian, women's, and other civil rights movements;

(C) identify the roles of significant leaders who supported various rights movements, including Martin Luther King Jr., Cesar Chavez, Rosa Parks, and Betty Friedan;

(D) analyze the effectiveness of the approach taken by some civil rights groups such as the Black Panthers versus the philosophically persuasive tone of Martin Luther King Jr.'s "I Have a Dream" speech and his "Letter from the Birmingham Jail";

(E) describe presidential actions and congressional votes to address minority rights in the United States, including desegregation of the armed forces, the Civil Rights Act of 1964, and the Voting Rights Act of 1965;

(F) describe the role of individuals such as governors George Wallace, Orval Faubus, and Lester Maddox and groups, including the Congressional bloc of southern Democrats, that sought to maintain the status quo;

(G) evaluate changes and events in the United States that have resulted from the civil rights movement, including increased participation of minorities in the political process; and

(H) describe how litigation such as the landmark cases of Brown v. Board of Education, Mendez v. Westminster, Hernandez v. Texas, Edgewood I.S.D. v. Kirby, and Sweatt v. Painter played a role in protecting the rights of the minority during the civil rights movement.

(10) History. The student understands the impact of political, economic, and social factors in the U.S. role in the world from the 1970s through 1990. The student is expected to:

(A) describe Richard M. Nixon's leadership in the normalization of relations with China and the policy of détente;

(B) describe Ronald Reagan's leadership in domestic and international policies, including Reaganomics and Peace Through Strength;

(C) compare the impact of energy on the American way of life over time;

(D) describe U.S. involvement in the Middle East such as support for Israel, the Camp David Accords, the Iran-Contra Affair, Marines in Lebanon, and the Iran Hostage Crisis;

(E) describe the causes and key organizations and individuals of the conservative resurgence of the 1980s and 1990s, including Phyllis Schlafly, the Contract with America, the Heritage Foundation, the Moral Majority, and the National Rifle Association; and

(F) describe significant societal issues of this time period.

(11) History. The student understands the emerging political, economic, and social issues of the United States from the 1990s into the 21st century. The student is expected to:

(A) describe U.S. involvement in world affairs, including the end of the Cold War, the Persian Gulf War, the Balkans Crisis, 9/11, and the global War on Terror;

(B) identify significant social and political advocacy organizations and leaders across the political spectrum;

(C) analyze the impact of third parties on presidential elections;

(D) discuss the historical significance of the 2008 presidential election; and

(E) describe significant societal issues of this time period.

(12) Geography. The student understands the impact of geographic factors on major events. The student is expected to:

(A) analyze the impact of physical and human geographic factors on the Panama Canal, the Klondike Gold Rush, the Dust Bowl, the levee failure in New Orleans after Hurricane Katrina, and the settlement of the Great Plains; and

(B) identify and explain reasons for changes in political boundaries such as those resulting from statehood and international conflicts.

(13) Geography. The student understands the causes and effects of migration and immigration on American society. The student is expected to:

(A) analyze the causes and effects of changing demographic patterns resulting from migration within the United States, including western expansion, rural to urban, the Great Migration, and the Rust Belt to the Sun Belt; and

(B) analyze the causes and effects of changing demographic patterns resulting from legal and illegal immigration to the United States.

(14) Geography. The student understands the relationship between population growth and modernization on the physical environment. The student is expected to:

(A) identify the effects of population growth and distribution on the physical environment;

(B) identify the roles of governmental entities and private citizens in managing the environment such as the establishment of the National Park System, the Environmental Protection Agency (EPA), and the Endangered Species Act; and

(C) understand the effects of governmental actions on individuals, industries, and communities, including the impact of Fifth Amendment property rights.

(15) Economics. The student understands domestic and foreign issues related to U.S. economic growth from the 1870s to 1920. The student is expected to:

(A) describe how the economic impact of the Transcontinental Railroad and the Homestead Act contributed to the close of the frontier in the late 19th century;

(B) describe the changing relationship between the federal government and private business, including the costs and benefits of laissez-faire, anti-trust acts, the Interstate Commerce Act, and the Pure Food and Drug Act;

(C) explain how foreign policies affected economic issues such as the Chinese Exclusion Act of 1882, the Open Door Policy, Dollar Diplomacy, and immigration quotas;

(D) describe the economic effects of international military conflicts, including the Spanish-American War and World War I, on the United States; and

(E) describe the emergence of monetary policy in the United States, including the Federal Reserve Act of 1913 and the shifting trend from a gold standard to fiat money.

(16) Economics. The student understands significant economic developments between World War I and World War II. The student is expected to:

(A) analyze causes of economic growth and prosperity in the 1920s, including Warren Harding's Return to Normalcy, reduced taxes, and increased production efficiencies;

(B) identify the causes of the Great Depression, including the impact of tariffs on world trade, stock market speculation, bank failures, and the flawed monetary policy of the Federal Reserve System;

(C) analyze the effects of the Great Depression on the U.S. economy and society such as widespread unemployment and deportation and repatriation of people of European and Mexican heritage and others;

(D) compare the New Deal policies and its opponents' approaches to resolving the economic effects of the Great Depression; and

(E) describe how various New Deal agencies and programs, including the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Social Security Administration, continue to affect the lives of U.S. citizens.

(17) Economics. The student understands the economic effects of World War II and the Cold War. The student is expected to:

(A) describe the economic effects of World War II on the home front such as the end of the Great Depression, rationing, and increased opportunity for employment, including for women and minorities;

(B) identify the causes of prosperity in the 1950s, including the Baby Boom and the impact of the GI Bill (Servicemen's Readjustment Act of 1944), and the effects of prosperity in the 1950s such as increased consumption and the growth of agriculture and business;

(C) describe the economic impact of defense spending on the business cycle and education priorities from 1945 to the 1990s;

(D) identify actions of government and the private sector such as the Great Society, affirmative action, and Title IX to create

economic opportunities for citizens and analyze the unintended consequences of each; and

(E) describe the dynamic relationship between U.S. international trade policies and the U.S. free enterprise system such as the Organization of Petroleum Exporting Countries (OPEC) oil embargo, the General Agreement of Tariffs and Trade (GATT), and the North American Free Trade Agreement (NAFTA).

(18) Economics. The student understands the economic effects of increased worldwide interdependence as the United States enters the 21st century. The student is expected to:

(A) discuss the role of American entrepreneurs such as Bill Gates, Sam Walton, Estée Lauder, Robert Johnson, Lionel Sosa, and millions of small business entrepreneurs who achieved the American dream; and

(B) identify the impact of international events, multinational corporations, government policies, and individuals on the 21st century economy.

(19) Government. The student understands changes over time in the role of government. The student is expected to:

(A) evaluate the impact of New Deal legislation on the historical roles of state and federal government;

(B) explain constitutional issues raised by federal government policy changes during times of significant events, including World War I, the Great Depression, World War II, the 1960s, and 9/11;

(C) describe the effects of political scandals, including Teapot Dome, Watergate, and Bill Clinton's impeachment, on the views of U.S. citizens concerning trust in the federal government and its leaders;

(D) discuss the role of contemporary government legislation in the private and public sectors such as the Community Reinvestment Act of 1977, USA PATRIOT Act of 2001, and the American Recovery and Reinvestment Act of 2009; and

(E) evaluate the pros and cons of U.S. participation in international organizations and treaties.

(20) Government. The student understands the changing relationships among the three branches of the federal government. The student is expected to:

(A) describe the impact of events such as the Gulf of Tonkin Resolution and the War Powers Act on the relationship between the legislative and executive branches of government; and

(B) evaluate the impact of relationships among the legislative, executive, and judicial branches of government, including Franklin D. Roosevelt's attempt to increase the number of U.S. Supreme Court justices and the presidential election of 2000.

(21) Government. The student understands the impact of constitutional issues on American society. The student is expected to:

(A) analyze the effects of landmark U.S. Supreme Court decisions, including *Brown v. Board of Education*, and other U.S. Supreme Court decisions such as *Plessy v. Ferguson*, *Hernandez v. Texas*, *Delgado v. Bastrop I.S.D.*, and *Tinker v. Des Moines*;

(B) discuss historical reasons why the constitution has been amended; and

(C) evaluate constitutional change in terms of strict construction versus judicial interpretation.

(22) Citizenship. The student understands the concept of American exceptionalism. The student is expected to:

(A) describe how American values are different and unique from those of other nations;

(B) describe U.S. citizens as people from numerous places throughout the world who hold a common bond in standing for certain self-evident truths; and

(C) discuss Alexis de Tocqueville's five values crucial to America's success as a constitutional republic: liberty, egalitarianism, individualism, populism, and laissez-faire.

(23) Citizenship. The student understands efforts to expand the democratic process. The student is expected to:

(A) identify and analyze methods of expanding the right to participate in the democratic process, including lobbying, non-violent protesting, litigation, and amendments to the U.S. Constitution;

(B) evaluate various means of achieving equality of political rights, including the 19th, 24th, and 26th amendments and congressional acts such as the American Indian Citizenship Act of 1924; and

(C) explain how participation in the democratic process reflects our national ethos, patriotism, and civic responsibility as well as our progress to build a "more perfect union."

(24) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) describe qualities of effective leadership; and

(B) evaluate the contributions of significant political and social leaders in the United States such as Andrew Carnegie, Hector P. Garcia, Thurgood Marshall, Billy Graham, Barry Goldwater, Phyllis Schlafly, and Hillary Clinton.

(25) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) describe how the characteristics and issues in U.S. history have been reflected in various genres of art, music, film, and literature;

(B) describe both the positive and negative impacts of significant examples of cultural movements in art, music, and literature such as Tin Pan Alley, the Harlem Renaissance, the Beat Generation, rock and roll, the Chicano Mural Movement, and country and western music on American society;

(C) identify the impact of popular American culture on the rest of the world over time; and

(D) analyze the global diffusion of American culture through the entertainment industry via various media.

(26) Culture. The student understands how people from various groups contribute to our national identity. The student is expected to:

(A) explain actions taken by people to expand economic opportunities and political rights, including those for racial, ethnic, and religious minorities as well as women, in American society;

(B) discuss the Americanization movement to assimilate immigrants and American Indians into American culture;

(C) explain how the contributions of people of various racial, ethnic, gender, and religious groups shape American culture;

(D) identify the political, social, and economic contributions of women, including Frances Willard, Jane Addams, Eleanor Roosevelt, Dolores Huerta, and Oprah Winfrey, to American society;

(E) discuss the meaning and historical significance of the mottos "E Pluribus Unum" and "In God We Trust"; and

(F) discuss the importance of congressional Medal of Honor recipients, including individuals of all races and genders such as Vernon J. Baker, Alvin York, and Roy Benavides.

(27) Science, technology, and society. The student understands the impact of science, technology, and the free enterprise system on the economic development of the United States. The student is expected to:

(A) explain the effects of scientific discoveries and technological innovations such as electric power, telephone and satellite communications, petroleum-based products, steel production, and computers on the economic development of the United States;

(B) explain how specific needs result in scientific discoveries and technological innovations in agriculture, the military, and medicine, including vaccines; and

(C) understand the impact of technological and management innovations and their applications in the workplace and the resulting productivity enhancements for business and labor such as assembly line manufacturing, time-study analysis, robotics, computer management, and just-in-time inventory management.

(28) Science, technology, and society. The student understands the influence of scientific discoveries, technological innovations, and the free enterprise system on the standard of living in the United States. The student is expected to:

(A) analyze how scientific discoveries, technological innovations, and the application of these by the free enterprise system, including those in transportation and communication, improve the standard of living in the United States;

(B) explain how space technology and exploration improve the quality of life; and

(C) understand how the free enterprise system drives technological innovation and its application in the marketplace such as cell phones, inexpensive personal computers, and global positioning products.

(29) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) use a variety of both primary and secondary valid sources to acquire information and to analyze and answer historical questions;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing and contrasting, finding the main idea, summarizing, making generalizations, making predictions, drawing inferences, and drawing conclusions;

(C) understand how historians interpret the past (historiography) and how their interpretations of history may change over time;

(D) use the process of historical inquiry to research, interpret, and use multiple types of sources of evidence;

(E) evaluate the validity of a source based on language, corroboration with other sources, and information about the author, including points of view, frames of reference, and historical context;

(F) identify bias in written, oral, and visual material;

(G) identify and support with historical evidence a point of view on a social studies issue or event; and

(H) use appropriate skills to analyze and interpret social studies information such as maps, graphs, and political cartoons.

(30) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) create written, oral, and visual presentations of social studies information;

(B) use correct social studies terminology to explain historical concepts; and

(C) use different forms of media to convey information, including written to visual and statistical to written or visual, using available computer software as appropriate.

(31) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create thematic maps, graphs, and charts representing various aspects of the United States; and

(B) pose and answer questions about geographic distributions and patterns shown on maps, graphs, charts, and available databases.

(32) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.42. World History Studies (One Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(b) Introduction.

(1) World History Studies is a survey of the history of humankind. Due to the expanse of world history and the time limitations of the school year, the scope of this course should focus on "essential" concepts and skills that can be applied to various eras, events, and people within the standards in subsection (c) of this section. The major emphasis is on the study of significant people, events, and issues from the earliest times to the present. Traditional historical points of reference in world history are identified as students analyze important events and issues in western civilization as well as in civilizations in other parts of the world. Students evaluate the causes and effects of political and economic imperialism and of major political revolutions since the 17th century. Students examine the impact of geographic factors on major historic events and identify the historic origins of contemporary economic systems. Students analyze the process by which constitutional governments evolved as well as the ideas from historic documents that influenced that process. Students trace the historical development of important legal and political concepts. Students exam-

ine the history and impact of major religious and philosophical traditions. Students analyze the connections between major developments in science and technology and the growth of industrial economies, and they use the process of historical inquiry to research, interpret, and use multiple sources of evidence.

(2) The following periodization should serve as the framework for the organization of this course: 8000 BC-500 BC (Development of River Valley Civilizations); 500 BC-AD 600 (Classical Era); 600-1450 (Post-classical Era); 1450-1750 (Connecting Hemispheres); 1750-1914 (Age of Revolutions); and 1914-present (20th Century to the Present). Specific events and processes may transcend these chronological boundaries.

(3) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as state papers, legal documents, charters, constitutions, biographies, autobiographies, speeches, letters, literature, music, art, and architecture is encouraged. Motivating resources are available from museums, art galleries, and historical sites.

(4) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies.

(5) A greater depth of understanding of complex content material can be attained by integrating social studies content and skills and by analyzing connections between and among historical periods and events. The list of events and people in this course curriculum should not be considered exhaustive. Additional examples can and should be incorporated. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(6) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(7) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation, as referenced in the Texas Education Code (TEC), §28.002(h).

(8) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and

recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) History. The student understands traditional historical points of reference in world history. The student is expected to:

(A) identify major causes and describe the major effects of the following events from 8000 BC to 500 BC: the development of agriculture and the development of the river valley civilizations;

(B) identify major causes and describe the major effects of the following events from 500 BC to AD 600: the development of the classical civilizations of Greece, Rome, Persia, India (Maurya and Gupta), China (Zhou, Qin, and Han), and the development of major world religions;

(C) identify major causes and describe the major effects of the following important turning points in world history from 600 to 1450: the spread of Christianity, the decline of Rome and the formation of medieval Europe; the development of Islamic caliphates and their impact on Asia, Africa, and Europe; the Mongol invasions and their impact on Europe, China, India, Southwest Asia, and the Mesoamerican civilizations;

(D) identify major causes and describe the major effects of the following important turning points in world history from 1450 to 1750: the rise of the Ottoman Empire, the influence of the Ming dynasty on world trade, European exploration and the Columbian Exchange, European expansion, and the Renaissance and the Reformation;

(E) identify major causes and describe the major effects of the following important turning points in world history from 1750 to 1914: the Scientific Revolution, the Industrial Revolution and its impact on the development of modern economic systems, European imperialism, and the Enlightenment's impact on political revolutions; and

(F) identify major causes and describe the major effects of the following important turning points in world history from 1914 to the present: the world wars and their impact on political, economic, and social systems; communist revolutions and their impact on the Cold War; independence movements; and globalization.

(2) History. The student understands how early civilizations developed from 8000 BC to 500 BC. The student is expected to:

(A) summarize the impact of the development of farming (Neolithic Revolution) on the creation of river valley civilizations;

(B) identify the characteristics of civilization; and

(C) explain how major river valley civilizations influenced the development of the classical civilizations.

(3) History. The student understands the contributions and influence of classical civilizations from 500 BC to AD 600 on subsequent civilizations. The student is expected to:

(A) describe the major political, religious/philosophical, and cultural influences of Persia, India, China, Israel, Greece, and Rome, including the development of monotheism, Judaism, and Christianity;

(B) explain the impact of the fall of Rome on Western Europe; and

(C) compare the factors that led to the collapse of Rome and Han China.

(4) History. The student understands how, after the collapse of classical empires, new political, economic, and social systems evolved and expanded from 600 to 1450. The student is expected to:

(A) explain the development of Christianity as a unifying social and political factor in medieval Europe and the Byzantine Empire;

(B) explain the characteristics of Roman Catholicism and Eastern Orthodoxy;

(C) describe the major characteristics of and the factors contributing to the development of the political/social system of feudalism and the economic system of manorialism;

(D) explain the political, economic, and social impact of Islam on Europe; Asia; and Africa;

(E) describe the interactions between Muslim, Christian, and Jewish societies in Europe, Asia, and North Africa;

(F) describe the interactions between Muslim and Hindu societies in South Asia;

(G) explain how the Crusades, the Black Death, the Hundred Years' War, and the Great Schism contributed to the end of medieval Europe;

(H) summarize the major political, economic, and cultural developments in Tang and Song China and their impact on Eastern Asia;

(I) explain the development of the slave trade;

(J) analyze how the Silk Road and the African gold-salt trade facilitated the spread of ideas and trade; and

(K) summarize the changes resulting from the Mongol invasions of Russia, China, and the Islamic world.

(5) History. The student understands the causes, characteristics, and impact of the European Renaissance and the Reformation from 1450 to 1750. The student is expected to:

(A) explain the political, intellectual, artistic, economic, and religious impact of the Renaissance; and

(B) explain the political, intellectual, artistic, economic, and religious impact of the Reformation.

(6) History. The student understands the characteristics and impact of Maya, Inca, and Aztec civilizations. The student is expected to:

(A) compare the major political, economic, social, and cultural developments of the Maya, Inca, and Aztec civilizations and explain how prior civilizations influenced their development; and

(B) explain how the Inca and Aztec empires were impacted by European exploration/colonization.

(7) History. The student understands the causes and impact of European expansion from 1450 to 1750. The student is expected to:

(A) analyze the causes of European expansion from 1450 to 1750;

(B) explain the impact of the Columbian Exchange on the Americas and Europe;

(C) explain the impact of the Atlantic slave trade on West Africa and the Americas;

(D) explain the impact of the Ottoman Empire on Eastern Europe and global trade;

(E) explain Ming China's impact on global trade; and

(F) explain three pro-free market factors that contributed to the success of Europe's Commercial Revolution.

(8) History. The student understands the causes and the global impact of the Industrial Revolution and European imperialism from 1750 to 1914. The student is expected to:

(A) explain how 17th and 18th century European scientific advancements led to the Industrial Revolution;

(B) explain how the Industrial Revolution led to political, economic, and social changes in Europe;

(C) identify the major political, economic, and social motivations that influenced European imperialism;

(D) explain the major characteristics and impact of European imperialism; and

(E) explain the benefits of free enterprise in the Industrial Revolution.

(9) History. The student understands the causes and effects of major political revolutions between 1750 and 1914. The student is expected to:

(A) compare the causes, characteristics, and consequences of the American and French revolutions, emphasizing the role of the Enlightenment, the Glorious Revolution, and religion;

(B) explain the impact of Napoleon Bonaparte and the Napoleonic Wars on Europe and Latin America;

(C) trace the influence of the American and French revolutions on Latin America, including the role of Simon Bolivar; and

(D) identify the influence of ideas such as separation of powers, checks and balances, liberty, equality, democracy, popular sovereignty, human rights, constitutionalism, and nationalism on political revolutions.

(10) History. The student understands the causes and impact of World War I. The student is expected to:

(A) identify the importance of imperialism, nationalism, militarism, and the alliance system in causing World War I;

(B) identify major characteristics of World War I, including total war, trench warfare, modern military technology, and high casualty rates;

(C) explain the political impact of Woodrow Wilson's Fourteen Points and the political and economic impact of the Treaty of Versailles, including changes in boundaries and the mandate system; and

(D) identify the causes of the February (March) and October revolutions of 1917 in Russia, their effects on the outcome of World War I, and the Bolshevik establishment of the Union of Soviet Socialist Republics.

(11) History. The student understands the causes and impact of the global economic depression immediately following World War I. The student is expected to:

(A) summarize the international political and economic causes of the global depression; and

(B) explain the response of governments in the United States, Germany, and the Soviet Union to the global depression.

(12) History. The student understands the causes and impact of World War II. The student is expected to:

(A) describe the emergence and characteristics of totalitarianism;

(B) explain the roles of various world leaders, including Benito Mussolini, Adolf Hitler, Hideki Tojo, Joseph Stalin, Franklin Roosevelt, and Winston Churchill, prior to and during World War II; and

(C) explain the major causes and events of World War II, including the German invasions of Poland and the Soviet Union, the Holocaust, Japanese imperialism, the attack on Pearl Harbor, the Normandy landings, and the dropping of the atomic bombs.

(13) History. The student understands the impact of major events associated with the Cold War and independence movements. The student is expected to:

(A) summarize how the outcome of World War II contributed to the development of the Cold War;

(B) summarize the factors that contributed to communism in China, including Mao Zedong's role in its rise, and how it differed from Soviet communism;

(C) identify the following major events of the Cold War, including the Korean War, the Vietnam War, and the arms race;

(D) explain the roles of modern world leaders, including Ronald Reagan, Mikhail Gorbachev, Lech Walesa, and Pope John Paul II, in the collapse of communism in Eastern Europe and the Soviet Union;

(E) summarize the rise of independence movements in Africa, the Middle East, and South Asia and reasons for ongoing conflicts; and

(F) explain how Arab rejection of the State of Israel has led to ongoing conflict.

(14) History. The student understands the development of radical Islamic fundamentalism and the subsequent use of terrorism by some of its adherents. The student is expected to:

(A) summarize the development and impact of radical Islamic fundamentalism on events in the second half of the 20th century, including Palestinian terrorism and the growth of al Qaeda; and

(B) explain the U.S. response to terrorism from September 11, 2001, to the present.

(15) Geography. The student uses geographic skills and tools to collect, analyze, and interpret data. The student is expected to:

(A) create and interpret thematic maps, graphs, and charts to demonstrate the relationship between geography and the historical development of a region or nation; and

(B) analyze and compare geographic distributions and patterns in world history shown on maps, graphs, charts, and models.

(16) Geography. The student understands the impact of geographic factors on major historic events and processes. The student is expected to:

(A) locate places and regions of historical significance directly related to major eras and turning points in world history;

(B) analyze the influence of human and physical geographic factors on major events in world history, including the development of river valley civilizations, trade in the Indian Ocean, and the opening of the Panama and Suez canals; and

(C) interpret maps, charts, and graphs to explain how geography has influenced people and events in the past.

(17) Economics. The student understands the impact of the Neolithic and Industrial revolutions and globalization on humanity. The student is expected to:

(A) identify important changes in human life caused by the Neolithic Revolution and the Industrial Revolution;

(B) summarize the role of economics in driving political changes as related to the Neolithic Revolution and the Industrial Revolution; and

(C) summarize the economic and social impact of 20th century globalization.

(18) Economics. The student understands the historic origins of contemporary economic systems. The student is expected to:

(A) identify the historic origins and characteristics of the free enterprise system, including the contributions of Adam Smith;

(B) identify the historic origins and characteristics of communism, including the influences of Karl Marx;

(C) identify the historic origins and characteristics of socialism; and

(D) identify the historic origins and characteristics of fascism.

(19) Government. The student understands the characteristics of major political systems throughout history. The student is expected to:

(A) identify the characteristics of monarchies and theocracies as forms of government in early civilizations; and

(B) identify the characteristics of the following political systems: theocracy, absolute monarchy, democracy, republic, oligarchy, limited monarchy, and totalitarianism.

(20) Government. The student understands how contemporary political systems have developed from earlier systems of government. The student is expected to:

(A) explain the development of democratic-republican government from its beginnings in the Judeo-Christian legal tradition and classical Greece and Rome through the English Civil War and the Enlightenment;

(B) identify the impact of political and legal ideas contained in the following documents: Hammurabi's Code, the Jewish Ten Commandments, Justinian's Code of Laws, Magna Carta, the English Bill of Rights, the Declaration of Independence, the U.S. Constitution, and the Declaration of the Rights of Man and of the Citizen;

(C) explain the impact of the writings of John Locke, Thomas Hobbes, Voltaire, Charles de Montesquieu, Jean Jacques Rousseau, Thomas Aquinas, John Calvin, and William Blackstone; and

(D) explain the significance of the League of Nations and the United Nations.

(21) Citizenship. The student understands the significance of political choices and decisions made by individuals, groups, and nations throughout history. The student is expected to:

(A) describe how people have participated in supporting or changing their governments; and



(B) describe the rights and responsibilities of citizens and noncitizens in civic participation throughout history.

(22) Citizenship. The student understands the historical development of significant legal and political concepts related to the rights and responsibilities of citizenship. The student is expected to:

(A) summarize the development of the rule of law from ancient to modern times;

(B) identify the influence of ideas regarding the right to a "trial by a jury of your peers" and the concepts of "innocent until proven guilty" and "equality before the law" that originated from the Judeo-Christian legal tradition and in Greece and Rome;

(C) identify examples of politically motivated mass murders in Cambodia, China, Latin America, the Soviet Union, and Armenia;

(D) identify examples of genocide, including the Holocaust and genocide in the Balkans, Rwanda, and Darfur;

(E) identify examples of individuals who led resistance to political oppression such as Nelson Mandela, Mohandas Gandhi, Natan Sharansky, Las Madres de la Plaza de Mayo, and Chinese student protestors in Tiananmen Square; and

(F) assess the degree to which American ideals have advanced human rights and democratic ideas throughout the world.

(23) Culture. The student understands the history and relevance of major religious and philosophical traditions. The student is expected to:

(A) describe the historical origins, central ideas, and spread of major religious and philosophical traditions, including Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Sikhism, and the development of monotheism; and

(B) identify examples of religious influence on various events referenced in the major eras of world history.

(24) Culture. The student understands the roles of women, children, and families in different historical cultures. The student is expected to:

(A) describe the changing roles of women, children, and families during major eras of world history; and

(B) describe the major influences of women during major eras of world history such as Elizabeth I, Queen Victoria, Mother Teresa, Indira Gandhi, Margaret Thatcher, and Golda Meir.

(25) Culture. The student understands how the development of ideas has influenced institutions and societies. The student is expected to:

(A) summarize the fundamental ideas and institutions of Eastern civilizations that originated in China and India;

(B) summarize the fundamental ideas and institutions of Western civilizations that originated in Greece and Rome;

(C) explain the relationship among Christianity, individualism, and growing secularism and how the relationship influenced subsequent political developments; and

(D) explain how Islam influences law and government in the Muslim world.

(26) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) identify significant examples of art and architecture that demonstrate an artistic ideal or visual principle from selected cultures;

(B) analyze examples of how art, architecture, literature, music, and drama reflect the history of the cultures in which they are produced; and

(C) identify examples of art, music, and literature that transcend the cultures in which they were created and convey universal themes.

(27) Science, technology, and society. The student understands how major scientific and mathematical discoveries and technological innovations affected societies prior to 1750. The student is expected to:

(A) identify the origin and diffusion of major ideas in mathematics, science, and technology that occurred in river valley civilizations, classical Greece and Rome, classical India, and the Islamic caliphates between 700 and 1200 and in China from the Tang to Ming dynasties;

(B) summarize the major ideas in astronomy, mathematics, and architectural engineering that developed in the Maya, Inca, and Aztec civilizations;

(C) explain the impact of the printing press on the Renaissance and the Reformation in Europe;

(D) describe the origins of the Scientific Revolution in 16th century Europe and explain its impact on scientific thinking worldwide; and

(E) identify the contributions of significant scientists such as Archimedes, Copernicus, Galileo, and Pythagoras.

(28) Science, technology, and society. The student understands how major scientific and mathematical discoveries and technological innovations have affected societies from 1750 to the present. The student is expected to:

(A) explain the role of textile manufacturing and steam technology in initiating the Industrial Revolution and the role of the factory system and transportation technology in advancing the Industrial Revolution;

(B) explain the roles of military technology, transportation technology, communication technology, and medical advancements in initiating and advancing 19th century imperialism;

(C) explain the effects of major new military technologies on World War I, World War II, and the Cold War;

(D) explain the role of telecommunication technology, computer technology, transportation technology, and medical advancements in developing the modern global economy and society; and

(E) identify the contributions of significant scientists and inventors such as Robert Boyle, Marie Curie, Thomas Edison, Albert Einstein, Isaac Newton, Louis Pasteur, and James Watt.

(29) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) identify methods used by archaeologists, anthropologists, historians, and geographers to analyze evidence;

(B) explain how historians, when examining sources, analyze frame of reference, historical context, and point of view to interpret historical events;

(C) explain the differences between primary and secondary sources and examine those sources to analyze frame of reference, historical context, and point of view;

(D) evaluate the validity of a source based on language, corroboration with other sources, and information about the author;

(E) identify bias in written, oral, and visual material;

(F) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, drawing inferences and conclusions, and developing connections between historical events over time;

(G) construct a thesis on a social studies issue or event supported by evidence; and

(H) use appropriate reading and mathematical skills to interpret social studies information such as maps and graphs.

(30) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use standard grammar, spelling, sentence structure, and punctuation;

(C) interpret and create written, oral, and visual presentations of social studies information; and

(D) transfer information from one medium to another.

(31) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.43. World Geography Studies (One Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(b) Introduction.

(1) In World Geography Studies, students examine people, places, and environments at local, regional, national, and international scales from the spatial and ecological perspectives of geography. Students describe the influence of geography on events of the past and present with emphasis on contemporary issues. A significant portion of the course centers around the physical processes that shape patterns in the physical environment; the characteristics of major landforms, climates, and ecosystems and their interrelationships; the political, economic, and social processes that shape cultural patterns of regions; types and patterns of settlement; the distribution and movement of the world population; relationships among people, places, and environments; and the concept of region. Students analyze how location affects economic activities in different economic systems. Students identify the processes that influence political divisions of the planet and analyze how different points of view affect the development of public policies. Students compare how components of culture shape the characteristics of regions and analyze the impact of technology and human modifications on the physical environment. Students use prob-

lem-solving and decision-making skills to ask and answer geographic questions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as contemporary and historic maps of various types, satellite-produced images, photographs, graphs, map sketches, and diagrams is encouraged.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) History. The student understands how geography and processes of spatial exchange (diffusion) influenced events in the past and helped to shape the present. The student is expected to:

(A) analyze the effects of physical and human geographic patterns and processes on the past and describe their impact on the present, including significant physical features and environ-

mental conditions that influenced migration patterns and shaped the distribution of culture groups today; and

(B) trace the spatial diffusion of phenomena such as the Columbian Exchange or the diffusion of American popular culture and describe the effects on regions of contact.

(2) History. The student understands how people, places, and environments have changed over time and the effects of these changes. The student is expected to:

(A) describe the human and physical characteristics of the same regions at different periods of time to evaluate relationships between past events and current conditions; and

(B) explain how changes in societies have led to diverse uses of physical features.

(3) Geography. The student understands how physical processes shape patterns in the physical environment. The student is expected to:

(A) explain weather conditions and climate in relation to annual changes in Earth-Sun relationships;

(B) describe the physical processes that affect the environments of regions, including weather, tectonic forces, erosion, and soil-building processes; and

(C) examine the physical processes that affect the lithosphere, atmosphere, hydrosphere, and biosphere.

(4) Geography. The student understands the patterns and characteristics of major landforms, climates, and ecosystems of Earth and the interrelated processes that produce them. The student is expected to:

(A) explain how elevation, latitude, wind systems, ocean currents, position on a continent, and mountain barriers influence temperature, precipitation, and distribution of climate regions;

(B) describe different landforms and the physical processes that cause their development; and

(C) explain the influence of climate on the distribution of biomes in different regions.

(5) Geography. The student understands how political, economic, and social processes shape cultural patterns and characteristics in various places and regions. The student is expected to:

(A) analyze how the character of a place is related to its political, economic, social, and cultural elements; and

(B) interpret political, economic, social, and demographic indicators (gross domestic product per capita, life expectancy, literacy, and infant mortality) to determine the level of development and standard of living in nations using the terms Human Development Index, less developed, newly industrialized, and more developed.

(6) Geography. The student understands the types, patterns, and processes of settlement. The student is expected to:

(A) locate and describe human and physical features that influence the size and distribution of settlements; and

(B) explain the processes that have caused changes in settlement patterns, including urbanization, transportation, access to and availability of resources, and economic activities.

(7) Geography. The student understands the growth, distribution, movement, and characteristics of world population. The student is expected to:

(A) construct and analyze population pyramids and use other data, graphics, and maps to describe the population characteristics of different societies and to predict future population trends;

(B) explain how political, economic, social, and environmental push and pull factors and physical geography affect the routes and flows of human migration;

(C) describe trends in world population growth and distribution; and

(D) examine benefits and challenges of globalization, including connectivity, standard of living, pandemics, and loss of local culture.

(8) Geography. The student understands how people, places, and environments are connected and interdependent. The student is expected to:

(A) compare ways that humans depend on, adapt to, and modify the physical environment, including the influences of culture and technology;

(B) describe the interaction between humans and the physical environment and analyze the consequences of extreme weather and other natural disasters such as El Niño, floods, tsunamis, and volcanoes; and

(C) evaluate the economic and political relationships between settlements and the environment, including sustainable development and renewable/non-renewable resources.

(9) Geography. The student understands the concept of region as an area of Earth's surface with related geographic characteristics. The student is expected to:

(A) identify physical and/or human factors such as climate, vegetation, language, trade networks, political units, river systems, and religion that constitute a region; and

(B) describe different types of regions, including formal, functional, and perceptual regions.

(10) Economics. The student understands the distribution, characteristics, and interactions of the economic systems in the world. The student is expected to:

(A) describe the forces that determine the distribution of goods and services in free enterprise, socialist, and communist economic systems;

(B) classify where specific countries fall along the economic spectrum between free enterprise and communism;

(C) compare the ways people satisfy their basic needs through the production of goods and services such as subsistence agriculture versus commercial agriculture or cottage industries versus commercial industries; and

(D) compare global trade patterns over time and examine the implications of globalization, including outsourcing and free trade zones.

(11) Economics. The student understands how geography influences economic activities. The student is expected to:

(A) understand the connections between levels of development and economic activities (primary, secondary, tertiary, and quaternary);

(B) examine factors affecting the location of different types of economic activities, including subsistence, natural resources, manufacturing, agriculture, services, and cottage industry; and

(C) assess how changes in climate, resources, and infrastructure (technology, transportation, and communication) affect the location and patterns of economic activities.

(12) Economics. The student understands the economic importance of, and issues related to, the location and management of resources. The student is expected to:

(A) analyze how the creation, distribution, and management of key natural resources affects the location and patterns of movement of products, money, and people; and

(B) evaluate the geographic and economic impact of policies related to the development, use, and scarcity of natural resources such as regulations of water.

(13) Government. The student understands the spatial characteristics of a variety of global political units. The student is expected to:

(A) interpret maps to explain the division of land, including man-made and natural borders, into separate political units such as cities, states, or countries; and

(B) compare maps of voting patterns or political boundaries to make inferences about the distribution of political power.

(14) Government. The student understands the processes that influence political divisions, relationships, and policies. The student is expected to:

(A) analyze current events to infer the physical and human processes that lead to the formation of boundaries and other political divisions;

(B) compare how democracy, dictatorship, monarchy, republic, theocracy, and totalitarian systems operate in specific countries; and

(C) analyze the human and physical factors that influence the power to control territory, create conflict/war, and impact international political relations such as the United Nations (UN), the European Union (EU), or the control of resources.

(15) Citizenship. The student understands how different points of view influence the development of public policies and decision-making processes on local, state, national, and international levels. The student is expected to:

(A) identify and give examples of different points of view that influence the development of public policies and decision-making processes on local, state, national, and international levels; and

(B) explain how citizenship practices, public policies, and decision making may be influenced by cultural beliefs, including nationalism and patriotism.

(16) Culture. The student understands how the components of culture affect the way people live and shape the characteristics of regions. The student is expected to:

(A) describe how physical geography, human adaption, and technology influence culture and impact innovation and diffusion;

(B) describe elements of culture, including entertainment, food, language, religion, recreation, and fashion;

(C) explain ways various groups of people perceive the characteristics of their own and other cultures, places, and regions differently; and

(D) compare life in a variety of urban and rural areas in the world to evaluate political, economic, social, and environmental changes.

(17) Culture. The student understands the distribution, patterns, and characteristics of different cultures. The student is expected to:

(A) describe and compare patterns of culture such as language, religion, land use, education, and customs that make specific regions of the world distinctive;

(B) describe major world religions, including animism, Buddhism, Christianity, Hinduism, Islam, Judaism, and Sikhism, and their spatial distribution;

(C) compare economic, political, or social opportunities in different cultures for women, ethnic and religious minorities, and other underrepresented populations; and

(D) evaluate the experiences and contributions of diverse groups to multicultural societies.

(18) Culture. The student understands the ways in which cultures change and maintain continuity. The student is expected to:

(A) analyze cultural changes in specific regions caused by migration, war, trade, innovations, and diffusion;

(B) assess causes, effects, and perceptions of conflicts between groups of people, including modern genocides and terrorism;

(C) identify examples of cultures that maintain traditional ways, including traditional economies; and

(D) evaluate the spread of cultural traits to find examples of cultural convergence and divergence such as the spread of democratic ideas, U.S.-based fast-food franchises, the English language, technology, or global sports.

(19) Science, technology, and society. The student understands the impact of technology and human modifications on the physical environment. The student is expected to:

(A) evaluate the significance of major technological innovations in the areas of transportation and energy that have been used to modify the physical environment;

(B) analyze ways technological innovations have allowed humans to adapt to places such as air conditioning and desalination; and

(C) examine the environmental, economic, and social impacts of advances in technology on agriculture and natural resources.

(20) Science, technology, and society. The student understands how current technology affects human interaction. The student is expected to:

(A) describe the impact of new information technologies such as the Internet, Global Positioning System (GPS), or Geography Information Systems (GIS); and

(B) examine the economic, environmental, and social effects of technology such as medical advancements or changing trade patterns on societies at different levels of development.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) interpret reference and thematic maps using map elements, including latitude and longitude, to determine absolute location;

(B) use historical, geographic, and statistical information from a variety of sources such as databases (graphs and charts), photographs, GIS, and media services to infer geographic relationships and solve geographic problems;

(C) evaluate the context, bias, validity, and utility of a variety of primary and secondary sources;

(D) locate places of contemporary geopolitical significance on a map; and

(E) create and interpret different types of maps to answer geographic questions, infer relationships, and analyze change.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) design and draw appropriate graphics such as maps, diagrams, tables, and graphs to communicate geographic features, distributions, and relationships;

(B) generate summaries, generalizations, and thesis statements supported by evidence;

(C) use geographic terminology correctly;

(D) use standard grammar, spelling, sentence structure, and punctuation; and

(E) create original work using proper citations and understanding and avoiding plagiarism.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) plan, organize, and complete a research project that involves asking geographic questions; acquiring, organizing, and analyzing information; answering questions; and communicating results;

(B) use case studies and GIS to identify contemporary challenges and to answer real-world questions; and

(C) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.44. United States Government (One-Half Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course.

(b) Introduction.

(1) In United States Government, the focus is on the principles and beliefs upon which the United States was founded and on the structure, functions, and powers of government at the national, state, and local levels. This course is the culmination of the civic and governmental content and concepts studied from Kindergarten through required secondary courses. Students learn major political ideas and forms of government in history. A significant focus of the course is on the U.S. Constitution, its underlying principles and ideas, and the form of government it created. Students analyze major concepts of republicanism, federalism, checks and balances, separation of powers, popular sovereignty, and individual rights and compare the U.S. system of government with other political systems. Students identify the role of government in the U.S. free enterprise system and examine the strategic importance of places to the United States. Students analyze

the impact of individuals, political parties, interest groups, and the media on the American political system, evaluate the importance of voluntary individual participation in a constitutional republic, and analyze the rights guaranteed by the U.S. Constitution. Students examine the relationship between governmental policies and the culture of the United States. Students identify examples of government policies that encourage scientific research and use critical-thinking skills to create a product on a contemporary government issue.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as the complete text of the U.S. Constitution, selected Federalist Papers, landmark cases of the U.S. Supreme Court (such as those studied in Grade 8 and U.S. History Since 1877), biographies, autobiographies, memoirs, speeches, letters, and periodicals that feature analyses of political issues and events is encouraged.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) History. The student understands how constitutional government, as developed in America and expressed in the Declaration of Independence, the Articles of Confederation, and the U.S. Constitution, has been influenced by ideas, people, and historical documents. The student is expected to:

(A) explain major political ideas in history, including the laws of nature and nature's God, unalienable rights, divine right of kings, social contract theory, and the rights of resistance to illegitimate government;

(B) identify major intellectual, philosophical, political, and religious traditions that informed the American founding, including Judeo-Christian (especially biblical law), English common law and constitutionalism, Enlightenment, and republicanism, as they address issues of liberty, rights, and responsibilities of individuals;

(C) identify the individuals whose principles of laws and government institutions informed the American founding documents, including those of Moses, William Blackstone, John Locke, and Charles de Montesquieu;

(D) identify the contributions of the political philosophies of the Founding Fathers, including John Adams, Alexander Hamilton, Thomas Jefferson, James Madison, John Jay, George Mason, Roger Sherman, and James Wilson, on the development of the U.S. government;

(E) examine debates and compromises that impacted the creation of the founding documents; and

(F) identify significant individuals in the field of government and politics, including George Washington, Thomas Jefferson, John Marshall, Andrew Jackson, Abraham Lincoln, Theodore Roosevelt, Franklin D. Roosevelt, and Ronald Reagan.

(2) History. The student understands the roles played by individuals, political parties, interest groups, and the media in the U.S. political system, past and present. The student is expected to:

(A) give examples of the processes used by individuals, political parties, interest groups, or the media to affect public policy; and

(B) analyze the impact of political changes brought about by individuals, political parties, interest groups, or the media, past and present.

(3) Geography. The student understands how geography can influence U.S. political divisions and policies. The student is expected to:

(A) understand how population shifts affect voting patterns;

(B) examine political boundaries to make inferences regarding the distribution of political power; and

(C) explain how political divisions are crafted and how they are affected by Supreme Court decisions such as Baker v. Carr.

(4) Geography. The student understands why certain places or regions are important to the United States. The student is expected to:

(A) identify the significance to the United States of the location and key natural resources of selected global places or regions; and

(B) analyze how U.S. foreign policy affects selected places and regions.

(5) Economics. The student understands the roles played by local, state, and national governments in both the public and private sectors of the U.S. free enterprise system. The student is expected to:

(A) explain how government fiscal, monetary, and regulatory policies influence the economy at the local, state, and national levels;

(B) identify the sources of revenue and expenditures of the U. S. government and analyze their impact on the U.S. economy;

(C) compare the role of government in the U.S. free enterprise system and other economic systems; and

(D) understand how government taxation and regulation can serve as restrictions to private enterprise.

(6) Economics. The student understands the relationship between U.S. government policies and the economy. The student is expected to:

(A) examine how the U.S. government uses economic resources in foreign policy; and

(B) understand the roles of the executive and legislative branches in setting international trade and fiscal policies.

(7) Government. The student understands the American beliefs and principles reflected in the U.S. Constitution and why these are significant. The student is expected to:

(A) explain the importance of a written constitution;

(B) evaluate how the federal government serves the purposes set forth in the Preamble to the U.S. Constitution;

(C) analyze how the Federalist Papers such as Number 10, Number 39, and Number 51 explain the principles of the American constitutional system of government;

(D) evaluate constitutional provisions for limiting the role of government, including republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights;

(E) describe the constitutionally prescribed procedures by which the U.S. Constitution can be changed and analyze the role of the amendment process in a constitutional government; and

(F) identify how the American beliefs and principles reflected in the Declaration of Independence and the U.S. Constitution contribute to both a national identity and federal identity and are embodied in the United States today.

(8) Government. The student understands the structure and functions of the government created by the U.S. Constitution. The student is expected to:

(A) analyze the structure and functions of the legislative branch of government, including the bicameral structure of Congress, the role of committees, and the procedure for enacting laws;

(B) analyze the structure and functions of the executive branch of government, including the constitutional powers of the president, the growth of presidential power, and the role of the Cabinet and executive departments;

(C) analyze the structure and functions of the judicial branch of government, including the federal court system, types of jurisdiction, and judicial review;

(D) identify the purpose of selected independent executive agencies, including the National Aeronautics and Space Administration (NASA), and regulatory commissions, including the Environ-

mental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), Food and Drug Administration (FDA), and the Federal Communications Commission (FCC);

(E) explain how certain provisions of the U.S. Constitution provide for checks and balances among the three branches of government;

(F) analyze selected issues raised by judicial activism and judicial restraint;

(G) explain the major responsibilities of the federal government for domestic and foreign policy such as national defense; and

(H) compare the structures, functions, and processes of the national, state, and local governments in the U.S. federal system.

(9) Government. The student understands the concept of federalism. The student is expected to:

(A) explain why the Founding Fathers created a distinctly new form of federalism and adopted a federal system of government instead of a unitary system;

(B) categorize government powers as national, state, or shared;

(C) analyze historical and contemporary conflicts over the respective roles of national and state governments; and

(D) understand the limits on the national and state governments in the U.S. federal system of government.

(10) Government. The student understands the processes for filling public offices in the U.S. system of government. The student is expected to:

(A) compare different methods of filling public offices, including elected and appointed offices at the local, state, and national levels;

(B) explain the process of electing the president of the United States and analyze the Electoral College; and

(C) analyze the impact of the passage of the 17th Amendment.

(11) Government. The student understands the role of political parties in the U.S. system of government. The student is expected to:

(A) analyze the functions of political parties and their role in the electoral process at local, state, and national levels;

(B) explain the two-party system and evaluate the role of third parties in the United States; and

(C) identify opportunities for citizens to participate in political party activities at local, state, and national levels.

(12) Government. The student understands the similarities and differences that exist among the U.S. system of government and other political systems. The student is expected to:

(A) compare the U.S. constitutional republic to historical and contemporary forms of government such as monarchy, a classical republic, authoritarian, socialist, direct democracy, theocracy, tribal, and other republics;

(B) analyze advantages and disadvantages of federal, confederate, and unitary systems of government; and

(C) analyze advantages and disadvantages of presidential and parliamentary systems of government.

(13) Citizenship. The student understands rights guaranteed by the U.S. Constitution. The student is expected to:

(A) understand the roles of limited government and the rule of law in the protection of individual rights;

(B) identify and define the unalienable rights;

(C) identify the freedoms and rights guaranteed by each amendment in the Bill of Rights;

(D) analyze U.S. Supreme Court interpretations of rights guaranteed by the U.S. Constitution in selected cases, including Engel v. Vitale, Schenck v. U.S., Texas v. Johnson, Miranda v. Arizona, Gideon v. Wainwright, Mapp v. Ohio, and Roe v. Wade;

(E) explain the importance of due process rights to the protection of individual rights and in limiting the powers of government; and

(F) recall the conditions that produced the 14th Amendment and describe subsequent efforts to selectively extend some of the Bill of Rights to the states, including the Blaine Amendment and U.S. Supreme Court rulings, and analyze the impact on the scope of fundamental rights and federalism.

(14) Citizenship. The student understands the difference between personal and civic responsibilities. The student is expected to:

(A) explain the difference between personal and civic responsibilities;

(B) evaluate whether and/or when the obligation of citizenship requires that personal desires and interests be subordinated to the public good;

(C) understand the responsibilities, duties, and obligations of citizenship such as being well informed about civic affairs, serving in the military, voting, serving on a jury, observing the laws, paying taxes, and serving the public good; and

(D) understand the voter registration process and the criteria for voting in elections.

(15) Citizenship. The student understands the importance of voluntary individual participation in the U.S. constitutional republic. The student is expected to:

(A) analyze the effectiveness of various methods of participation in the political process at local, state, and national levels;

(B) analyze historical and contemporary examples of citizen movements to bring about political change or to maintain continuity; and

(C) understand the factors that influence an individual's political attitudes and actions.

(16) Citizenship. The student understands the importance of the expression of different points of view in a constitutional republic. The student is expected to:

(A) examine different points of view of political parties and interest groups such as the League of United Latin American Citizens (LULAC), the National Rifle Association (NRA), and the National Association for the Advancement of Colored People (NAACP) on important contemporary issues; and

(B) analyze the importance of the First Amendment rights of petition, assembly, speech, and press and the Second Amendment right to keep and bear arms.

(17) Culture. The student understands the relationship between government policies and the culture of the United States. The student is expected to:

(A) evaluate a U.S. government policy or court decision that has affected a particular racial, ethnic, or religious group such as the Civil Rights Act of 1964 and the U.S. Supreme Court cases of Hernandez v. Texas and Grutter v. Bollinger; and

(B) explain changes in American culture brought about by government policies such as voting rights, the Servicemen's Readjustment Act of 1944 (GI Bill of Rights), the Immigration and Nationality Act of 1965, the Immigration Reform and Control Act of 1986, affirmative action, and racial integration.

(18) Science, technology, and society. The student understands the role the government plays in developing policies and establishing conditions that influence scientific discoveries and technological innovations. The student is expected to:

(A) understand how U.S. constitutional protections such as patents have fostered competition and entrepreneurship; and

(B) identify examples of government-assisted research that, when shared with the private sector, have resulted in improved consumer products such as computer and communication technologies.

(19) Science, technology, and society. The student understands the impact of advances in science and technology on government and society. The student is expected to:

(A) understand the potential impact on society of recent scientific discoveries and technological innovations; and

(B) evaluate the impact of the Internet and other electronic information on the political process.

(20) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(B) create a product on a contemporary government issue or topic using critical methods of inquiry;

(C) analyze and defend a point of view on a current political issue;

(D) analyze and evaluate the validity of information, arguments, and counterarguments from primary and secondary sources for bias, propaganda, point of view, and frame of reference;

(E) evaluate government data using charts, tables, graphs, and maps; and

(F) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(21) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use standard grammar, spelling, sentence structure, and punctuation;

(C) transfer information from one medium to another, including written to visual and statistical to written or visual, using computer software as appropriate; and

(D) create written, oral, and visual presentations of social studies information.

(22) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

§113.45. Psychology (One-Half Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course.

(b) Introduction.

(1) In Psychology, an elective course, students study the science of behavior and mental processes. Students examine the full scope of the science of psychology such as the historical framework, methodologies, human development, motivation, emotion, sensation, perception, personality development, cognition, learning, intelligence, biological foundations, mental health, and social psychology.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(3) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the Texas Education Code, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) History. The student understands the development of the field of psychology. The student is expected to:

(A) identify characteristics that differentiate the field of psychology from other related social sciences;



(B) trace the historical development of the contemporary perspectives in psychology, including biological, behavioral, cognitive, sociocultural, humanistic, and psychodynamic; and

(C) explore subfields and career opportunities available in the science of psychology.

(2) Science of psychology. The student differentiates the processes of theory development and validation. The student is expected to:

(A) define and differentiate the concepts of theory and principle;

(B) identify and describe the basic methods of social scientific reasoning;

(C) apply the standards of the American Psychological Association (APA) for ethical decision making regarding the collection, storage, and use of psychological data; and

(D) define and interpret measures of central tendency (mean, median, and mode) and dispersion (range and standard deviation).

(3) Science of psychology. The student understands the relationship between biology and behavior. The student is expected to:

(A) describe the anatomy of the central and peripheral nervous systems and the endocrine system; and

(B) explain the effects of the endocrine and nervous systems on development and behavior.

(4) Science of psychology. The student understands how sensations and perceptions influence cognition and behavior. The student is expected to:

(A) explain the capabilities and limitations of sensory systems and individual perceptions; and

(B) understand the interaction of the individual and the environment in determining sensation and perception.

(5) Individual development. The student understands that development is a life-long process. The student is expected to:

(A) critique the various perspectives presented in the nature versus nurture debate;

(B) trace the influence of physical development on the individual;

(C) discuss the role of the caregiver on individual development;

(D) explain factors involved in cognitive development according to Piaget;

(E) describe Erickson's stages of psychosocial development;

(F) evaluate the predicted outcomes of given courses of actions in particular situations based on an understanding of the development of morality; and

(G) evaluate the presented theories of human development and specify the strengths and weaknesses of each.

(6) Individual development. The student understands behavioral and social learning theories. The student is expected to:

(A) demonstrate an understanding of the principles of operant and classical conditioning and of social learning; and

(B) describe the processes of learning using typical classroom situations.

(7) Individual identity. The student understands the principles of motivation and emotion. The student is expected to:

(A) compare predominant theories of motivation and emotion; and

(B) explore the interaction of biological and cultural factors in emotion and motivation.

(8) Individual identity. The student understands the nature of intelligence. The student is expected to differentiate the various types of intelligence.

(9) Individual identity. The student understands the basic principles of tests and measurements. The student is expected to:

(A) describe statistical concepts used in testing; and

(B) differentiate among aptitude, achievement, and Intelligence Quotient (IQ) tests.

(10) Individual identity. The student understands the development and assessment of personality. The student is expected to:

(A) define personality;

(B) compare and evaluate various theories of personality, including psychodynamic, trait, humanistic, and sociocultural; and

(C) describe personality assessment tools.

(11) Individual experience. The student understands basic elements of cognition. The student is expected to:

(A) define and identify the basic elements of thought;

(B) identify strategies and obstacles associated with problem solving and decision making;

(C) explore the structural features of language;

(D) discuss theories of language acquisition and development;

(E) evaluate the limitations and capabilities of the information processing model; and

(F) understand the states and levels of consciousness.

(12) Individual experience. The student understands the multifaceted aspects of mental health. The student is expected to:

(A) explain stress and the individual's physiological, behavioral, and psychological responses to stressors;

(B) evaluate cognitive and behavioral strategies for dealing with stress;

(C) analyze the challenges inherent in defining abnormal behavior and acknowledge sociocultural stigma of labeling behavior as abnormal;

(D) recognize the biological, social, and cognitive origins of abnormal behavior;

(E) discuss major categories of abnormal behaviors and identify their respective characteristics as classified in the Diagnostic and Statistical Manual (DSM); and

(F) evaluate the effectiveness of past and present methods of therapy.

(13) The individual in society. The student will understand the influence of society and culture on behavior and cognition. The student is expected to:

(A) describe how attributions affect explanations of behavior;

(B) explore the nature and effects of bias and discrimination;

(C) describe circumstances in which conformity and obedience are likely to occur;

(D) describe the effects of the presence of others on individual behavior;

(E) discuss the nature of altruism;

(F) discuss the factors influencing attraction; and

(G) identify sources of attitude formation and assess methods used to influence attitudes.

(14) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) create a product on a contemporary psychology-related issue or topic using critical methods of inquiry;

(B) draw and evaluate conclusions from qualitative information;

(C) apply evaluation rules to quantitative information; and

(D) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions.

(15) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use psychology-related terminology correctly;

(B) use standard grammar, spelling, sentence structure, and punctuation;

(C) transfer information from one medium to another, including written to visual and written or visual to statistical, using computer software as appropriate; and

(D) create written, oral, and visual presentations of social studies information.

(16) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution;

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision; and

(C) participate in conflict resolution using persuasion, compromise, debate, and negotiation.

(17) Social studies skills. The student develops long-term and short-term goal-setting skills for individual and community problem solving. The student is expected to:

(A) illustrate the relationship and sequence between intermediate goals and terminal goals; and

(B) monitor and evaluate self-directed inquiry or projects for timelines, accuracy, and goal attainment.

(18) Science and technology. The student understands the relationship of changes in technology to personal growth and development. The student is expected to:

(A) analyze examples of attitudes, beliefs, and behaviors related to changes in available technology; and

(B) evaluate the impact of changes in technology on personal growth and development.

§113.46. *Sociology (One-Half Credit), Beginning with School Year 2011-2012.*

(a) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course.

(b) Introduction.

(1) Sociology, an elective course, is an introductory study in social behavior and organization of human society. This course will describe the development of the field as a social science by identifying methods and strategies of research leading to an understanding of how the individual relates to society and the ever changing world. Students will also learn the importance and role of culture, social structure, socialization, and social change in today's society.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(3) Students identify the role of the free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(4) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the Texas Education Code, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) Foundations of sociology. The student understands the theoretical perspectives of the historical interpretations of human social development. The student is expected to:

(A) describe the development of the field of sociology;

(B) identify leading sociologists in the field of social science, including Auguste Comte, Emile Durkheim, Herbert Spencer, Max Weber, and Karl Marx, and interpret their contributions to the foundation of sociology; and

(C) identify sociologists such as W. E. B. DuBois, Booker T. Washington, Robert E. Park, Harriet Martineau, Jane Addams, Robert Nisbet, and Julian Samora and interpret their contributions to the field.

(2) Foundations of sociology. The student understands how society evolves and cause and effect of social and institutional change. The student is expected to:

(A) differentiate types of societies such as hunting and gathering, agrarian, pastoral, industrial, and post-industrial;

(B) identify and describe the types of societies that exist in the world today;

(C) examine changes in U.S. institutions and society resulting from industrialization, urbanization, and immigrant assimilation; and

(D) analyze information about cultural life in the United States and other countries over time.

(3) Culture and social structure. The student examines world cultures. The student is expected to:

(A) identify the elements of culture to include language, symbols, norms, and values;

(B) explain how the elements of culture form a whole culture; and

(C) give examples of subcultures and describe what makes them unique.

(4) Culture and social structure. The student understands types of groups and their functions. The student is expected to:

(A) describe models of primary, secondary, formal, informal, and reference groups and e-communities; and

(B) analyze groups in terms of membership roles, status, values, mores, role conflicts, and methods of resolution.

(5) Culture and social structure. The student differentiates and recognizes examples of subculture and counterculture. The student is expected to:

(A) compare cultural norms such as ethnic, national origin, age, socioeconomic, and gender among various U.S. subculture groups;

(B) describe stereotypes of the various U.S. subcultures;

(C) analyze social problems in selected U.S. subcultures; and

(D) examine counterculture movements and analyze their impact on society as a whole.

(6) Individual and society. The student understands the process of socialization. The student is expected to:

(A) define socialization and describe how the process of socialization is culturally determined;

(B) differentiate the agents of socialization and evaluate their functions and roles; and

(C) trace socialization as a lifelong process.

(7) Individual and society. The student understands the concept of adolescence and its characteristics. The student is expected to:

(A) explain how education, exclusion from the labor force, and the juvenile justice system led to the development of adolescence as a distinct stage of the life cycle;

(B) identify and interpret the five characteristics of adolescence: biological growth and development, an undefined status, increased decision making, increased pressures, and the search for self; and

(C) identify issues and concerns facing contemporary adolescents such as dating, dating violence, sexuality, teen parenting, drug use, suicide, and eating disorders, including the importance of personal responsibility for life choices.

(8) Individual and society. The student understands the life stage of adulthood and its characteristics. The student is expected to:

(A) identify the stages of adult development and compare the differences between male and female development;

(B) analyze the traditional roles of work and how the composition of the labor force has changed in the United States; and

(C) analyze the characteristics of late adulthood and changes on the individual and society such as retirement, physical and mental functioning, dependency on others, and death.

(9) Individual and society. The student will explain the nature and social function of deviance. The student is expected to:

(A) compare theories of deviance such as the functionalist, conflict, and interactionist perspectives;

(B) interpret differences in crime and arrest rates by social categories such as ethnicity, gender, socioeconomic status, and age, including cross-reference with the National Crime Victimization Survey; and

(C) analyze the criminal justice system in the United States in relation to deviant behavior.

(10) Social inequality. The student understands the nature of social stratification in society. The student is expected to:

(A) analyze the characteristics and components of caste and class systems and social mobility and how motivation affects each;

(B) define poverty and its components and analyze poverty's impact on the individual and society;

(C) contrast theories of social stratification; and

(D) recognize and examine global stratification and inequality.

(11) Social inequality. The student understands the impact of race and ethnicity on society. The student is expected to:

(A) define race and ethnicity and differentiate among the distinguishing characteristics of minority groups;

(B) contrast the terms discrimination, prejudice, and bias;

(C) discuss the ramifications of stereotyping;

(D) analyze the varying treatment patterns of minority groups such as African American, Asian American, Hispanic American, and Native American; and

(E) explain how institutional racism is evident in American society.

(12) Social inequality. The student understands changing societal views on gender, age, and health. The student is expected to:

(A) analyze how gender roles affect the opportunities available to men and women in society;

(B) analyze the effects of an aging society;

(C) compare the nature of health care in a global society; and

(D) evaluate the nature of health care in different segments of American society.

(13) Social institutions. The student identifies the basic social institution of the family and explains its influences on society. The student is expected to:

(A) define the functions and rituals of the family and how the family has changed over time;

(B) define family systems and patterns;

(C) analyze the trends in American society regarding family life and the needs that the institution of family satisfies; and

(D) analyze ways in which family life can be disrupted.

(14) Social institutions. The student identifies the basic social institutions of economics and politics and explains their influence on society. The student is expected to:

(A) define and differentiate between the economic models of free enterprise and socialism and how they impact society;

(B) define and differentiate among different types of government and discuss the legitimacy of those in power and the impact of each on its citizens; and

(C) trace the changes in ideas about citizenship and participation of different groups through time.

(15) Social institutions. The student identifies the basic social institutions of education and religion and explain their influence on society. The student is expected to:

(A) explain functionalist, conflict, and interactionist theories of education;

(B) argue and defend some current issues in American education;

(C) examine religion from the sociological point of view;

(D) analyze the functions of society and the basic societal needs that religion serves; and

(E) compare and contrast distinctive features of religion in the United States with religion in other societies.

(16) Social institutions. The student understands the basic social institutions of science and the mass media and their influence on society. The student is expected to:

(A) identify factors that have contributed to the institutionalization of science, explain the norms of scientific research, and explain how these norms differ from the realities of scientific research;

(B) trace major developments in the history of mass media and identify the types of mass media in the United States;

(C) explain the differences between the functionalist and conflict perspectives of mass media; and

(D) examine contemporary mass media issues.

(17) Changing world. The student understands how population and urbanization contribute to a changing social world. The student is expected to:

(A) describe the study of demography, the basic demographic concepts, and changes in settlement patterns on society; and

(B) explain and critique various theories of population growth and its impact on society.

(18) Changing world. The student understands how collective behavior, social movements, and modernization contribute to a changing social world. The student is expected to:

(A) compare and contrast various types of collective behavior and social movements and how they affect society;

(B) discuss theories that have been developed to explain collective behavior and social movements; and

(C) illustrate three social processes that contribute to social change and discuss and evaluate how technology, population, natural environment, revolution, and war cause cultures to change.

(19) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) create a product on a contemporary sociological issue or topic using critical methods of inquiry;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions; and

(C) use appropriate mathematical skills to interpret sociological information.

(20) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use sociology-related terminology correctly;

(B) use standard grammar, spelling, sentence structure, and punctuation;

(C) transfer information from one medium to another, including written to visual and written or visual to statistical, using computer software as appropriate; and

(D) create written, oral, and visual presentations of social studies information.

(21) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution;

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision; and

(C) participate in conflict resolution using persuasion, compromise, debate, and negotiation.

§113.47. Special Topics in Social Studies (One-Half Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course. Students may take this course with different course content for a maximum of two credits.

(b) Introduction.

(1) In Special Topics in Social Studies, an elective course, students are provided the opportunity to develop a greater understanding of the historic, political, economic, geographic, multicultural, and social forces that have shaped their lives and the world in which they live. Students will use social science knowledge and skills to engage in rational and logical analysis of complex problems using a variety of approaches, while recognizing and appreciating diverse human perspectives.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(3) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the Texas Education Code, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) apply social studies methodologies encompassing a variety of research and analytical tools to explore questions or issues thoroughly and fairly to include multiple perspectives;

(B) evaluate effects of major political, economic, and social conditions on a selected social studies topic;

(C) appraise a geographic perspective that considers physical and cultural processes as they affect the selected topic;

(D) examine the role of diverse communities in the context of the selected topic;

(E) analyze ethical issues raised by the selected topic in historic, cultural, and social contexts;

(F) depending on the topic, use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(G) depending on the topic, use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

(2) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) locate, analyze, organize, synthesize, evaluate, and apply information about the selected topic, identifying, describing, and evaluating multiple points of view;

(B) differentiate between valid primary and secondary sources and use them appropriately to conduct research and construct arguments;

(C) read narrative texts critically and identify points of view from the historical context surrounding an event and the frame of reference that influenced the participants;

(D) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(E) collect visual images (photographs, paintings, political cartoons, and other media) to enhance understanding and appreciation of multiple perspectives in a social studies topic;

(F) identify bias in written, oral, and visual material;

(G) evaluate the validity of a source based on language, corroboration with other sources, and information about the author; and

(H) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(3) Social studies skills. The student creates written, oral, and visual presentations of social studies information. The student is expected to:

(A) apply the conventions of usage and mechanics of written English;

(B) use social studies terminology correctly;

(C) use appropriate oral communication techniques;

(D) construct a thesis that is supported by evidence;

(E) recognize and evaluate counter arguments;

(F) use visual images (photographs, paintings, and other media) to facilitate understanding and appreciation of multiple perspectives in a social studies topic;

(G) develop a bibliography with ideas and information attributed to source materials and authors using accepted social sciences formats such as *Modern Language Association (MLA)* and *Chicago Manual of Style (CMS)* to document sources and format written materials; and

(H) use computer software to create written, graphic, or visual products from collected data.

§113.48. Social Studies Research Methods (One-Half Credit), Beginning with School Year 2011-2012.

(a) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course. Students may take this course with different course content for a maximum of two credits.

(b) Introduction.

(1) In Social Studies Research Methods, an elective course, students conduct advanced research on a selected topic in social studies using qualitative and/or quantitative methods of inquiry. Students present their research results and conclusions in written and visual or oral format. The course is designed to be conducted in either classroom or independent settings.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(3) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the Texas Education Code, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) Social studies skills. The student understands the need for an organizing framework to identify an area of interest and collect information. The student is expected to:

(A) select a social studies issue, topic, or area of interest;

(B) write a rationale and preliminary ideas for research methods;

(C) develop a literature review; and

(D) develop a thesis.

(2) Social studies skills. The student applies a process approach to a research topic, applying the ideas, theories, and modes of inquiry drawn from the social sciences in the examination of persistent issues and social questions. The student is expected to:

(A) understand the basic requirements and philosophical foundations for qualitative and quantitative methods of inquiry, including inductive and deductive reasoning, to determine the most effective research approach from a variety of alternatives;

(B) select and design a research project, including an examination of the theory and methods applicable to the research topic;

(C) collect information from a variety of sources (primary, secondary, written, and oral) using techniques such as questionnaires, interviews, and library research;

(D) use current technology such as library topic catalogues, networks, online information systems, academic journals, primary sources on the Internet, email interviews, and video interviews to collect information about the selected topic;

(E) use information from sources that take into account multiple perspectives;

(F) differentiate between primary and secondary sources and use each appropriately to conduct research and construct arguments;

(G) develop and use criteria for the evaluation of qualitative and/or quantitative information;

(H) describe the results of the research process;

(I) generate logical conclusions from research results;

(J) justify a conclusion with supporting evidence;

(K) make predictions as to future actions and/or outcomes based on conclusions of research; and

(L) develop a bibliography in a format appropriate to the social sciences such as *Modern Language Association (MLA)* and *Chicago Manual of Style (CMS)* to document sources and format written materials.

(3) Social studies skills. If doing qualitative research, the student employs the processes of critical social science inquiry to understand an issue, topic, or area of interest using a variety of sources, checking their credibility, validating and weighing evidence for claims, and searching for causality. The student is expected to:

(A) interpret the historiography of the research topic;

(B) apply key social science concepts such as time, chronology, causality, change, conflict, and complexity to explain, analyze, and show connections among patterns of historical change and continuity;

(C) investigate, interpret, and analyze multiple historical and contemporary viewpoints within and across cultures;

(D) relate important events, recurring dilemmas, and persistent issues to topic; and

(E) employ empathy, skepticism, and critical judgment to analysis of topic.

(4) Social studies skills. If doing quantitative research, the student is expected to:

(A) apply the scientific method in a research project;

(B) create a matrix applying research methodologies that employ survey research, ethnography, primary documents, and statistical analysis to given subject areas;

(C) determine the most efficient research approach;

(D) utilize basic statistical approaches and tools in the analysis of aggregate information;

(E) define and compute statistical information using various statistical approaches such as means testing and correlation, measures of central tendency and distribution, the development of categorical systems, and logical analysis;

(F) analyze information using a spreadsheet or statistical analysis information software;

(G) apply the fundamental principles and requirements of validity and reliability as used in the social sciences;

(H) interpret patterns of behavior reflecting attitudes and values that contribute or pose obstacles to cross-cultural understanding; and

(I) utilize applicable ethical standards in collecting, storing, and using human experimental or survey data.

(5) Social studies skills. The student creates a written and oral presentation of research and conclusions. The student is expected to:

(A) apply the conventions of usage and mechanics of written English;

(B) present thesis and conclusion;

(C) use appropriate social science terminology;

(D) justify conclusion with supporting evidence and address counter arguments as appropriate;

(E) construct visuals such as statistical compilations, charts, graphs, tables, timelines, and maps to convey appropriate data;

(F) create a presentation on a selected topic using word-processing, graphics, and multimedia software;

(G) incorporate and present visual images (photographs, paintings, and other media) to enhance presentation; and

(H) develop a bibliography with ideas and information attributed to source materials and authors using accepted social sciences formats such as *Modern Language Association (MLA)* and *Chicago Manual of Style (CMS)* to document sources and format written materials.

(6) Social studies skills. The student understands the principles and requirements of the scientific method. The student is expected to:

(A) select a social studies issue, topic, or area of interest;

(B) select and design a research project, including an examination of the theory and methods applicable to the research topic;

(C) describe the results of the research process; and

(D) justify conclusion with supporting evidence and make predictions as to future actions and/or outcomes based on conclusions of research.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001564

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 475-1497

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## CHAPTER 118. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ECONOMICS WITH EMPHASIS ON THE FREE ENTERPRISE SYSTEM AND ITS BENEFITS SUBCHAPTER A. HIGH SCHOOL

### 19 TAC §§118.1, 118.3, 118.4

The State Board of Education (SBOE) proposes an amendment to §118.1 and new §118.3 and §118.4, concerning Texas essential knowledge and skills (TEKS) for economics. The sections establish the TEKS for high school economics. The proposed rule actions would establish revised economics TEKS for implementation beginning with the 2011-2012 school year.

In January and February 2009, committees were convened to review the social studies and economics TEKS. On April 22, 2009, the SBOE Committee on Instruction held a work session to study the process for review of the TEKS, make recommendations to the SBOE Committee of the Full Board regarding adjustments to the process approved by the SBOE in July 2008, and provide guidance to Texas Education Agency (TEA) staff and social studies and economics TEKS review committees regarding next steps in the review of the social studies and economics TEKS. Information from the April SBOE Committee on Instruction meeting was discussed by the board at the May meeting. In June 2009, six expert reviewers appointed by the SBOE reviewed the current social studies and economics TEKS and submitted feedback to the SBOE.

In July 2009, committees were convened to complete initial drafts of recommended revisions to the social studies and economics TEKS. Initial drafts of the recommendations for revisions to the social studies and economics TEKS were posted on the TEA website for informal feedback. Initial drafts were also reviewed by the six expert reviewers. During the September 2009 meeting, expert reviewers and representatives from the TEKS review committees provided invited testimony.

The social studies and economics TEKS review committees met again in October 2009 to review feedback and complete recommendations for revisions to the social studies and economics TEKS. The recommendations from the review committees were presented to the SBOE Committee of the Full Board during a discussion item at the November 2009 meeting. The proposed revisions were presented for first reading and filing authorization at the January 2010 meeting, and a public hearing on the proposed revisions was held at that time. The SBOE Committee of the Full Board postponed action on the proposed revisions until the March 2010 SBOE meeting.

During its March 2010 meeting, the SBOE took action to approve for first reading and filing authorization proposed revisions to 19 TAC Chapter 118, Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits, Subchapter A, High School.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed rule actions are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed rule actions.

There will be costs associated with this process for the TEA to review and revise the economics TEKS. There are also implications for the TEA for the development and implementation of professional development to help teachers and administrators understand the revised economics TEKS. For fiscal year (FY) 2010, the estimated cost to the TEA for reviewing and revising the TEKS is \$3,000. The estimated cost for professional development is \$200,000 for FY 2011 and \$25,000 for FYs 2012-2014.

There are anticipated fiscal implications for school districts and charter schools to implement the revised TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Ms. Givens has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. In conjunction with the regularly scheduled May 2010 State Board of Education meeting, a public hearing on the proposal will be held on Wednesday, May 19, 2010, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas.

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c); and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment and new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.008, and 28.025.

§118.1. Implementation of Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits, High School.

The provisions of §118.2 of this subchapter shall be superseded by §118.4 of this subchapter beginning with the 2011-2012 school year [supersede §75.69 of this title (relating to Economics with Emphasis on the Free Enterprise System and Its Benefits (One-half Unit)) beginning September 1, 1998].

§118.3. Implementation of Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits, High School, Beginning with School Year 2011-2012.

The provisions of §118.4 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year and at that time shall supersede §118.2 of this subchapter.

§118.4. Economics with Emphasis on the Free Enterprise System and Its Benefits, High School (One-Half Credit), Beginning with School Year 2011-2012.

(a) General requirements. This course will be taught in the social studies department and is recommended to be taught in Grade 12.

(b) Introduction.

(1) Economics with Emphasis on the Free Enterprise System and Its Benefits is the culmination of the economic content and concepts studied from Kindergarten through required secondary courses. The focus is on the basic principles concerning production, consumption, and distribution of goods and services (the problem of scarcity) in the United States and a comparison with those in other countries around the world. Students analyze the interaction of supply, demand, and price. Students will investigate the concepts of specialization and international trade, economic growth, key economic measurements, and monetary and fiscal policy. Students will study the roles of the Federal Reserve System and other financial institutions, government, and businesses in a free enterprise system. Types of business ownership and market structures are discussed. The course also incorporates instruction in personal financial literacy. Students apply critical-thinking skills using economic concepts to evaluate the costs and benefits of economic issues.

(2) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(3) Economics with Emphasis on the Free Enterprise System and Its Benefits builds upon the foundation in economics and social studies laid by the social studies essential knowledge and skills in Kindergarten-Grade 12. The course will apply these skills to current economic situations. The content enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(4) As referenced in House Bill 492, an act of the Texas Legislature signed into law in 2005, the concepts of personal financial literacy are to be mastered by students in order that they may become self-supporting adults who can make informed decisions relating to personal financial matters. These concepts are incorporated into the student expectations of Economics with Emphasis on the Free Enterprise System and Its Benefits: understanding interest, avoiding and eliminating credit card debt; understanding the rights and responsibil-



ities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; types of bank accounts available to consumers and benefits of maintaining a bank account; balancing a checkbook; types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and charitable giving.

(5) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(c) Knowledge and skills.

(1) Economics. The student understands the concepts of scarcity and opportunity costs. The student is expected to:

(A) explain why scarcity and choice are basic economic problems faced by every society;

(B) describe how societies answer the basic economic questions;

(C) describe the economic factors of production; and

(D) interpret a production-possibilities curve and explain the concepts of opportunity costs and scarcity.

(2) Economics. The student understands the interaction of supply, demand, and price. The student is expected to:

(A) understand the effect of changes in price on the quantity demanded and quantity supplied;

(B) identify the non-price determinants that create changes in supply and demand, which result in a new equilibrium price; and

(C) interpret a supply-and-demand graph using supply-and-demand schedules.

(3) Economics. The student understands the reasons for international trade and its importance to the United States and the global economy. The student is expected to:

(A) explain the concepts of absolute and comparative advantages;

(B) apply the concept of comparative advantage to explain why and how countries trade; and

(C) analyze the impact of U.S. imports and exports on the United States and its trading partners.

(4) Economics. The student understands the issues of free trade and the effects of trade barriers. The student is expected to:

(A) compare the effects of free trade and trade barriers on economic activities;

(B) evaluate the benefits and costs of participation in international free-trade agreements; and

(C) analyze the effects of changes in exchange rates on imports and exports.

(5) Economics. The student understands free enterprise, socialist, and communist economic systems. The student is expected to:

(A) describe the basic characteristics of economic systems, including property rights, incentives, economic freedom, competition, and the role of government;

(B) compare the free enterprise system, socialism, and communism using the basic characteristics of economic systems;

(C) examine current examples of free enterprise, socialist, and communist economic systems;

(D) understand that the terms free enterprise, free market, and capitalism are synonymous terms to describe the U.S. economic system; and

(E) analyze the importance of various economic philosophers, including Friedrich Hayek, Milton Friedman, John Maynard Keynes, Karl Marx, and Adam Smith, and their impact on the U.S. free enterprise system.

(6) Economics. The student understands the basic characteristics and benefits of a free enterprise system. The student is expected to:

(A) explain the basic characteristics of the U.S. free enterprise system, including private property, incentives, economic freedom, competition, and the limited role of government;

(B) explain the benefits of the U.S. free enterprise system, including individual freedom of consumers and producers, variety of goods, responsive prices, investment opportunities, and the creation of wealth;

(C) analyze recent changes in the basic characteristics of the U.S. economy; and

(D) analyze the costs and benefits of U. S. economic policies related to the economic goals of economic growth, stability, full employment, freedom, security, equity (equal opportunity versus equal outcome), and efficiency.

(7) Economics. The student understands the right to own, use, and dispose of private property. The student is expected to:

(A) analyze the cost and benefits of the purchase, use, or disposal of personal and business property; and

(B) identify and evaluate examples of restrictions that the government places on the use of business and individual property.

(8) Economics. The student understands the circular-flow model of the economy. The student is expected to:

(A) interpret the roles of resource owners and firms in a circular-flow model of the economy and provide real-world examples to illustrate elements of the model;

(B) explain how government actions affect the circular-flow model; and

(C) explain how the circular-flow model is affected by the rest of the world.

(9) Economics. The student understands types of market structures. The student is expected to:

(A) describe characteristics and give examples of pure competition, monopolistic competition, oligopoly, and monopoly; and

(B) identify and evaluate ordinances and regulations that apply to the establishment and operation of various types of businesses.

(10) Economics. The student understands key economic measurements. The student is expected to:

(A) interpret economic data, including unemployment rate, gross domestic product, gross domestic product per capita as a measure of wealth, and rate of inflation; and

(B) analyze business cycles using key economic indicators.

(11) Economics. The student understands key components of economic growth. The student is expected to:

(A) analyze how productivity relates to growth;

(B) analyze how technology relates to growth; and

(C) analyze how trade relates to growth.

(12) Economics. The student understands the role of money in an economy. The student is expected to:

(A) describe the functions of money;

(B) describe the characteristics of money;

(C) analyze the costs and benefits of commodity money, fiat money, and representative money; and

(D) examine the positive and negative aspects of barter, currency, credit cards, and debit cards.

(13) Economics. The student understands the role of the Federal Reserve System in establishing monetary policy. The student is expected to:

(A) explain the structure of the Federal Reserve System;

(B) analyze the three basic tools used to implement U.S. monetary policy, including reserve requirements, the discount rate and the federal funds rate target, and open market operations;

(C) explain how the actions of the Federal Reserve System affect the nation's money supply; and

(D) analyze the decline in value of the U.S. dollar, including the abandonment of the gold standard.

(14) Economics. The student understands the role that the government plays in the U.S. free enterprise system. The student is expected to:

(A) identify economic concepts in the U.S. Constitution, including property rights and taxation;

(B) describe the role of government in the U.S. free enterprise system and the changes in that role over time; and

(C) evaluate government rules and regulations in the U.S. free enterprise system.

(15) Economics. The student understands the economic impact of fiscal policy decisions at the local, state, and national levels. The student is expected to:

(A) identify types of taxes at the local, state, and national levels and the economic importance of each;

(B) analyze the categories of revenues and expenditures in the U.S. federal budget; and

(C) analyze the impact of fiscal policy decisions on the economy.

(16) Personal financial literacy. The student understands types of business ownership. The student is expected to:

(A) explain the characteristics of sole proprietorships, partnerships, and corporations;

(B) analyze the advantages and disadvantages of sole proprietorships, partnerships, and corporations;

(C) analyze the economic rights and responsibilities of businesses, including those involved in starting a small business; and

(D) explain how corporations raise money through stocks and bonds.

(17) Personal financial literacy. The student understands the role of financial markets/institutions in saving, borrowing, and capital formation. The student is expected to:

(A) explain the functions of financial institutions and how they affect households and businesses;

(B) explain how the amount of savings in an economy is the basis of capital formation;

(C) analyze the role of interest and risk in allocating savings to its most productive use; and

(D) examine the types of accounts available to consumers from financial institutions and the risks, monetary costs, and benefits of maintaining these accounts.

(18) Personal financial literacy. The student understands the role of individuals in financial markets. The student is expected to:

(A) assess ways to be a wise investor in the stock market and in other personal investment options;

(B) explain how to begin a savings program;

(C) examine investment options available in a personal retirement plan;

(D) demonstrate how to maintain a checking account, including balancing a checkbook or reconciling a bank statement;

(E) identify the types of loans available to consumers;

(F) explain the responsibilities and obligations of borrowing money; and

(G) develop strategies to become a low-risk borrower by improving one's personal credit score.

(19) Personal financial literacy. The student applies critical-thinking skills to analyze the costs and benefits of personal financial decisions. The student is expected to:

- debt;
- (A) examine ways to avoid and eliminate credit card
- bankruptcy;
- (B) evaluate the costs and benefits of declaring personal
- and
- (C) evaluate the costs and benefits of buying insurance;
- and
- (D) evaluate the costs and benefits of charitable giving.

(20) Personal financial literacy. The student understands how to provide for basic needs while living within a budget. The student is expected to:

- (A) evaluate the costs and benefits of renting a home;
- (B) evaluate the costs and benefits of buying a home;
- and
- (C) assess the financial aspects of making the transition from renting to home ownership.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) analyze economic information by sequencing, categorizing, identifying cause- and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(B) create economic models, including production-possibilities curves, circular-flow charts, and supply-and-demand graphs, to analyze economic concepts or issues;

(C) explain a point of view on an economic issue;

(D) analyze and evaluate the validity of economic information from primary and secondary sources for bias, propaganda, point of view, and frame of reference;

(E) evaluate economic data using charts, tables, graphs, and maps; and

(F) use appropriate mathematical skills to interpret economic information.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use economic-related terminology correctly;

(B) use standard grammar, spelling, sentence structure, and punctuation;

(C) transfer information from one medium to another, including written to visual and statistical to written or visual, using computer software as appropriate;

(D) create written, oral, and visual presentations of economic information; and

(E) attribute ideas and information to source materials and authors.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(A) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(B) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001565

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 475-1497



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 7. MEMORANDA OF UNDERSTANDING

##### 30 TAC §7.117

The Texas Commission on Environmental Quality (TCEQ or agency) proposes an amendment to §7.117.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The memorandum of understanding (MOU) between the TCEQ and the Texas Railroad Commission (RRC) was last updated in May, 1998, and since that time, statutory changes and several agency reorganizations have occurred requiring the MOU to be revised. This includes the transfer of the uranium mining program from the Department of State Health Services to the TCEQ, as well as internal agency organizational changes. In addition, Senate Bill (SB) 1387, 81st Legislature, 2009, was passed concerning carbon dioxide injection with respect to geologic sequestration, which also requires an MOU between the TCEQ and the RRC.

The proposed rulemaking will occur in both the RRC rules, as well as the TCEQ rules. However, the specific MOU provisions are currently in 16 TAC Chapter 3 (concerning Oil and Gas Division) while 30 TAC Chapter 7 (concerning Memoranda of Understanding) incorporates by reference the rules in 16 TAC Chapter 3.

#### SECTION DISCUSSION

*§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission*

The section is being amended by changing the agency's name from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality. The MOU referenced in this section, 16 TAC §3.30 (concerning Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission), is concurrently being amended by the RRC. The titles of both sections will also be amended to conform to this change.

## 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 rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed rulemaking updates the MOU between the RRC and the agency as required by SB 1604, 80th Legislature, 2007, and SB 1387, 81st Legislature, 2009. The agency will not require additional resources to implement the proposed rulemaking.

SB 1604 required the agency and the RRC to adopt an MOU to define the duties of each agency, and SB 1387 requires both agencies, by rule, to amend the MOU in 16 TAC §3.30 or enter into a new MOU. SB 1604 gave the agency jurisdiction over certain activities associated with radioactive materials, and SB 1387 addressed the regulation of the injection and storage of carbon dioxide. Instead of creating a separate MOU for carbon dioxide sequestration, the RRC and the agency are proposing to amend the MOU found in 16 TAC §3.30 in a concurrent rulemaking to incorporate legislative mandates and clearly identify the jurisdiction of the two agencies. The MOU proposed in separate rulemakings will define jurisdiction over: waste materials associated with the exploration for and the development, production, and refining of oil and gas; carbon dioxide sequestration; and activities that generate recycling and sewage. The proposed rulemaking will incorporate the MOU in 16 TAC by reference and will not have a significant fiscal impact on the agency or units of local government.

## PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be compliance with state law and a clear understanding on the jurisdiction of each agency and the activities they regulate.

The proposed rule incorporates by reference a revised MOU between the agency and the RRC that is being proposed concurrently in a separate rulemaking. Since the proposed rule is administrative in nature, no fiscal impacts are anticipated for individuals or large businesses.

## SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses since the proposed rule incorporates by reference a revised MOU between the RRC and the agency that is being proposed concurrently in a separate rulemaking.

## 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 rulemaking 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 required because the proposed rulemaking 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

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to update the MOU between the RRC and the TCEQ to clarify jurisdiction of the respective agencies pursuant to statutory changes and agency reorganizations. Section 10 of House Bill (HB) 1407, 67th Legislature, 1981, a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, required the Texas Department of Water Resources, the Texas Department of Health, and the RRC to execute an MOU specifying in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas, and to amend the MOU at any time that the agencies find it to be necessary. The original MOU between the agencies became effective January 1, 1982. The MOU was revised effective December 1, 1987, to reflect legislative clarification of the RRC's jurisdiction over oil and gas wastes and the Texas Water Commission's, successor to the Texas Department of Water Resources, jurisdiction over industrial and hazardous wastes. SB 1604 gave the TCEQ jurisdiction over certain activities associated with radioactive materials and requires the TCEQ and the RRC to adopt an MOU to define the duties of each agency with respect to radioactive materials. SB 1387 addressed the regulation of the injection and storage of carbon dioxide and requires the TCEQ and the RRC, by rule, to amend the MOU in 16 TAC §3.30 or enter into a new MOU. The agencies have determined that it is now necessary and have proposed to revise the MOU found in 16 TAC §3.30 in a concurrent rulemaking to clarify jurisdictional boundaries, reflect legislative changes in agency responsibility, and to incorporate the legislative mandates of SB 1604 and SB 1387.

The proposed rulemaking does not meet the definition of a major environmental rule because the proposed rulemaking only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rulemaking is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rulemaking does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the proposed rule is not an environmental rule.

Additionally, the proposed rulemaking does not meet the definition of a major environmental rule because it is not anticipated that the proposed rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule merely explicates jurisdiction of the respective agencies and does not impose new requirements.

Finally, the proposed rulemaking action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmen-

tal rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. In this case, the proposed rulemaking does not meet any of these applicability requirements. First, in explicating jurisdiction of the respective agencies, the proposed rule does not exceed a standard set by federal law. Second, the proposed rule does not exceed an express requirement of state law, because §10 of HB 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 expressly mandated creation of the MOU including a mandate to amend the MOU at any time that the agencies find it to be necessary. SB 1604 requires the TCEQ and the RRC to adopt an MOU to define the duties of each agency, and SB 1387 requires both agencies, by rule, to amend the MOU in 16 TAC §3.30 or enter into a new MOU. Third, the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose this rulemaking solely under the commission's general powers but under specific authority as explained under the second point. Therefore, the commission concludes that the proposed rule does not meet the definition of a major environmental rule.

The commission invites public comment regarding this draft regulatory impact analysis determination. 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.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to update the MOU between the RRC and the TCEQ to clarify jurisdiction of the respective agencies pursuant to statutory changes and agency reorganizations. The proposed rule interprets and clarifies continuing historic statutory jurisdiction as well as recently enacted statutory jurisdiction of the TCEQ and the RRC found in multiple statutes. The proposed rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of public or private real property because the proposed rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rulemaking merely clarifies and explains jurisdiction of the respective agencies. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §5.05.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

#### ANNOUNCEMENT OF HEARING

The RRC will hold a public hearing on this proposal in Austin on May 11, 2010 at 1:30 PM in the William Travis Building, Room 1-100, at the RRC located at 1701 North Congress Avenue. 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 the Personnel Office of the RRC by mail at P.O. Box 12967, Austin, Texas 78711-2967 or by telephone at (512) 463-6981 or Telecommunication Devices for the Deaf, (512) 463-7284. Requests should be made at least two weeks before the scheduled meeting.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, 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 2009-055-007-PR. The comment period closes May 17, 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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Cari-Michel La Caille, Waste Permits Division, by phone at (512) 239-6479.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is proposed under the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, the Texas Radiation Control Act; THSC, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation; TWC, Chapter 26, concerning Water Quality Control; and the Injection Well Act, TWC, Chapter 27, concerning Injection Wells. The amendment is also proposed under THSC, §361.024, concerning Rules and Standards, which authorizes the commission to adopt rules for the management and control of solid waste; 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; and TWC, §27.019, concerning Rules, Etc., which authorizes the commission to adopt rules required for the performance of the commission's responsibilities under the Injection Well Act.

The proposed amendment implements THSC, §§361.016, 401.069, and 401.414; and TWC, §5.104 and §27.049.

§7.117. *Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission].*

The Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], concerning cooperation and the division of jurisdiction between the agencies regarding wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference as adopted in Texas Railroad Commission rule 16 TAC §3.30 (concerning Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission]). If a copy of this document cannot be obtained from the internet, a copy can be requested from the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001531

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 239-6090



## CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §116.17 and amendments to §§116.10, 116.111, 116.116, 116.117, and 116.118.

The new and amended sections would be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP) with the exception of §§116.10(5)(F), 116.111(a)(2)(K), 116.116(b)(3), and 116.117(a)(4)(B).

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 23, 2009, the EPA published notice in the *Federal Register* (74 *Federal Register* 48450) of its intent to disapprove the TCEQ rules that relate to the establishment of the state's qualified facilities program as a SIP revision. The EPA is basing this proposed disapproval on the following: 1) the program is not clearly limited to use in minor New Source Review (NSR) and does not clearly prevent circumvention of major NSR requirements; 2) the program does not require that an applicability determination for major NSR be made first for facility changes; 3) the program fails to meet the statutory and regulatory requirements for a SIP revision and is not consistent with guidance on SIP revisions; 4) the program is not an enforceable minor NSR program; and 5) the program lacks safeguards to prevent interference with national ambient air quality standard (NAAQS) at-

tainment and maintenance. The proposed rules in this action address these issues.

In this same notice, the EPA also proposed disapproval of the commission's definition of best available control technology (BACT) in §116.10(3), General Definitions. This proposal also addresses this issue, as discussed in the SECTION BY SECTION discussion.

The creation of the qualified facilities program was a development of the 74th Legislature, 1995, through Senate Bill (SB) 1126. SB 1126 became effective on May 19, 1995, and amended the Texas Clean Air Act (TCAA) by revising the definition of "modification of existing facility," which changed the factors used to determine whether a modification has occurred. The commission interpreted this statute as applicable for minor NSR permitting purposes only. In 1996, Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, was revised to incorporate this legislative directive for minor NSR sources only.

SB 1126 specifies exemptions from the definition of "modification of existing facility." It provides that changes may be made to existing facilities without triggering the statutory definition of modification of existing facility found in TCAA, Texas Health and Safety Code (THSC), §382.003(9) if either of the following conditions are met: the facility has received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur, or regardless of whether the facility has received a preconstruction permit or permit amendment, uses control technology that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur. Facilities that meet these requirements are designated as "qualified facilities."

The commission implemented SB 1126 through rules in Chapter 116, Subchapters A and B that frame the qualified facilities program and confirm that these rules only apply to existing qualified facilities. The rules do not allow construction of a new facility, nor can the change result in a net increase in allowable emissions of any air contaminant, or allow the emissions of an air contaminant category that did not previously exist at the facility undergoing the change. The use of the terminology in the phrase "net increase in allowable emissions of any air contaminant" in §116.116(e), Changes to Qualified Facilities, should not be confused with federal terminology, where "net increase" has specific meaning as it relates to federal NSR applicability involving comparison of actual emissions. The qualified facility program compares allowable emissions at one facility to allowable emissions of the same type at another facility at a single site. Prior to making this comparison, the owner or operator must determine if a project requires federal nonattainment (NA) or prevention of significant deterioration (PSD) review. This is accomplished by comparing a facility's baseline actual emission rate to the planned emission rate resulting from the change using either proposed actual emissions or the facility's potential to emit (PTE), to a significance level for the pollutant involved. If the projected emissions increase equals or exceeds the significance level, the facility owner or operator must compute the result of all emissions increases and decreases at the facility according to the definition of contemporaneous period as defined in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions, to determine the net emission increase. If this net increase equals or exceeds a major modification threshold, then federal NSR is triggered, and the proposed change cannot

be authorized using a qualified facility claim. The significance levels and the major source thresholds are found in the definition of major modification in §116.12.

The commission has always administered the qualified facilities program as a minor NSR program and has not allowed its applicability for changes requiring major NSR. This is consistent with the requirements of the enabling statute in THSC, §382.0512 which states that "nothing in this section shall be construed to limit the application of otherwise enforceable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter." The program does not, and has not, superseded or negated federal requirements. The qualified facilities program may not be used as a shield for protection or exemption from federal programs. Persons making changes must maintain sufficient documentation to demonstrate that the project will comply with Subchapter B, Division 5, Nonattainment Review, Subchapter B, Division 6, Prevention of Significant Deterioration Review, and with Subchapter E, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63). A major modification, as defined in §116.12, may not occur without first being subject to a nonattainment and/or PSD review. Likewise, an owner or operator may not use qualified facility rules to avoid maximum achievable control technology (MACT) requirements for the construction or reconstruction of major sources of hazardous air pollutants (HAP) as they are described and addressed in 40 Code of Federal Regulations (40 CFR) Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP) rules. If a proposed project is determined to be a major modification under nonattainment and/or PSD rules, or meets the definition of construction or reconstruction under 40 CFR Part 63, the owner or operator must obtain a federal NSR permit or major modification under the appropriate federal NSR program, as well as a HAP permit to meet requirements of Federal Clean Air Act (FCAA), §112(g) if case-by-case MACT applies; and a minor NSR permit amendment. Further, the qualified facilities program does not impair the commission's authority to control the quality of the state's air and to take action to control a condition of air pollution if the commission finds that such a condition exists.

EPA has acknowledged that the qualified facility program was intended, and has been administered, as a minor NSR program. It proposed disapproval of the program based on lack of specific rule requirements that would restrict the program to minor NSR, require federal netting procedures, and provide enforceability of any new emission limits under the qualified facility program (74 *Federal Register* 48450). The commission is proposing rule amendments to §116.116(e) that address these identified deficiencies through a specific requirement for a separate netting analysis to determine the potential applicability of federal review to the proposed change, submission of a permit application, certification of emissions, and permit alteration. In addition to the specific rule requirements, the commission is structuring the rules to provide a clear sequence for facility owners and operators to determine whether their facility can be qualified. The proposed rule changes address the specific concerns noted by the EPA in its proposed disapproval, and are designed to allow the EPA to approve the qualified facilities program as a minor NSR program into the Texas SIP.

#### *Use of the Term "Facility"*

In the *Federal Register* notice (74 *Federal Register* 48450), the EPA specifically solicited commission comment on the EPA in-

terpretation of the use of the term "facility" in commission rules and Texas law as this is critical to EPA's understanding of the commission's permitting program.

The TCEQ does not concur with the EPA's understanding of Texas law in relation to the definition of "Facility." Further, the EPA erroneously interprets the term "facility" as used in TCEQ rules by stating that, in part, a "facility" can be more than one major stationary source, and it can include every emissions point on a company site without limiting these emissions points to only those belonging to the same industrial classification (SIC code).

TCEQ and its predecessor agencies have consistently interpreted the term "facility" to preclude inclusion of more than one stationary source, in contrast to EPA's stated understanding. In Texas, a facility cannot include more than one stationary source, nor can it include every emissions point on a company site, even if limited to the same SIC code. THSC, §382.003(6) and §116.10(6) define the term "facility" as "a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility. A facility may constitute or contain a stationary source." A facility under Texas law can be subject to major NSR or minor NSR.

This interpretation of the term "facility" has been consistent by the TCEQ and its predecessor agencies for more than 30 years. Further, this definition has been approved into the Texas SIP, as acknowledged by the EPA in the *Federal Register* notice in 74 *Federal Register* 48455 in footnote 4. The TCEQ provided comments regarding this issue in EPA's September 23, 2009 *Federal Register* notice which are filed under Docket Number EPA-R06-OAR-2005-TX-0025 in the docket system at [www.regulations.gov](http://www.regulations.gov).

In order to be consistent with existing definitions in other rules of the commission, the term "account" is used to describe the range of a qualified facility transaction. The commission uses the term "account" synonymously with the EPA's use of "source." As EPA noted in the *Federal Register* notice in 74 *Federal Register* 48455, footnote 7, "account" is a SIP-approved definition.

#### *Netting and Double Counting*

The qualified facilities program can only be used if a physical or operational change to an existing facility complies with federal NSR requirements. The statutory exemption from the definition of "modification of an existing facility" for minor NSR sources does not relieve an owner or operator from conducting an evaluation to determine if a federal major modification has occurred. Prior to seeking qualified facility status for their facilities, owners or operators must demonstrate that any increase in actual emissions must not trigger federal NSR through comparison of baseline actual emissions to projected actual emissions or PTE. These comparisons may only be done for emissions at facilities located at a single site; comparison between emission sources at separate sites is not allowed for the necessary netting analysis. Therefore, the qualified facilities program requirements are at least as stringent as the federal requirements to conduct an evaluation to determine if a federal major modification has occurred.

In proposed renumbered §116.116(e)(3), commission rules state that in order to make a physical or operational change to a qualified facility, an owner or operator must demonstrate that any proposed change does not result in a net increase in allowable emissions of any air contaminant previously authorized

under minor NSR at the same account. Under proposed renumbered §116.116(e)(4) and (5), a qualified facility is allowed to demonstrate that a minor NSR modification has not occurred by comparing allowable emissions to allowable emissions, before and after a proposed change. Additionally, proposed renumbered §116.116(e)(10) requires that no existing level of control can be reduced. The EPA also notes that the intent to require a separate netting analysis to be performed for each proposed change under the qualified facilities program is not explicitly stated (74 *Federal Register* 48450). Therefore, the proposed new §116.116(e)(11) corrects this deficiency by requiring that a separate netting analysis must be completed for each proposed change.

For facilities undergoing an intraplant trade, where allowable emissions at one facility are increased while the allowable emissions at another facility are reduced within a single account, an allowable-to-allowable comparison is used only to determine if a net increase has occurred for minor NSR. The emissions are reviewed with the increase and reduction considered simultaneously and not covering a five-year period (contemporaneously) as for federal review. If a net emissions increase has occurred, an owner or operator cannot use the qualified facilities program to authorize the proposed project, and must find another state authorization method.

In addition, the owner or operator must submit a pre-change notification if the intraplant trade moves emissions from the interior of a site to a point closer to the property line. This gives the commission the ability to evaluate any potential off-property effects relating to all contaminants, including those with federal ambient air quality standards. This intraplant trade capability exists only to the extent that the project is a minor NSR action.

Proposed §116.116(e)(1) requires the evaluation of emissions related to physical and operational changes to be conducted on a baseline actual to either a projected actual or PTE basis as applicable. This comparison is used to determine if a net emission increase above the appropriate significance level for a federal permitting program has occurred. If the significance level is met or exceeded, the owner or operator must perform a netting analysis which is done using baseline actual and projected actual emissions and compares actual emissions increases and decreases at the facility during the contemporaneous period as defined in §116.12 to the emissions resulting from the proposed change. If the results of the netting analysis indicate that a major modification has occurred, the appropriate federal program is triggered and federal authorization must be obtained. In such a case, the qualified facilities program cannot be used and an NSR amendment must be obtained along with the appropriate federal NSR authorization.

In addition, an anti-backsliding provision is included in the qualified facility rules, located in renumbered §116.116(e)(10). This rule states that "the existing level of control may not be lessened for a qualified facility." For physical and/or operational changes which involve intraplant trades, the maximum allowable emission rate table (MAERT) in the permit for the facility contributing emission reductions is reduced by the appropriate amount, while the MAERT for the facility receiving the emission increases is increased. If additional emission reductions are necessary to demonstrate that a net increase has not occurred, those reductions are also included in the changes to the MAERT in order to make them federally enforceable. The inclusion of the qualified facilities changes into the MAERT of the relevant permits en-

sures that the changes will not violate Texas control strategies or interfere with attainment of the NAAQS.

#### *Relaxation of SIP Requirements*

The EPA has expressed additional concern about the qualified facility program because it allows changes in facilities without necessarily obtaining a permit amendment and a subsequent upgrade of BACT. Qualified facilities may use BACT no older than 120 months counting from the date of the permit issuance or amendment to the date of the proposed change. EPA has stated that facilities making changes without a corresponding upgrade to BACT could represent a relaxation of SIP requirements.

The qualified facility program has only been applied to non-federal changes from its inception and is consistently used only for minor NSR. Changes that would exceed major source thresholds are screened out of the qualified facility program, leaving only the minor modifications. Therefore, the program does not, and has not, adversely affected air quality. Over the last ten years, about one percent of the commission's permitting actions have been for qualified facilities. The program does not allow the use of BACT that is older than 120 months, when combined with the minor modification only restriction and the relatively few number of qualified facility actions, the program does not adversely affect air quality and does not represent a relaxation of SIP requirements. Additionally, facilities making a qualified facilities change are not allowed to use BACT that is less stringent than what the facility is already using, regardless of how old that BACT may be. In addition to these proposed rule amendments, the commission is proposing, as a SIP amendment, a separate document with additional explanation of the qualified facility program, a record of facilities where changes were sought under the qualified facility program, and guidance for the implementation of SB 1126 to demonstrate that the qualified facilities program is and has been at least as stringent as, and does not result in backsliding from, the approved Texas SIP.

#### *Notification of Changes at Qualified Facilities*

The commission requires that facility owners or operators submit Form PI-E, Notification of Changes to Qualified Facilities to provide notification of intended changes under the qualified facility program. The form requires details on the proposed qualified facility changes, including emission calculations to confirm that federal NSR does not apply and information on intraplant trades which may have resulted in emissions that have moved closer to a site property line. Proposed changes under the qualified facility program are reviewed as part of the minor NSR program. Under the commission's minor NSR program, applications are required for new construction or modification. The PI-E form is not an application because the qualified facility program specifically forbids new construction, and changes under the program are not considered modifications by legislative design. The form contains sufficient detail to allow review of proposed qualified facility changes similarly to an application for new construction or modification. This review has resulted in a significant denial rate for changes under the qualified facility program in nonattainment areas. The PI-E form is submitted to the commission's Austin office and the appropriate regional office where it is publicly accessible. Using the information on the form, the public may access more detailed information about proposed changes, including staff technical reviews.

In addition to the PI-E form, the proposed rules will require facilities seeking a qualified facility change to submit an application for a revision to the relevant permits involved in the change, or



a change in certification requirements if the change involves a standard permit or permit by rule. This allows the commission to incorporate the qualified facilities changes into the relevant permits, ensuring federal enforceability of the changes. By incorporating the changes into the permits, the commission ensures that the air quality benefits that existed before the qualified facilities changes will continue to be present and enforceable. Any additional future change at a qualified facility would have to undergo a separate review for federal applicability before making further changes. Therefore, the qualified facilities changes will have no adverse impact on the ambient air, Texas control strategies, or attainment of the NAAQS.

## SECTION BY SECTION DISCUSSION

### *§116.10, General Definitions*

The EPA has proposed disapproval (74 *Federal Register* 48454) of the definitions of "Actual emissions" and "Allowable emissions" in §116.10(1) and (2), respectively. Because these definitions apply only to the qualified facility program, the commission proposes to move the definitions to new section §116.17, Qualified Facility Definitions, to restrict their use to the qualified facility program. The remaining definitions would be renumbered accordingly. Other proposed changes in this rule-making for new §116.116(e)(1), are intended to clarify qualified facility netting requirements.

In its proposed disapproval of the qualified facility program, the EPA states the commission must revise its definition of best available control technology in §116.10(3) to clearly apply only for minor sources and minor modifications (74 *Federal Register* 48450). The commission proposes to address this issue by separating the content of the definition in renumbered §116.10(1), and its application in §116.111(a)(2)(C), General Application. The commission proposes to amend the definition of BACT to define the term in a more descriptive manner using language to indicate the features of the term without using the term in the definition. The proposed new definition will maintain its broad application to all NSR permitting actions and thus maintain the stringency of permit review currently approved in the SIP. In the commission permitting process, the first determination is whether federal requirements are triggered. If so, then the BACT requirements of 40 CFR §52.21(b)(12) are applied. The commission's BACT process will then be applied for any other air contaminants and any other facilities not subject to federal permitting requirements.

The commission proposes §116.10(9)(A) to state that insignificant increases of emissions that would not be considered modifications, are authorized under permit by rule rather than a "commission exemption." This amendment would remove an obsolete term and specify the commission's authorization method.

The commission proposes to delete §116.10(9)(B), which refers to insignificant increases at a permitted facility. This circumstance is addressed by §116.10(9)(A) and has no other application under the commission's NSR permitting program. The subsequent subparagraphs would be re-lettered.

### *§116.17, Qualified Facility Definitions*

The commission proposes this new section to restrict the use of the definitions "Actual emissions" and "Allowable emissions" to the qualified facility program. The language in the definitions was written for specific application to qualified facilities, and the commission seeks to ensure that there is no confusion with application of the terms in other permitting programs. The com-

mission proposes to add a citation referring to §116.116(e) in the definition of "Actual emissions" to improve clarity. The commission also proposes to delete the subparagraphs in the definition of "Allowable emissions" that state how the term is applied for qualified grandfathered facilities because there is no further application of the qualified facility program for these types of facilities.

### *§116.111, General Application*

The commission proposes to amend §116.111(a)(2)(C) describing the application of BACT. The commission and predecessor agencies have interpreted and applied the requirement for BACT to be applicable to all facilities, as defined in the TCAA, and to all contaminants that would be emitted from those facilities. The federal definition necessarily applies only to the major sources and major modifications under the federally-developed PSD permitting program. In addition, the federal requirements allow for netting by major sources, a process that allows exemption from federal permitting requirements. The scope of the Texas law is more comprehensive than that required for the federal permitting programs. The purpose of the amendment is to establish the commission's application of BACT, which applies to all facilities and all air contaminants after the evaluation of federal applicability, and the corresponding application of the federal definition of BACT in 40 CFR §52.21(b)(12). The existing language in §116.111(a)(2)(C) would be deleted as unnecessary. On January 13, 2010, the commission proposed to amend §116.160 to include 40 CFR §52.21(b)(12), and §116.160 would be the appropriate reference in this rule. However, until the changes to §116.160 are effective, the commission cannot propose such a change. Therefore, at adoption of proposed new §116.111(a)(2)(C), the commission may change the reference from federal rule to state rule.

### *§116.116, Changes to Facilities*

The EPA acknowledges that the commission intends the qualified facilities program to apply only to minor modifications at minor and major existing qualified facilities (74 *Federal Register* 48450), but states that rules require a clear limitation of the program to minor NSR changes. Additionally, THSC, §382.0512, which authorizes the qualified facility program, specifically states that all applicable federal requirements, including federal NSR review, will not be affected.

The commission proposes to add §116.116(e)(1) prohibiting the use of the qualified facility program for changes meeting the definition of "Major modification" in §116.12, Nonattainment and Prevention of Significant Deterioration. The commission uses the same restriction, which has been approved into the SIP, for facilities authorized under permits by rule (PBR) in 30 TAC Chapter 106, Permits by Rule. This language is also intended to address the EPA's concerns about the qualified facility program's use of allowable emissions in determining if a facility change will require reductions in actual emissions at another facility at the source. The EPA states that this provision could allow circumvention of major modification applicability. The language in the proposed amendment would restrict use of the qualified facility program to minor modification while still allowing the flexibility of the program as intended by the legislature. Prior to determining if a facility may use §116.116(e) as a qualified facility, owners or operators must make a determination of federal applicability. Facilities requiring federal NSR cannot use the qualified facility program and must be authorized through permit amendment under a different program. Through use of a clear restriction of the qualified facility program to minor sources and minor modifica-

tions, the commission also addresses the EPA's concerns stated in its disapproval notice (74 *Federal Register* 48450).

The proposed amendment will address EPA requirements expressed in the EPA disapproval notice (74 *Federal Register* 48450) concerning an increase in allowable emissions at a qualified facility with a concurrent equivalent decrease in actual emissions at another facility located at the same TCEQ account number. The commission uses the term "account" synonymously with the EPA's use of "source." The separate netting analysis for each change would ensure that all net changes remain below major modification thresholds. The EPA proposed disapproval of the qualified facility program because it lacks a restriction that would prevent a major stationary source from offsetting significant emission increases by using reductions from outside the major stationary source. Proposed §116.116(e)(1) would prohibit this action while still allowing trading within the same account number, provided the sources involved were minor. The proposed new paragraph also states explicitly that facilities using the qualified facility program must be authorized under Chapter 116 or Chapter 106.

The commission proposes a new §116.116(e)(2). In 74 *Federal Register* 48450, the EPA cites deficiencies in the enforceability, quantification, and permanence of emissions changes in the qualified facility program. This new paragraph will provide specific requirements for holders of case-by-case permits, PBRs under Chapter 106, and standard permits to ensure no relaxation of the SIP. This proposed new paragraph contains language to ensure that facilities making emission reductions under the qualified facility program do not later increase emissions.

The proposed new paragraph requires facility owner operators to submit Form PI-E, Notification of Changes to Qualified Facilities for any proposed qualified facility change. Proposed subparagraph (A) requires owner or operators to simultaneously submit an application for permit alteration for any facility involved in the qualified facility request that is authorized under §116.111 (this is a case-by case permit). This will allow the commission to begin the timely alteration of all applicable permits to reflect changes under the qualified facility program.

Proposed §116.116(e)(2)(B) requires owners or operators of facilities authorized by standard permit, which makes allowable emission reductions equivalent to emission increases at a facility authorized by a permit issued under §116.111, to submit a revision to the representations in the facility registration in accordance with §116.611, Registration to Use a Standard Permit.

Proposed §116.116(e)(2)(C) addresses facilities authorized under Chapter 106. If the proposed change at a facility authorized by permit by rule also involves a permit issued under §116.111, then the §116.111 permit will be altered to reflect a new emission rate. If there is no §116.111 permit involved in the transaction, emission changes must be certified by a revision to the representations in the facility registration for a standard permit, or in the case of a PBR, a certified emission rate under §106.6, Registration of Emissions, through use of a PI-7-CERT or APD-CERT form. Either of these actions establishes an enforceable new allowable rate that cannot be changed without review.

The commission proposes to include a subparagraph D that states that no allowable emission rate in §116.17 may be exceeded to ensure that facilities making reductions under the qualified facility program do not later increase emissions. Proposed subparagraph (E) is included to ensure that facilities meet the BACT requirements for qualified facilities in §116.10(9).

This subparagraph also states that there will be no reduction of emission control efficiency to ensure that facilities reauthorized into a §116.111 permit do not reduce control efficiency if the §116.111 permit uses older control technology. Subsequent paragraphs in the subsection would be renumbered.

The commission proposes to amend renumbered §116.116(e)(4)(B) and (C) to delete the word "number." This updates the commission's use of the term "account" rather than "account number." As the EPA noted in the *Federal Register* notice at page 48455, footnote 7, "account" is a SIP-approved definition.

The commission proposes §116.116(e)(4), (5), and (9)(A) to revise citations reflecting the renumbering of the paragraphs of the subsection.

The commission proposes §116.116(e)(5) to require that qualified facility transaction must occur at facilities located at the same account. The commission's use of the term "account" is equivalent with the EPA's use of "source." This amendment will ensure an accounting of permissible transactions under this qualified facility program. The commission also proposes to amend §116.116(e)(5)(A) to require that reductions in actual emissions used as emissions offsets be based on a 12-month rolling average rather than a calendar annual rate in order to provide a consistent and more accurate representation of emissions. The commission also proposes to amend §116.116(e)(5) and (A) to delete the term "offset." This term has a specific meaning in federal NSR permitting and refers to a requirement that emissions decreases must be equal to or greater than proposed increases. The commission proposes this to emphasize that the qualified facility program is a minor NSR program with netting requirements that are unique to the program and are performed only after a determination is made that federal NSR does not apply.

The commission proposes to amend §116.116(e)(5)(C) to include language moved from §116.116(e)(6)(E) stating that an emissions effects screening level will be determined by the executive director because the two subparagraphs concern the same subject.

The commission proposes to amend §116.116(e)(5)(E) to remove the current language and to add language stating that a facility owner or operator shall demonstrate that changes at qualified facilities will not adversely affect ambient air quality. The EPA acknowledges that the qualified facility program is structured at §116.117(b)(4), Documentation and Notification of Changes to Qualified Facilities, such that emissions moved closer to a property line are analyzed prior to a change occurring. The proposed amendment is added to address an EPA identified deficiency at 74 *Federal Register* 48450, that the requirement should be made explicit in §116.116(e).

The commission proposes §116.116(e)(9)(C) to require that reductions in actual and allowable emissions be based on a 12-month rolling average rather than a calendar annual rate in order to provide a consistent and more accurate representation of emissions.

The commission proposes to add §116.116(e)(11) requiring that a separate netting analysis be performed for each proposed change under this subsection. In 74 *Federal Register* 48450, the EPA acknowledges the commission's intent that each proposed change under the qualified facility program was to be analyzed separately to ensure that emission increases

and reductions used by facilities occur simultaneously. This proposed amendment would make the requirement explicit.

#### *§116.117, Documentation and Notification of Changes to Qualified Facilities*

The commission proposes to add language in §116.117(a)(4) requiring recordkeeping demonstrating that changes to qualified facilities meeting the requirements of §116.116(e) include information of how a determination was made that there would be no adverse effect on ambient air quality. The commission proposes to amend §116.117(b)(1) to reflect changes in citation for the paragraphs of §116.116(e) and to reflect the proposed deletion of §116.117(b)(2).

The commission proposes to delete §116.117(b)(2). The commission has determined that to fully address EPA identified deficiencies of the qualified program, the program rule should require prior notification of proposed changes. This will allow the commission to timely review these proposed changes and ensure that the proposed change meets all applicable state and federal requirements.

#### *§116.118, Pre-change Qualification*

The commission proposes to amend §116.118(a)(2) to delete an obsolete reference to a PI-8 form and replace it with reference to current forms PI-7-CERT and APD-CERT.

#### 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 or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed changes to the rules for the qualified facilities program are administrative in nature and do not impose any new requirements on regulated parties or significantly change agency procedures.

The proposed rules amend various sections of Chapter 116 and address concerns expressed by the EPA regarding the agency's qualified facilities program in its review of the SIP. The proposed changes to established rules for the qualified facilities program are administrative in nature and clarify that the rules regarding qualified facilities are restricted to minor sources and modification of minor sources. The proposed rules prescribe a separate netting analysis to ensure that all net changes in emissions for the same account number remain below major modification thresholds. These proposed changes will continue to allow the qualified facilities program to function for minor changes to facilities if the specified criteria are met. The proposed rules also modify the definition of BACT and clarify its permissible use. No additional costs are imposed on facility owners or operators, and the proposed rules will not have a fiscal impact on other state agencies or local governments that own or operate qualified facilities.

#### 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 compliance with federal law and federal approval of the SIP, which is protective of the environment and human health.

The proposed changes to the established rules for the qualified facilities program are administrative in nature and are not antici-

pated to impose any additional costs for businesses or individuals. Owners or operators of qualified facilities are not expected to experience any fiscal impacts as a result of the proposed rules.

#### 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 do not impose any additional costs on facility owners or operators.

#### 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 protect the environment, 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. The proposed rules are administrative in nature and do not impose any additional costs on facility owners or operators.

#### 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 in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of proposed rules is to amend various sections of Chapter 116 to address concerns expressed by the EPA regarding the agency's qualified facilities program in its review of the SIP. The proposed changes to established rules for the qualified facilities program are administrative in nature and clarify that the rules regarding qualified facilities are restricted to minor changes regardless of the source classification. The proposed rules prescribe a separate netting analysis to ensure that all net changes in emissions for the same account number remain below major modification thresholds. These proposed changes will continue to allow the qualified facilities program to function for minor changes to facilities if the specified criteria are met. The proposed changes will allow the commission to incorporate proposed qualified facilities changes into the relevant permits, ensuring that the changes will have no adverse effects on ambient air quality, Texas air quality control strategies, and attainment of the NAAQS. The proposed rules also modify the definition of BACT and clarify its permissible use. These proposed changes will continue to allow the qualified facilities program to function for minor changes to facilities if the specified criteria are met. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these

federal standards on 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.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rules implement requirements of the FCAA. The proposed amendments are based on federal requirements for a permitting program and are necessary for federal approval of the Texas SIP. These rules are an express requirement of state law, but are proposed to meet the federal requirements for approval as a revision to the Texas SIP. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government if this rulemaking is adopted. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §382.003(9) and §382.0518.

Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). Comments on this draft determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend the rules related to qualified facilities and revise the definition and applicability of BACT in order to obtain federal approval of the rules into the Texas SIP. The proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require

compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause 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 commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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 proposed 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 will benefit the environment by ensuring emission increases at certain facilities are combined with equivalent emission decreases at another facility at the same commission account number remain below all allowable emissions. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.32). 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 the proposed 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

Chapter 116 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 116 requirements into their operating permit.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 10, 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 Devon Ryan, 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 2010-006-116-PR. The comment period closes May 17, 2010. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

### SUBCHAPTER A. DEFINITIONS

#### 30 TAC §116.10, §116.17

##### STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment and new section are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; and §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified.

The new section and amendment implement Texas Health and Safety Code, §§361.002, 361.011, 361.024, 361.061, 361.123, 361.124, 363.061, 382.002, 382.003, 382.011, 382.051, and 382.05195.

##### §116.10. General Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and

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

~~[(1) Actual emissions—The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).]~~

~~[(2) Allowable emissions—The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.]~~

~~[(A) Permitted facility—For a facility with a permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a maximum allowable emissions rate table and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized under Chapter 106 of this title (relating to Permits by Rule).]~~

~~[(B) Facility permitted by rule—For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8 form.]~~

~~[(C) Qualified grandfathered facility—For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.]~~

~~[(D) Standard permit facility—For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration to use the standard permit.]~~

~~[(E) Special exemption facility—For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.]~~

~~[(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.]~~

(1) [(3)] Best available control technology (BACT)--An air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility, and is considered technically practical and economically reasonable for the facility. The emissions reduction can be achieved through technology such as the use of add-on control equipment or by enforceable changes

in production processes, systems, methods, or work practice. [BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.]

(2) [(4)] Dockside vessel--Any water-based transportation, platforms, or similar structures which are connected or moored to the land.

(3) [(5)] Dockside vessel emissions--Those emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment. These emissions include, but are not limited to:

- (A) loading and unloading of liquid bulk materials;
- (B) loading and unloading of liquified gaseous materials;
- (C) loading and unloading of solid bulk materials;
- (D) cleaning and degassing of liquid vessel compartments; and
- (E) abrasive blasting and painting.

(4) [(6)] Facility--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(5) [(7)] Federally enforceable--All limitations and conditions which are enforceable by the United States Environmental Protection Agency (EPA), including:

- (A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR Parts 60 and 61);
- (B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63));
- (C) requirements within any applicable state implementation plan (SIP);
- (D) any permit requirements established under 40 CFR §52.21;
- (E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program; or
- (F) any permit requirements established under Subchapter E [(C)] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6) [(8)] Grandfathered facility--Any facility that is not a new facility and has not been modified since August 30, 1971.

(7) [(9)] Lead smelting plant--Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(8) [(10)] Maximum allowable emissions rate table (MAERT)--A table included with a preconstruction permit issued un-

der this chapter that contains the allowable emission rates established by the permit for a facility.

(9) [(11)] Modification of existing facility--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more permits by rule under Chapter 106 of this title (relating to Permits by Rule) [~~emission exemptions~~];

[(B)] insignificant increases at a permitted facility;

(B) [(C)] maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(C) [(D)] an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;

(D) [(E)] a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(E) [(F)] a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(F) [(G)] a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(10) [(12)] New facility--A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) ~~[(13)]~~ New source--Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) ~~[(14)]~~ Nonattainment area--A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(13) ~~[(15)]~~ Public notice--The public notice of application for a permit as required in this chapter.

(14) ~~[(16)]~~ Qualified facility--An existing facility that satisfies the criteria of either paragraph (9)(D)~~[(E)]~~(i) or (ii) of this section.

(15) ~~[(17)]~~ Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

§116.17. Qualified Facility Definitions.

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

(1) Actual emissions--The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to a change to a facility under §116.116(e) of this title (relating to Changes at Facilities). This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(2) Allowable emissions--The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this paragraph. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(A) Permitted facility--For a facility with a permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a maximum allowable emissions rate table and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized under Chapter 106 of this title (relating to Permits by Rule).

(B) Facility permitted by rule--For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established in accordance with §106.6 of this title (relating to Registration of Emissions).

(C) Standard permit facility--For a facility authorized by standard permit, other than §116.617(2) of this title (relating to State Pollution Control Project Standard Permit), the allowable emissions shall be the maximum emissions rate represented in the registration to use the standard permit.

(D) Special exemption facility--For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

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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TRD-201001532

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: May 16, 2010  
For further information, please call: (512) 239-6090

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**SUBCHAPTER B. NEW SOURCE REVIEW PERMITS**

**DIVISION 1. PERMIT APPLICATION**

**30 TAC §§116.111, 116.116 - 116.118**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; and §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified.

The amendments implement Texas Health and Safety Code, §§361.002, 361.011, 361.024, 361.061, 361.123, 361.124, 363.061, 382.002, 382.003, 382.011, 382.051, and 382.05195.

*§116.111. General Application.*

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual." [~~"Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual."~~]

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under Title I Part C of the Federal Clean Air Act (FCAA) shall evaluate and apply BACT as defined in 40 Code of Federal Regulations (CFR) §52.21(b)(12). [~~The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.~~]

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under [Title] 40 [~~Code of Federal Regulations~~] Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contami-

nants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E [E] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3, of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications 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).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

#### *§116.116. Changes to Facilities.*

(a) Representations and conditions. The following are the conditions upon which a permit, special permit, or special exemption are issued:

(1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and

(2) any general and special conditions attached to the permit, special permit, or special exemption itself.

(b) Permit amendments.

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

(A) a change in the method of control of emissions;

(B) a change in the character of the emissions; or

(C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter



E [C] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the provisions in Chapter 39 of this title.

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

(B) any change from a representation in an application, general condition, or special condition in a permit that does not cause:

(i) a change in the method of control of emissions;

(ii) a change in the character of emissions; or

(iii) an increase in the emission rate of any air contaminant.

(2) Requests for permit alterations that must receive prior approval by the executive director are those that:

(A) result in an increase in off-property concentrations of air contaminants;

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

(3) The executive director shall be notified in writing of all other permit alterations not specified in paragraph (2) of this subsection.

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) of this title.

(5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) of this title.

(d) Permits by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption from permitting or permit by rule under Chapter 106 of this title unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All changes authorized under Chapter 106 of this title to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

(1) Prior to determining if this subsection may be applied to a proposed change to a facility, the following will apply:

(A) The facility must be authorized under this chapter or Chapter 106 of this title.

(B) A separate netting analysis shall be made for each proposed change to determine the applicability of federal New Source Review by demonstrating that any increase in actual emissions is below the threshold for major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions). Proposed changes exceeding the major modification threshold cannot be authorized under this subsection. This analysis

shall meet the definition and requirements of net emissions increase in §116.12(20) of this title.

(2) Prior to changes under this subsection, facility owners or operators will submit Form PI-E, Notification of Changes to Qualified Facilities, and the following additional requirements will apply:

(A) Facility owners or operators will simultaneously submit, where applicable, an application for a permit alteration for each permit issued under §116.111 of this title involved in the qualified facility transaction.

(B) Owners or operators of facilities authorized under Subchapter F of this Chapter, (relating to Standard Permits) shall submit a revision to the representations in the facility registration in accordance with §116.611 of this title (relating to Registration to Use a Standard Permit).

(C) Any applicable permit issued under §116.111 of this title will be altered to reflect changes under this subsection to facilities authorized under Chapter 106 of this title. If no applicable permit issued under §116.111 of this title is involved in the qualified facility transaction then changes shall be certified by a registration for an emission rate under §106.6 of this title (relating to Registration of Emissions).

(D) No allowable emission rate in as defined in §116.17 of this title (relating to Qualified Facilities Definitions) shall be exceeded.

(E) The facility has received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur, or regardless of whether the facility has received a preconstruction permit or permit amendment, uses control technology that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur. There will be no reduction in emission control efficiency.

(3) [(1)] Notwithstanding any other subsection of this section, a physical or operational change may be made to a qualified facility if it can be determined that the change does not result in:

(A) a net increase in allowable emissions of any air contaminant; and

(B) the emission of any air contaminant not previously emitted.

(4) [(2)] In making the determination in paragraph (3) [(1)] of this subsection, the effect on emissions of the following shall be considered:

(A) any air pollution control method applied to the qualified facility;

(B) any decreases in allowable emissions from other qualified facilities at the same commission air quality account [~~number~~] that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) any decrease in actual emissions from other qualified facilities at the same commission air quality account [~~number~~] that are not included in subparagraph (B) of this paragraph.

(5) [(3)] The determination in paragraph (3) [(1)] of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an air contaminant category or compound above the allowable emissions for that air contaminant category or compound, there must be [the amount

above the allowable emissions must be offset by] an equivalent decrease in emissions at the same facility or a different facility at the same account. [~~In making this offset, the following applies.~~]

(A) The equivalent decrease in emissions [~~offset~~] shall be based on the same time periods (e.g., hourly and 12-month rolling average [~~annual~~] rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds. The effects screening level shall be determined by the executive director.

(D) For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.

(E) The facility owner or operator shall demonstrate that the change will not adversely affect ambient air quality. [~~The effects screening level shall be determined by the executive director.~~]

(F) An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.

(6) [(4)] Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities) and §116.118 of this title (relating to Pre-change Qualification).

(7) [(5)] As used in this subsection, the term "physical and operational change" does not include:

(A) construction of a new facility; or

(B) changes to procedures regarding monitoring, determination of emissions, and recordkeeping that are required by a permit.

(8) [(6)] Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter. The owner or operator shall:

(A) utilize additional control methods that are as effective as best available control technology (BACT) required at the time the additional control methods are implemented; or

(B) demonstrate that the additional control methods, although not as effective as BACT, were implemented to comply with a law, rule, order, permit, or implemented to resolve a documented citizen complaint.

(9) [(7)] For purposes of this subsection and §116.117 of this title, the following subparagraphs apply.

(A) Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (4) [(2)] of this subsection.

(B) The allowable emissions from facilities that were never constructed shall not be used in intraplant trading.

(C) The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and 12-month rolling average [~~annual rates~~]) as the allowable

emissions for the facility at which the change will occur and for which an intraplant trade is desired.

(D) Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or 12-month rolling average [~~annual rate~~]).

(10) [(8)] The existing level of control may not be lessened for a qualified facility.

(11) A separate netting analysis shall be performed for each proposed change under this subsection.

(f) Use of credits. Notwithstanding any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.376(b) [~~§101.29(d)(4)(v)~~] of this title (relating to Discreet Emission Credit Use [~~Banking and Trading~~]) if all applicable conditions of §101.376 [~~§101.29~~] of this title are met. This subsection does not authorize any physical changes to a facility.

*§116.117. Documentation and Notification of Changes to Qualified Facilities.*

(a) Persons making changes under §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy §116.116(e) of this title. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain the documentation. The documentation shall be made available to representatives of the commission upon request. The documentation shall include:

(1) quantification of all emission increases and decreases associated with the physical or operational change;

(2) a description of the physical or operational change;

(3) a description of any equipment being installed; and

(4) sufficient information as necessary to show that the project is not expected to adversely affect ambient air quality and will comply as applicable with:

(A) §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review); or [~~and with~~]

(B) Subchapter E [E] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) Persons making such changes to qualified facilities shall comply with the following notification requirements.

(1) Annual report. For changes to qualified facilities when there is no intraplant trading under §116.116(e)(4) [~~§116.116(e)(2)~~] of this title, an annual report shall be submitted to the appropriate regional office of the commission by August 1 of each year. The report shall include all changes made under §116.116(e) during the immediately preceding annual period July 1 - June 30. This reporting period and the due date may be changed with the agreement of the commission's regional office. The annual report shall contain a PI-E form for each change. The report need not include changes previously submitted by PI-E form to the commission under paragraph [~~paragraphs~~] (2) [~~or (3)~~] of this subsection or which have been incorporated into the permit for the facility.

[(2) ~~Post-change notification. Post-change notification shall be required for changes to qualified facilities for which there is intraplant trading below the reportable limit. The notification shall be~~]

~~submitted on a PI-E form to the commission's New Source Review Permits Division within 30 days after the change occurs.~~

(2) ~~[(3)]~~ Pre-change notification only. Pre-change notification shall be required if a physical or operational change at a qualified facility will affect compliance with a permit special condition. The notice shall be made to the commission prior to the change. It shall identify the affected special condition and indicate the change needed or the desire to remove the special condition from the permit. The permit holder is relieved from complying with the permit special condition upon the filing of the notice, provided the change complies with §116.116(e) of this title.

(3) ~~[(4)]~~ Pre-change notification and approval. Pre-change notification shall be required for changes to qualified facilities for which there is intraplant trading above the reportable limit. The notification of the change shall be submitted on a PI-E form to the commission's New Source Review Permits Division before the change may occur. The change may occur after the receipt of written notification from the commission that there are no objections, or 45 days after the PI-E is received by the commission, whichever occurs first.

(4) ~~[(5)]~~ Reportable limit. The executive director shall establish reportable limits. A reportable limit is either:

(A) an emission rate that is adjusted based on a factor that accounts for a ratio of the effects screening levels of the different compounds and the difference in location of emissions involved in an intraplant trade; or

(B) an emission rate that results in a sum total of modeled ground level concentration for the account that shall not exceed two times the effects screening level at any point off property.

(c) For facilities that have received a preconstruction permit, all changes for which the notification procedure of subsection (b) of this section has been used shall be incorporated into the permit when the permit is amended or renewed.

(d) Nothing in this section shall limit the applicability of any federal requirement.

#### §116.118. *Pre-change Qualification.*

(a) If either of the following conditions exists, it will be necessary to establish that a facility is a qualified facility before a physical or operational change may be made under the notification procedure of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities):

(1) the facility is a qualified facility on the basis of best available control technology and the requirement for the facility type has not been previously established by the executive director; or

(2) the facility does not have allowable emissions established for an air contaminant relevant to the change in a maximum allowable emissions rate table, PI-7-CERT, APD-CERT ~~[PI-8 form]~~, or PI-E form.

(b) The pre-change qualification shall be made by submitting a PI-E form to the commission's New Source Review Permits Division. The facility shall be qualified in accordance with the information contained in the PI-E form after receipt of written notification from the commission that there are no objections, or 45 days after the PI-E form is received by the commission, whichever occurs first. The pre-change qualification may be submitted at the same time as a pre-change notification under §116.117(b) of this title or at any other time prior to making a change to a qualified facility.

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

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6090

## CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

The Texas Commission on Environmental Quality (commission or agency) proposes amendments to §§328.52, 328.55, 328.60, 328.63, 328.66, and 328.69 - 328.71; and the repeal of §328.67 and §328.68.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2008, comments received by the scrap tire program requested that the executive director facilitate the ability of local officials and fire marshals to review and have input on applications for scrap tire facilities and Land Reclamation Projects Using Tires (LRPUT). This proposal would require applicants to request input from local authorities, including fire authorities, and resolve any noncompliance issues with local requirements before an application could be approved. Provisions requiring some level of coordination with local government officials are currently in the rule, and they would be amended to require applicants to provide proof of notice and to prohibit the executive director from issuing authorizations if local governments provide timely notice that an application does not comply with local requirements.

The rules currently require that an applicant provide the executive director a copy of written notification which was provided to local government officials for some types of applications and not for others. The proposed revisions would require that applications include proof of notice to local government officials in all applications for LRPUTs and scrap tire facilities. The executive director would be prohibited from authorizing a scrap tire facility or a LRPUT if a local authority provides timely notice that an application does not comply with local requirements. In accordance with 30 TAC §305.127(4)(B), any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application or prior to the amendment, modification, or suspension and reissuance of an authorization shall be included in the authorization. Applications pending when this proposed rule takes effect would be impacted by this amendment.

Proposed amendments would clarify that LRPUTs are subject to annulment, suspension, revocation, denial, and motions to overturn. Amendments would authorize the executive director to withhold approval or request additional information for a LRPUT application for reasons related to protecting public health and the environment. LRPUT applications would be required to include information about groundwater levels in the area, and the executive director could require additional information about groundwater levels at the proposed site.

Other proposed changes in this rule package focus on updating the rules to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission, allowing submittal of electronic documents, and clarifying the exemption from the timeframe requirement to split, quarter, or shred off-the-road tires before disposal.

This proposed rulemaking would repeal the outdated portions of the rules which refer to parts of the Scrap Tire Program, which are no longer supported by the underlying statutory provisions which were repealed or expired in 1997.

## SECTION BY SECTION DISCUSSION

### §328.52, *Applicability*

Proposed §328.52(d) would clarify rules implementing an existing statutory requirement that prohibits disposal of scrap tires unless the tires are shredded, split, or quartered. Scrap tires that are off-the-road tires intended for use on heavy machinery are exempt from the timeframe requirement to be split, quartered, or shredded when stored at a storage site or a permitted landfill, but they must still be split, quartered, or shredded before they may be disposed.

### §328.55, *Registration Requirements*

Proposed §328.55(1) would change the reference from the Texas Natural Resources Conservation Commission to the Texas Commission on Environmental Quality. Proposed §328.55(6) would make LRPUT authorizations subject to annulment, suspension, revocation, and denial.

### §328.60, *Scrap Tire Storage Site Registration*

Proposed §328.60(b)(4) would allow electronic submittals as allowed by the executive director in lieu of hard copy documents. Proposed §328.60(b)(9)(A)(i) would correct outdated address information for the United States Geological Survey and the Texas Department of Transportation. Proposed §328.60(b)(9)(A)(ii) would correct outdated address information regarding where topographic maps can be obtained.

### §328.63, *Scrap Tire Facility Requirements*

Proposed §328.63(c)(3) would allow an application to register a scrap tire facility to be submitted in a manner allowed by the executive director, which would facilitate electronic submittals. Proposed §328.63(d)(1) would require applicants to provide notice to local governments. Proposed §328.63(d)(1) would require the owner or operator of a scrap tire facility to mail a copy of the notification documents to the appropriate local official and fire authority and provide proof of mailing in the form of return receipts for registered mail. The proposal would prohibit the executive director from authorizing a scrap tire facility if a local government official, including a fire authority, with jurisdiction over the proposed facility provides timely notice that the proposed scrap tire facility does not comply with local requirements. Proposed §328.63(d)(2) and (4) would allow local officials up to 45 days to reply to notice from applicants. Proposed §328.63(d)(4) would change the existing requirement for an applicant for a scrap tire energy recovery facility, one type of scrap tire facility, from having to provide a letter of approval from the fire marshal to having to provide proof of notice. The change of this existing requirement is recommended in order to maintain consistency with the requirements for other types of scrap tire facilities. The executive director would be prohibited from approving an application for any type of scrap tire facility if a local government provides a timely negative response. This change addresses the con-

cern expressed by some tire facility owners that the application process should not be delayed by local governments' failure or refusal to respond to opportunities to provide input.

### §328.66, *Land Reclamation Projects Using Tires (LRPUT)*

Proposed §328.66(a) would allow an application for a LRPUT to be submitted in a manner allowed by the executive director, which would facilitate electronic submittals. Proposed §328.66(a) would authorize the executive director to withhold authorization or request additional information for a LRPUT application for reasons related to protecting public health and the environment. Proposed §328.66(a)(6) would require a demonstration of the seasonal high water level in the area and authorize the executive director to request additional information about groundwater levels at the site. Proposed §328.66(a)(10) would add groundwater districts to the list of entities to be notified of applications. Proposed §328.66(a)(10) and (d) would prohibit the executive director from authorizing a LRPUT if a local official with jurisdiction over the proposed facility provides timely notice that the proposed facility does not comply with local requirements. Proposed §328.66(a)(10) and (d) would allow local officials up to 45 days to reply to notice provided by applicants.

### §328.67, *Special Authorization Priority Enforcement List (SAPEL)*

This proposed rulemaking would repeal §328.67 which addresses the Special Authorization Priority Enforcement List (SAPEL). This rule is no longer necessary after projects were completed and the underlying statutes expired or were repealed in 1997.

### §328.68, *Priority Enforcement List (PEL) Program*

This proposed rulemaking would repeal §328.68 which addresses the Priority Enforcement List (PEL). This rule is no longer necessary after projects were completed and the underlying statutes expired or were repealed in 1997.

### §328.69, *Public Notice of Intent to Operate*

Proposed §328.69(d) would change the reference from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

### §328.70, *Motion for Reconsideration*

The title of §328.70 would be updated to refer to a Motion to Overturn instead of a Motion for Reconsideration. Proposed §328.70 would authorize persons affected by a LRPUT application to file a Motion to Overturn. Proposed §328.70 would update cross references to the correct Chapter 50 rules.

### §328.71, *Closure Cost Estimate for Financial Assurance*

Proposed §328.71(h)(3) would change the reference from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

## 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 or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules amend certain sections of Chapter 328, Subchapter F and propose the repeal of two sections of the rules dealing with scrap tires. Several of the proposed changes are administrative in nature, facilitate the submittal of electronic documents, and clarify that off-the-road scrap tires must be split, quartered, or shredded before disposal. The proposed repeal of the sections concerning the SAPEL and PEL rules would eliminate sections of the rules that are outdated. The proposed rules would also require applications for scrap tire facilities and LRPUTs to include proof of notice to local government officials and prohibit the executive director from approving applications if a local government provides timely notice that a proposed facility does not comply with local requirements. Proposed amendments provide that LRPUTs are subject to annulment, suspension, revocation, denial, and motions to overturn. Amendments would authorize the executive director to withhold an authorization or request additional information for a LRPUT application for reasons related to protecting public health and the environment. LRPUT applications would be required to include a demonstration of the seasonal high water level in the area, and the executive director would be authorized to request additional information about groundwater levels at the site. The amended application requirements would not apply to currently authorized scrap tire facilities or LRPUTs.

Local governments may receive more notices of proposed scrap tire facilities or LRPUTs within their jurisdictions and may use more resources to review and provide input on those applications. The cost to review and provide input is not expected to be significant. Staff estimates that it may take local officials one to three more hours per application to prepare a written response concerning compliance with local ordinances or codes.

It is not known how many local governments would submit applications for new scrap tire facilities or LRPUTs, but staff does not expect to receive more than ten applications per year for these facilities. If a local government applies for a new facility or project, costs to comply with the proposed rules are not expected to be significant. Using an estimated minimum wage of \$7.25 per hour and a timeframe of eight hours to prepare correspondence, staff estimates that it may cost as much as \$58 per instance for a local government to contact the appropriate local officials. There may be additional costs for LRPUT applicants to provide information about groundwater levels, but these costs are not expected to be significant.

#### 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 increased protection of public health and the environment, and improved planning efforts for scrap tire facilities and LRPUTs due to increased input from local officials. These improvements should allow for a more efficient and protective authorization process.

Staff estimates that it will receive ten or fewer applications each year regarding new scrap tire facilities and LRPUTs. Using an estimated minimum wage of \$7.25 per hour and a timeframe of eight hours to prepare correspondence, staff estimates that it may cost as much as \$58 per instance for applicants to contact and coordinate with the appropriate local officials. There may be additional costs for LRPUT applicants to provide information about groundwater levels, but these costs are not expected to be significant.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. A small or micro-business is not expected to complete the application process unless it is economically advantageous for it to propose a new scrap tire facility or LRPUT. If a small or micro-business does propose a new facility or project, staff estimates that it may cost as much as \$58 per instance for a business to contact and coordinate with the appropriate local officials. There may be additional costs for LRPUT applicants to provide information about groundwater levels, but these costs are not expected to be significant.

#### 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 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 proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is intended to protect the environment and reduce risks to human health, but it is not expected to adversely affect the economy in a material way. The amended application requirements would only apply to new applications, so they would generally not cause any expense to existing facilities. For new applications, the additional requirements and coordination with local governments and fire authorities is not expected to result in a significant expense.

Furthermore, the proposal does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, there are no standards set for authorizing these types of facilities by federal law and the proposal is not required by state law. Second, the proposed rules do not exceed an express requirement of state law. There are no specific statutory requirements for authorizing these types of facilities. Third, the rules do not exceed an express 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. Fourth, the commission does not propose the rules solely under the general powers of the agency, but rather under the authority of: Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.112, which governs the storage, transportation, and disposal of used or scrap tires. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment regarding this draft regulatory impact analysis determination. 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.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rulemaking is to facilitate the ability of local officials and fire authorities to review and have input on applications for scrap tire facilities and LRP/UTs. This proposal would require applicants to provide additional information and request input from local authorities before an application could be approved. The executive director would be prohibited from approving an application if local governments provide timely notice that an application does not comply with local requirements. Input from local governments is expected to make these facilities more protective of public health and the environment.

The amendments, including provisions related to coordination with local governments, do not impose a burden on a recognized real property interest and therefore do not constitute a taking. The promulgation of the proposed rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rules. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas 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.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 11, 2010 at 10:00 AM 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 the 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 Michael Parrish, 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 2008-034-328-CE. The comment period closes May 17, 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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Brooke Jackson, Field Operations Support Division, (512) 239-0400.

#### SUBCHAPTER F. MANAGEMENT OF USED OR SCRAP TIRES

##### 30 TAC §§328.52, 328.55, 328.60, 328.63, 328.66, 328.69 - 328.71

#### STATUTORY AUTHORITY

These amendments are proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.112, Storage, Transportation, and Disposal of Used or Scrap Tires, which governs the storage, transportation, and disposal of used or scrap tires.

The proposed amendments implement THSC, §361.061 and §361.112.

##### §328.52. *Applicability.*

(a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter. All persons or facilities regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.

(b) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials. This subchapter does not apply to whole used or scrap tires that are classified as industrial solid waste.

(c) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by generators according to the requirements in §328.58 of this title (relating to Manifest System).

(d) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the timeframe requirements to be split, quartered, or shredded when stored at a registered storage site or a permitted landfill, but must be split, quartered, or shredded prior to disposal.

#### §328.55. *Registration Requirements.*

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Commission on Environmental Quality [Natural Resource Conservation Commission], P.O. Box 13087, Mail Code 174 [125], Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, in-

cluding the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation, or denial of registration, including Land Reclamation Projects Using Tires, procedures are as follows:

(A) The executive director may annul, suspend, or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §328.54 of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to maintain financial assurance as required;

(ix) dumping of used or scrap tires or tire pieces illegally;

(x) collection, storage, transportation, or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xi) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section; or

(xii) failure to obtain and maintain necessary approvals or certifications from the Fire Marshal with jurisdiction over the facility location.[]

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport, or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration under this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation, or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension, or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport, or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 and the rules of the commission.

§328.60. *Scrap Tire Storage Site Registration.*

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §328.55 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration, amended registration, or renewal shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan and a site operating plan; and evidence of financial assurance as required under this section.

(2) Upon filing a registration application, the applicant shall mail a copy of the application to the appropriate county judge and shall mail notice that an application has been filed to the appropriate regional council of government and the appropriate mayor if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city. Proof of mailing shall be provided in the form of return receipts for registered mail.

(3) Upon filing a registration application, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. Notice shall be published in a newspaper of general circulation. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the facility; the health authorities of the city and county in which the facility will

be located, if applicable; and the appropriate state senator and representative for the area encompassing the facility.

(4) Applications shall be submitted in triplicate either in writing or through an electronic reporting system as allowed by the executive director.

(5) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code, Chapter 1001 [Article 3271a, Vernon's Annotated Texas Statutes]. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(6) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(7) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(8) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in compliance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) Site and surrounding area information includes the following:

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division [~~(D-10)~~], P.O. Box 5020 [5051, West Austin Station], Austin, Texas, 78726-5020. [78763-5051;]

(ii) Topographic maps. These maps shall be United States Geological Survey 7-1/2-minute quadrangle sheets or equivalent, marked to show the storage site boundaries and roadway access. These maps may be obtained at a nominal cost from any[; Branch of Distribution;] United States Geological Survey, Federal Center, [~~Denver, Colorado 80225;~~]



(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(10) Engineering information includes the following:

(A) Site layout plan. The site layout plan shall include:

(i) location of storage areas;

(ii) location of fire lanes and fire control facilities;

(iii) security fencing, gates and gatehouse, site entrance, and access roads and fire lanes in accordance with §328.61 of this title (relating to Design Requirements for Scrap Tire Storage Site);

(iv) location of buildings; and

(v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams, and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls which shall be designed and pro-

vided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan;[-]

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location;[-]

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §328.71 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, fire-water storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(11) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §328.71 of this title [~~relating to Closure Cost Estimation for Financial Assurance~~].

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall

notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

#### §328.63. Scrap Tire Facility Requirements.

(a) Applicability. This section applies to owners or operators of facilities that process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. The applicant shall obtain a scrap tire storage site registration in accordance with §328.60 of this title (relating to Scrap Tire Storage Site Registration) if the applicant seeking registration for a scrap tire facility:

(1) intends to have more than a 30 calendar day supply of tires at the facility site; or

(2) is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site and intends to store in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director in accordance with §328.55 of this title (relating to Registration Requirements) before starting operations. An application for registration shall be made on a form provided by the executive director upon request. In addition to the General Registration requirements, the following registration information must be provided to the executive director.

(1) Persons that process, conduct energy recovery or recycle used or scrap tires or tire pieces shall submit an application for a registration number from the executive director for the operation of the scrap tire facility.

(2) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g., the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(3) The application for registration of a scrap tire facility shall be submitted [~~as one original and two copies to the executive director with all supporting data also submitted~~] in triplicate either in writing or through an electronic reporting system as allowed [~~unless otherwise directed~~] by the executive director.

(4) Data presented in support of an initial or renewal application for a scrap tire facility shall consist of the following information:

(A) an application form provided by the executive director and location map(s) pursuant to §328.60 of this title [~~(relating to Scrap Tire Storage Site Registration)~~];

(B) the maximum amount of tires (in pounds) that will be on the scrap tire facility at any given time;

(C) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(D) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(E) the product to be manufactured and the end use market;

(F) a property owner affidavit on a form provided by the executive director pursuant to §328.60 of this title [~~(relating to Scrap Tire Storage Site Registration)~~]; and

(G) a list of all other applicable federal, state, and local permits and/or registrations with the associated numbers;

(5) Persons that conduct energy recovery shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities before submitting an application for registration as a scrap tire facility.

(d) General requirements.

(1) The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; to the appropriate regional council of government; and, to the appropriate local fire authority. Proof of mailing shall be provided in the form of return receipts for registered mail.

(2) ~~(4)~~ Where local ordinances require controls and records more stringent than the requirements of this subchapter, scrap tire facility operators shall use those criteria to satisfy commission requirements under this section. The executive director shall not authorize a scrap tire facility if a local government with jurisdiction over a proposed facility provides timely written notice to the executive director that the proposed facility does not comply with local requirements. Local governments shall be allowed up to 45 days after an applicant mails notice to mail its reply to the executive director.

(3) ~~(2)~~ Stockpiles of used or scrap tires or tire pieces at the processing location that are awaiting splitting, quartering, shredding, processing, or recycling shall be monitored for vector control and appropriate vector control measures shall be applied when needed, but in no event less than once every two weeks.

(4) ~~(3)~~ If a scrap tire facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. The executive director shall not authorize a scrap tire facility if a local fire authority with jurisdiction over a proposed facility provides timely written notice to the executive director that the proposed facility does not comply with local requirements relating to fire protection. Local fire authority officials shall be allowed up to 45 days after an applicant mails notice to mail its reply to the executive director. [In addition, the scrap tire energy recovery facility shall provide a letter from the fire marshal within whose jurisdiction the scrap tire energy recovery facility is located stating that the fire marshal has reviewed and approved the fire protection system.]

(5) ~~(4)~~ The owner or operator of the scrap tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(6) ~~(5)~~ A scrap tire facility operator shall submit to the executive director an annual summary of facility activities from January 1 through December 31 of each calendar year, showing the number and type of scrap tires received, amount by weight of tires shredded, processed, burned for energy recovery or recycled, and the amount by weight of tire pieces removed from the facility. If the tire pieces were delivered to an end user, the annual report shall include the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

§328.66. *Land Reclamation Projects Using Tires (LRPUT).*

(a) Any person or entity intending to initiate a Land Reclamation Projects Using Tires (LRPUT) shall notify the executive director in writing of the intent to fill land by means of a LRPUT. The application shall be submitted in triplicate either in writing or through an electronic reporting system as allowed by the executive director. Owners/operators of LRPUTs are required to provide information to the executive director as part of the notification document as described in ~~paragraph (4) of~~ this subsection. Approval in writing by the executive director (authorization to proceed) is required before the reclamation project may be initiated. The executive director may withhold authorization to proceed for good cause related to protecting public health and the environment or if the information submitted is not deemed to be complete. The executive director shall have 60 days to review the notification documents for completeness. The executive director may request additional information if the executive director determines that the notification submittal does not address all applicable requirements of this subchapter or any potential risks to public health or the environment. The following information shall be submitted in the notification document or attachments thereto.

(1) The owner/operator of the LRPUT shall disclose in the notification the location of the project on a state highway map, United States Geological Survey map or similar, and provide a legal description of the property. The general location on the site where fill activities will take place shall be shown on one or more of these maps;

(2) A property owner's affidavit shall be submitted at the time of notification of intent to initiate a LRPUT and shall include the following:

(A) legal description of the property on which the LRPUT will occur; and

(B) acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that a reclamation project utilizing tire pieces exists on the site, and providing details about the location of the filled area within the property boundaries, areal extent of the fill project, coordinates or survey data, and the approximate volume or weight of tires which were used as fill, at such time as the fill project has been completed;

(3) The approximate volume of tire pieces proposed to be placed below ground, or the equivalent number of whole tires, and the approximate size and depth of the depression or borrow area to be filled shall be disclosed in the notification document;

(4) The approximate period of time during which the project will be conducted shall be disclosed, with estimated start and finish dates;

(5) The method of placement and commingling of the tire shreds to achieve a mix of tire pieces with the inert fill material in a proportion no greater than 50% of tire material by volume.

(6) A demonstration of the seasonal high groundwater level in the area. The executive director may require that an additional demonstration be provided for the seasonal high groundwater level at the proposed site based on the demonstration provided for the area. If the executive director requires an additional demonstration of the seasonal high groundwater level at the proposed site, the applicant shall provide the requested information within the timeframe specified by the executive director.

(7) ~~[(6)]~~ A statement signed and sealed by a professional engineer licensed to practice in Texas shall be submitted in the notification to the executive director to certify that the LRPUT is designed in a manner that will comply with the following standards.

(A) The LRPUT shall not cause a discharge of solid waste or pollutants adjacent to or into the waters of the state, including ground water, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) The LRPUT shall not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is complete; and

(C) Tire or tire pieces shall not be placed below ground in a manner that constitutes disposal as defined in Texas Health and Safety Code §361.003(7);

(8) ~~[(7)]~~ An affidavit signed by the property owner shall be submitted certifying that:

(A) the borrow area, hole or disturbed land area existed before the project; was excavated for another purpose; and was not excavated for the burial of tire pieces;

(B) the LRPUT will be completed in a manner that will comply with all regulations set forth in this subchapter and any other rules of the commission or any other local, state or federal agency which apply; and

(C) the local fire marshal has been notified of the tire placement or fill activity.

(9) ~~[(8)]~~ An affidavit signed by the operator shall be submitted certifying that he or she is familiar with the application and all supporting data; is aware of all commitments represented in the notification; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the project in accordance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(10) ~~[(9)]~~ The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; to the appropriate groundwater district; and to the appropriate regional council of government. Proof of mailing shall be provided in the form of return receipts for registered mail. The executive director shall not authorize a LRPUT if a local government with jurisdiction over a proposed facility provides timely written notice that the proposed facility does not comply with local requirements. Local governments shall be allowed up to 45 days after an applicant mails notice to mail its reply to the executive director.

(11) ~~[(10)]~~ Upon the filing of the notification documents, the facility owner or operator shall provide notice to the general pub-

lic by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the LRPUT project. The notices shall specify that the notification documents have been provided to the county judge and that they are available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the project; the health authorities of the city and county in which the project will be located, if applicable; and the appropriate state senator and representative for the area encompassing the project.

(b) Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a LRPUT must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

(c) The LRPUT shall not result in a public nuisance.

(d) An applicant for a [The owner or operator of the ] LRPUT shall notify the local fire authority [marshal or fire department] serving the area of the proposed tire placement or fill activity. If an owner or operator of a LRPUT does not intend to provide its own fire fighting personnel or system, the owner or operator shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. The executive director shall not authorize a LRPUT if a local fire authority with jurisdiction over a proposed facility provides timely written notice to the executive director that the proposed facility does not comply with local requirements relating to fire protection. Local fire authority officials shall be allowed up to 45 days after an applicant mails notice to mail its reply to the executive director. Applicants must provide proof that the mailed notice was received by the fire authority.

(e) All tires used to fill land shall be split, quartered, or shredded. Whole tires shall not be placed below ground.

(f) The owner and operator of the LRPUT shall comply with all applicable local ordinances, including any public safety, or zoning and land use laws.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with inert material acceptable for filling land. If greater than 50% of tire pieces by volume are placed below ground, the site is considered a tire monofill and is subject to §328.65 of this title (relating to Tire Monofill Permit Required).

(h) Tire pieces shall be placed no closer than 18 inches to the final grade or ground surface. A soil cover unadulterated with tire pieces shall make up at least the upper 18 inches of the reclamation project.

(i) The owner or operator of the LRPUT shall register as a scrap tire facility if a shredding operation is conducted on site for processing tires.

(j) The owner or operator of the LRPUT shall register as a scrap tire storage site under §328.60 of this title (relating to Scrap Tire Storage Site Registration) if:

(1) operations requiring storage of more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable

containers would qualify the site as a registered tire storage site under §328.60 of this title [~~(relating to Scrap Tire Storage Site Registration)~~]; and

(2) the construction of the LRPUT extends beyond 90 days from the date of delivery of tires or tire pieces to the site.

(k) The executive director shall issue an identifying number at the time the approval letter for the LRPUT is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPUT for which such a number is issued.

(l) A person may provide the commission with written comments on any notification of a LRPUT project. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for a LRPUT.

(m) Following completion of all fill activities for the LRPUT, the owner or operator shall submit to the executive director, for review and approval, a documented certification signed by a licensed [~~registered~~] professional engineer verifying that the project has been completed in accordance with this subchapter, the notification documents, and all attachments. Once approved, this certification shall be placed in the file.

§328.69. *Public Notice of Intent to Operate.*

(a) Scrap tire storage sites that are registered with the executive director shall publish notice in the county where they intend to store used or scrap tires or tire pieces before beginning operation. Notice shall be published in a newspaper of general circulation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Scrap tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square feet pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the scrap tire storage site owner shall contain at a minimum the following information:

- (1) the facility registration number;
- (2) the name under which the facility registration number was issued;
- (3) the permanent street address and telephone number of the facility;
- (4) a brief statement explaining the utilization activities the facility intends to perform at the location;
- (5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and
- (6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] as the state agency regulating this activity.

(e) The public notice of intent shall be published at least 30 days before beginning activities. The public notice of intent shall be published for a period of 10 days continuously. In counties where no daily newspaper is published, the notice shall be published at least once each week for three consecutive weeks.

§328.70. *Motion to Overturn* [~~for Reconsideration~~].

A person affected by a registration or Land Reclamation Projects Using Tires under this chapter may file a Motion to Overturn [~~for Reconsideration~~] pursuant to §50.139 [~~§50.39~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]), notwithstanding §50.131 [~~§50.31~~] of this title (relating to Purpose and Applicability).

§328.71. *Closure Cost Estimate for Financial Assurance.*

(a) As part of a facility's registration application, an owner or operator of a scrap tire storage site must prepare a written estimate, certified by a professional engineer, in current dollars, of the cost of hiring a third party to close the facility(ies). The closure cost for scrap tire storage sites is determined by the sum of paragraphs (1) and (2) of this subsection:

(1) The estimated cost for a third party to transport and dispose of the maximum site capacity of used or scrap tires and tire pieces as depicted by the site layout plan. The estimate shall include equipment and operator time for loading tires and disposal costs.

(2) The estimated cost for a third party to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products, securing the site, and preventing access to the equipment or removing it from the site to a location acceptable to the executive director; or the amount of \$3,000, whichever is greater.

(b) The closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required. The closure cost estimate provided by the owner or operator may be amended by the executive director. In some cases, the closure cost estimate may not be sufficient which means that the owner or operator remains responsible for the entire costs to close the site.

(c) Any amendment application shall include a recalculation of the closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires or tire pieces generated from out of state and stored at the facility until the registration amendment has been approved by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining the amount of financial assurance required.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator and shall be considered to weigh 20 pounds; and

(2) a cubic yard of tire shreds or pieces shall be considered to weigh no more than 950 pounds; however, other verifiable data may be used if accepted and approved by the executive director.

(e) The calculated capacity of a site as calculated for closure may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new closure calculations based upon the depicted volumetric capacity

converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised closure cost estimates shall be submitted to the executive director within 15 days of the executive director's written request to revise the closure cost estimate.

(f) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism.

(g) Financial assurance required under this section shall be provided in accordance with Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Sites).

(h) Closure will begin when:

- (1) the executive director deems the facility abandoned; or
- (2) the registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(3) closure is ordered by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] or a United States District Court or other court of competent jurisdiction.

(i) Following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so or when closure begins under the circumstances outlined in subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001539

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 239-2548



### 30 TAC §328.67, §328.68

*(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

These repeals are proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.112, Storage, Transportation, and Disposal of Used or Scrap Tires,

which governs the storage, transportation, and disposal of used or scrap tires.

The proposed repeals implement THSC, §361.061 and §361.112.

§328.67. *Special Authorization Priority Enforcement List (SAPEL).*

§328.68. *Priority Enforcement List (PEL) Program.*

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

Filed with the Office of the Secretary of State on April 5, 2010.

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Director, Environmental Law Division

Texas Commission on Environmental Quality

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## CHAPTER 330. MUNICIPAL SOLID WASTE SUBCHAPTER U. STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS

### 30 TAC §330.983

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §330.983.

#### 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 116, Control of Air Pollution by Permits for New Construction or Modification, to address issues raised by the United States Environmental Protection Agency (EPA) in its September 23, 2009, *Federal Register* (74 *Federal Register* 48450) notice of its intent to disapprove of the TCEQ rules that relate to the establishment of the state's qualified facilities program as a State Implementation Plan (SIP) revision.

#### SECTION DISCUSSION

##### §330.983, *Definitions*

The commission proposes to amend §330.983(8), *Definitions*, to correct a cross-reference in the definition of "Modification of existing facility" resulting from concurrently proposed amendments to Chapter 116.

#### 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 or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed changes to the rules for the qualified facilities program

are administrative in nature and do not impose any new requirements on regulated parties or significantly change agency procedures.

The proposed rulemaking amends various sections of 30 TAC Chapter 116 and Chapter 330 and addresses concerns expressed by the EPA regarding the agency's qualified facilities program in its review of the SIP. The proposed changes to established rules for the qualified facilities program are administrative in nature and clarify that the rules regarding qualified facilities are restricted to minor sources and modification of minor sources. The proposed rulemaking prescribes a separate netting analysis to ensure that all net changes in emissions for the same account number remain below major modification thresholds. The proposed changes will continue to allow the qualified facilities program to function for minor changes to facilities if the specified criteria are met. The proposed rulemaking also modifies the definition of BACT and clarifies its permissible use. No additional costs are imposed on facility owners or operators, and the proposed rulemaking will not have a fiscal impact on other state agencies or local governments that own or operate qualified facilities.

Since the proposed amendment to Chapter 330 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 with state rules. The proposed changes to the established rules for the qualified facilities program are administrative in nature and are not anticipated to impose any additional costs for businesses or individuals. Owners or operators of qualified facilities are not expected to experience any fiscal impacts as a result of the proposed rule.

The proposed rulemaking amends Chapter 330 and is part of a concurrent rulemaking for Chapter 116. Fiscal impacts of rules proposed for Chapter 116 can be found in a separate fiscal note for that chapter.

The proposed rulemaking amends Chapter 330 to update a cross-reference to a proposed amendment to Chapter 116. Specifically, the agency is proposing to renumber the existing paragraphs of §116.10 in a separate rulemaking, and the proposed Chapter 330 rule will reference the proposed change in Chapter 116 to ensure that cross-reference is correct and there is consistency between the two chapters.

Since the proposed amendment to Chapter 330 is administrative in nature, it is not expected to have a fiscal impact on other businesses or individuals.

#### 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 required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission 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 §116.10 and make non-substantive formatting and style changes. In a concurrent rulemaking, the commission is proposing to renumber the paragraphs in §116.10. 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.

Comments on this draft determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### 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 §116.10. 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 determined that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the bene-

fits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the rules include the construction and operation of solid waste treatment, storage, and disposal facilities and discharge of municipal and industrial waste to coastal waters.

The specific purpose of this proposal is to update a cross-reference in the rule. Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the rule is consistent with these CMP goals and policies; the rule does not create or have a direct or significant adverse effect on any CNRAs; and will ensure proper municipal solid waste (MSW) management in all regions of the state, including coastal areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rule-making action is consistent with CMP goals and policies.

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

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 10, 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. The commission is soliciting comment only on the proposed cross-reference change in paragraph §330.983(8), and is not soliciting comment on the remainder of the paragraphs in §330.983.

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 Devon Ryan, 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 2010-006-116-PR. The comment period closes May 17, 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\\_adapt.html](http://www.tceq.state.tx.us/nav/rules/propose_adapt.html). For further information, please contact Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and Texas Health and Safety Code (THSC), §361.011, concerning Commission's Jurisdiction: Municipal solid Waste, which establishes the commission's jurisdiction over all aspects of the

management of municipal solid waste; §361.024, concerning Rules and Standards, which provides the commission with rulemaking authority; §361.061, concerning Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; §363.061, concerning Commission Rules; Approval of Regional and Local Solid Waste Management Plan, which authorizes the commission to adopt rules relating to regional and local solid waste management plans; and §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendment implements THSC, §§361.002, 361.011, 361.024, 361.061, 361.123, 361.124, 363.061, 382.002, 382.003, 382.011, 382.051, and 382.05195.

#### §330.983. *Definitions.*

The terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise.

(1) **Bioremediation**--The biological breakdown of waste occurring at a landfill prior to placing the waste in a landfill cell. Processing may include adding supplements and oxygen to speed the natural biological processes, after which the material will meet landfill acceptance standards and can be placed in a cell. Common sources of material requiring bioremediation are transportation or pipeline accidents and spills.

(2) **Category 1 municipal solid waste landfills**--Landfills with a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(3) **Category 2 municipal solid waste landfills**--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate less than 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.



(4) Category 3 municipal solid waste landfills--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate greater than or equal to 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, 40 Code of Federal Regulations Part 63, Subpart AAAA, or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(5) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(6) Facility--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(7) Modification--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity after May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

(8) Modification of existing facility--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include conditions listed in the definition of modification of existing facility under §116.10 [§116.10(H)] of this title (relating to General Definitions).

(9) Process--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection with them, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(10) Project--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, for the purposes of this subchapter means the construction or modification of a facility or a group of facilities submitted under the same registration.

(11) Receptor--Any off-property recreational area, commercial/industrial structure, residence, or other normally occupied structures not used solely by the owner and/or operator of the municipal solid waste landfill site.

(12) Site--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

(13) Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

(14) Waste solidification--The physical process used to reduce the mobility of constituents in a waste or to eliminate free liquids.

(15) Waste stabilization--The chemical process used to stabilize the volatility of the constituents in a waste.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001534

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 239-6090



## CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§331.2, 331.17, and 331.18; and new §331.241 and §331.243.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement certain requirements of Senate Bill (SB) 1387, 81st Legislature, 2009. SB 1387 establishes a state-level regulatory framework for the safe geologic storage and sequestration of carbon dioxide into formations that may contain oil or gas. Although carbon dioxide-driven enhanced oil recovery is regulated by the Railroad Commission of Texas (RRC), there has been no regulatory framework in Texas for the pure storage and sequestration of carbon dioxide. As such, entities wanting to capture and sequester carbon dioxide for long-term storage were left without clear legal guidelines by which to operate. SB 1387 amended the Texas Water Code (TWC) and the Natural Resources Code relating to the implementation of projects involving the capture, injection, sequestration, or geologic storage of carbon dioxide.

SB 1387 gave the RRC jurisdiction over the injection of carbon dioxide into wells that are or may be productive of oil or gas and over storage in a salt brine formation existing above or below an oil or gas formation. SB 1387 also requires that, before the RRC may issue a permit under this legislation, the applicant for the permit must provide to the RRC a letter from the TCEQ executive director stating that underground fresh water supplies will not be injured by the permitted activity. To put into practice this requirement, the proposed rules implement new TWC, §27.046, Letter from Executive Director, and incorporate into Chapter 331 new definitions added to TWC, §27.002.

Section 11 of SB 1387 states that the TCEQ shall adopt rules under TWC, §27.046 as soon as practicable after the effective date of the legislation. SB 1387 became effective on September 1, 2009.

SB 1387 contains other provisions that are not addressed in this rulemaking, including the following requirements: amendment by the TCEQ and the RRC of the memorandum of understanding (MOU) recorded in 16 TAC §3.30 or creation of a new MOU to outline the duties of both agencies under the Underground Injection Control (UIC) program; establishment of the Anthropogenic Carbon Dioxide Storage Trust Fund consisting of permit fees for carbon dioxide injection wells and any penalties for violations of RRC rules; and submission of reports to the legislature on two interim studies, one by the General Land Office (in

consultation with the TCEQ, University of Texas Bureau of Economic Geology (BEG), and RRC) related to issues surrounding allowing carbon dioxide sequestration on state-owned land, and another report jointly by the TCEQ and RRC (in consultation with the BEG) related to permitting issues for carbon dioxide sequestration. These other requirements listed in this paragraph will be addressed in separate projects.

In addition to implementing the legislation, §331.17(d)(3) and §331.18(b)(6) are being revised to specify updated citations of technical requirements for pre-injection units consistent with the commission's repeal of Chapter 317 and replacement with 30 TAC Chapter 217, effective August 30, 2008.

#### SECTION BY SECTION DISCUSSION

The commission proposes to amend §331.2, Definitions, to add six definitions necessary to characterize new terminology used in SB 1387 that does not currently appear in TCEQ rules. Anthropogenic carbon dioxide (ACD), and Anthropogenic carbon dioxide injection well are added as paragraphs (6) and (7), respectively. Enhanced recovery operation, is added as paragraph (40). Geologic storage, and Geologic storage facility, are added as paragraphs (48) and (49), respectively. Oil or gas, is added as paragraph (79). The commission is renumbering the definitions in §331.2 as a result of the added definitions.

The commission proposes to amend §331.17(d)(3), Pre-injection Units Registration, and §331.18(b)(6), Registration Application, Processing, Notice, Comment, Motion to Overturn. Both of these paragraphs cite the applicable technical requirements of Chapter 317 as standards for pre-injection units used for storage or processing of waste to be injected, or in conjunction with an injection operation. However, Chapter 317 was repealed, and its provisions were incorporated into Chapter 217, in rules effective August 28, 2008 (33 TexReg 6843). Chapter 217 brought the standards and criteria for wastewater treatment systems up-to-date with current engineering practices and technology, and it is necessary to cite these current standards as technical requirements for pre-injection units in §331.17(d)(3) and §331.18(b)(6).

The commission proposes new §331.241, Purpose, Scope, and Applicability. Subsection (a) states that the purpose of proposed new Subchapter N is to implement the provisions of TWC, §27.046, as it applies to the commission. Subsection (b) clarifies that this subchapter does not apply to the injection of fluid through the use of a Class II injection well for the primary purpose of enhanced recovery operations.

The commission proposes new §331.243, Letter from Executive Director. Subsection (a) requires the applicant for a permit from the RRC to provide a letter from the executive director stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand. Subsection (b) specifies information submitted with the application for permit that the executive director shall review in making the determination required by subsection (a). This information includes the area of review and corrective action plans, subsurface monitoring plans required during injection or post-injection, post-injection site care plans, and any other elements of the application reasonably required in order for the executive director to make the determination required by subsection (a). Subsection (c) obligates the applicant to provide any information requested by the executive director to allow the executive director to make a determination under this section.

Subsection (d) requires the executive director, upon performing the review required by subsection (b) and making the determination under subsection (a), to provide a letter to the applicant stating the results of that determination.

#### 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. Rather than creating a new MOU, the agency and the RRC have chosen to amend the existing MOU to address interagency coordination needed to comply with provisions of SB 1387. Work on amending the existing MOU, found in 16 TAC, is currently in progress. The proposed rules are not expected to have significant fiscal implications for the RRC and are not expected to have any fiscal implications for other state agencies or units of local government.

The proposed rules implement a provision of SB 1387, 81st Legislature, 2009. This provision requires that permit applications submitted to the RRC for drilling and operating anthropogenic carbon dioxide injection wells or geologic storage facilities include a letter from the agency stating that the well will not injure any freshwater strata or that the geologic storage facility is not located in a freshwater sand formation or stratum. Other provisions of SB 1387 pertaining to the agency will be implemented in separate rulemakings.

SB 1387 assigns jurisdiction to the RRC for the injection or storage of anthropogenic carbon dioxide and requires the RRC to permit these activities. The bill allows the RRC to impose fees for permitting, monitoring, and inspecting carbon dioxide wells and storage facilities. This fee revenue is deposited to the Anthropogenic Carbon Dioxide Trust Fund to be used only by the RRC.

The proposed rules amend Chapter 331 and specify information to be submitted with the permit application that the agency will need to complete its review. This information includes the area of review, corrective action plans, subsurface monitoring plans, post-injection site care plans, and any other elements reasonably needed in order for the executive director to make the determination required. The proposed rules also incorporate needed definitions for terms and make other administrative changes to enhance readability.

In order to determine whether injecting or storing carbon dioxide will injure any freshwater strata or if the formation is freshwater sand, agency staff will have to do substantially as extensive a review as currently required for a Class I injection well permit application. When federal rules for carbon dioxide injection wells take effect, the complexity and technical requirements for this review could increase since it is expected that such a review may require many more wells to be researched and evaluated for corrective action. Computational models predicting the physical location of an injected carbon dioxide plume and the extent of critical pressures created by injection that could impose a risk to fresh water resources will be needed and are expected to become the focus of the agency's review. The computational models will need to be able to handle complex multi-phase flows at a level of complexity not currently present in the agency's UIC program. In addition, the agency will be required to coordinate with RRC staff, train staff, develop new program capabilities, and ensure staff is trained in new processes and procedures. However,

the agency will conduct needed reviews using currently available resources.

The proposed rules are not expected to have a fiscal impact on local governments unless they wish to inject or store carbon dioxide. Local governments that own or operate coal-fired power generating facilities are not expected to inject or store carbon dioxide at this time.

#### 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 continued protection of fresh water by agency performance of reviews and determinations regarding the use of injection wells or carbon dioxide storage.

The geologic storage of carbon dioxide is costly because it requires the conversion of a gas to a liquid. Carbon dioxide capture and processing uses large specialized equipment, which would increase capital and operating costs. Equipment to capture and process carbon dioxide requires a high consumption of energy (approximately 25% to 30% of electricity produced by a coal-fired plant), and there are additional costs that may be incurred for transporting, injecting, and monitoring because of high pressures required and requirements to ensure hazardous materials are removed. For these reasons, it is expected that large businesses owning or operating coal-fired power plants will be the principal parties affected by the proposed rules. Other large businesses in other industrial groups may also be interested in carbon dioxide storage in injection wells, but since rules governing this activity have yet to be enacted, it is difficult to know at this point which industries would choose carbon dioxide storage. Since the agency will not typically require additional information beyond the contents of the RRC application, staff does not expect the proposed rules to have a significant fiscal impact on these large businesses. If the agency does require additional information beyond the RRC application, consultant fees that a business might pay for such work could be as much as \$100 per hour.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Due to the high cost of energy and high energy consumption required for carbon dioxide storage, small businesses are not expected to apply for permits to store carbon dioxide, and the proposed rules are not expected to have a fiscal impact on them. If a small business does decide to submit an application to the RRC for carbon dioxide storage, it could expect to pay the same as a large business to complete the application process.

#### 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 protect the environment and comply with state law. In addition, the proposed rules are not expected to have an adverse affect on 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 lo-

cal economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules do not meet the definition of a major environmental rule because it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules implement specific requirements of SB 1387, 81st Legislature, 2009. SB 1387 added six definitions to Chapter 7 of the TWC. SB 1387, codified at TWC, §27.46, requires a letter from the executive director be submitted to the RRC by an applicant for a permit from the RRC that would authorize anthropogenic carbon dioxide injection well(s) for geologic storage of and operation of a geologic storage facility. This letter from the executive director must state that drilling and operating the proposed anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand. The intent of the proposed rules is to add six new definitions to TCEQ's UIC rules, correct obsolete cross references, and to implement provisions for the accommodation of a prerequisite letter from the executive director. The proposed rulemaking action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. In this case, the proposed rules do not meet any of these applicability requirements. First, in adding definitions and implementing provisions for the accommodation of a prerequisite letter from the executive director, the proposed rules do not exceed a standard set by federal law because there are no applicable federal standards. Second, the proposed rules do not exceed an express requirement of state law because SB 1387 added six definitions to Chapter 7 of the TWC and imposed a prerequisite letter from the executive director as a step in the RRC's permitting process to authorize anthropogenic carbon dioxide injection wells for geologic storage and operation of geologic storage facilities. Third, the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules

solely under the commission's general powers. These rules are proposed under the specific authority of TWC, §27.046(c). Therefore, the commission concludes that the proposed rules do not meet the definition of a major environmental rule.

The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to implement legislative changes to TCEQ's UIC rules by adding definitions and implementing provisions for the accommodation of a prerequisite letter from the executive director as a step in the RRC's permitting process to authorize anthropogenic carbon dioxide injection wells for geologic storage and operation of geologic storage facilities.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of public or private real property because the proposed rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rules would add definitions and implement provisions for the accommodation of a prerequisite letter from the executive director as a step in the RRC's permitting process to authorize anthropogenic carbon dioxide injection wells for geologic storage and operation of geologic storage facilities. Because these proposed rules only establish the requisites for the executive director's review of an application for a permit that is submitted to the RRC, the proposed rules do not affect real property. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas 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.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 12, 2010 at 9:00 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 Michael Parrish, 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 2009-044-331-PR. The comment period closes May 17, 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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Kathryn Flegal, Underground Injection Control Permits Team, phone (512) 239-6890.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 30 TAC §§331.2, 331.17, 331.18

##### STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.046(c), which requires the commission to adopt rules to implement and administer §27.046.

The proposed amendments implement changes to TWC, §27.002, and correct obsolete cross-references.

##### §331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well which has been permanently discontinued from use or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

(2) Activity--The construction or operation of any of the following:

- (A) an injection well for disposal of waste;
- (B) an injection or production well for the recovery of minerals;
- (C) a monitor well at a Class III injection well site;
- (D) pre-injection units for processing or storage of waste; or
- (E) any other class of injection well regulated by the commission.

(3) Affected person--Any person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the proposed injection operation for which a permit is sought.

(4) Annulus--The space in the wellbore between the injection tubing and the long string casing and/or liner.

(5) Annulus pressure differential--The difference between the annulus pressure and the injection pressure in an injection well.

(6) Anthropogenic carbon dioxide (ACD)--

(A) Carbon dioxide that would otherwise have been released into the atmosphere that has been:

(i) stripped, segregated, or divided from any other fluid stream; or

(ii) captured from an emissions source, including:

(I) an advanced clean energy project as defined by Texas Health and Safety Code, §382.003, or another type of electric generation facility; or

(II) an industrial source of emissions;

(B) any incidental associated substance derived from the source material for, or from the process of capturing, carbon dioxide described by subparagraph (A) of this paragraph;

(C) any substance added to carbon dioxide described by subparagraph (A) of this paragraph to enable or improve the process of injecting the carbon dioxide; and

(D) does not include naturally occurring carbon dioxide that is recaptured, recycled, and reinjected as part of enhanced recovery operations.

(7) Anthropogenic carbon dioxide injection well--An injection well used to inject or transmit anthropogenic carbon dioxide into a reservoir.

(8) [(6)] Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(9) [(7)] Aquifer restoration--The process used to achieve or exceed water quality levels established by the commission for a permit/production area.

(10) [(8)] Aquifer storage well--A Class V injection well used for the injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(11) [(9)] Area of review--The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 mile or a number calculated according to the criteria set forth in §331.42 of this title.

(12) [(40)] Area permit--A permit that authorizes the construction and operation of two or more similar injection, production, or monitoring wells used in operations associated with Class III well activities within a specified area.

(13) [(44)] Artificial liner--The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

(14) [(42)] Baseline quality--The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection operations.

(15) [(43)] Baseline well--A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

(16) [(44)] Buffer area--The area between any mine area boundary and the permit area boundary.

(17) [(45)] Caprock--A geologic formation typically overlying the crest and sides of a salt stock. The caprock consists of a complex assemblage of minerals including calcite (CaCO<sub>3</sub>), anhydrite (CaSO<sub>4</sub>), and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(18) [(46)] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(19) [(47)] Casing--Material lining used to seal off strata at and below the earth's surface.

(20) [(48)] Cement--A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent movement of fluids within or adjacent to a borehole, or a similar substance used in plugging a well.

(21) [(49)] Cementing--The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

(22) [(20)] Cesspool--A drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(23) [(21)] Commercial facility--A Class I permitted facility, where one or more commercial wells are operated.

(24) [(22)] Commercial underground injection control (UIC) Class I well facility--Any waste management facility that accepts, for a charge, hazardous or nonhazardous industrial solid waste for disposal in a UIC Class I injection well, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(25) [(23)] Commercial well--An underground injection control Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person.

(26) [(24)] Conductor casing or conductor pipe--A short string of large-diameter casing used to keep the top of the wellbore open during drilling operations.

(27) [(25)] Cone of influence--The potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water or freshwater aquifer.

(28) [(26)] Confining zone--A part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(29) [(27)] Contaminant--Any physical, biological, chemical, or radiological substance or matter in water.

(30) [(28)] Control parameter--Any physical parameter or chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well. Monitoring includes measurement with field instrumentation or sample collection and laboratory analysis.

(31) [(29)] Desalination brine--The waste stream produced by a desalination operation containing concentrated salt water, other

naturally occurring impurities, and additives used in the operation and maintenance of a desalination operation.

(32) [(30)] Desalination concentrate--Same as desalination brine.

(33) [(31)] Desalination operation--A process which produces water of usable quality by desalination.

(34) [(32)] Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(35) [(33)] Disturbed salt zone--Zone of salt enveloping a salt cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt cavern, and is the result of mining activities during salt cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(36) [(34)] Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(37) [(35)] Drinking water treatment residuals--Materials generated, concentrated or produced as a result of treating water for human consumption.

(38) [(36)] Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(39) [(37)] Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(40) Enhanced recovery operation--The use of any process for the displacement of hydrocarbons from a reservoir other than primary recovery and includes the use of any physical, chemical, thermal, or biological process and any co-production project.

(41) [(38)] Excursion--The movement of mining solutions, as determined by analysis for control parameters, into a designated monitor well.

(42) [(39)] Existing injection well--A Class I well which was authorized by an approved state or United States Environmental Protection Agency-administered program before August 25, 1988, or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(43) [(40)] Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(44) [(41)] Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(45) [(42)] Formation fluid--Fluid present in a formation under natural conditions.

(46) [(43)] Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) it is used as drinking water for human consumption; or

(ii) the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

(iii) it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(47) [(44)] General permit--A permit issued under the provisions of this chapter authorizing the disposal of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals as provided by Texas Water Code, §27.023.

(48) Geologic storage--The underground storage of anthropogenic carbon dioxide in a reservoir.

(49) Geologic storage facility--The underground reservoir, underground equipment, injection wells, and surface buildings and equipment used or to be used for the geologic storage of anthropogenic carbon dioxide and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the geologic storage of anthropogenic carbon dioxide. The term includes any reasonable and necessary areal buffer and subsurface monitoring zones, pressure fronts, and other areas as may be necessary for this state to receive delegation of any federal underground injection control program relating to the storage of carbon dioxide. The term does not include a pipeline used to transport carbon dioxide from the facility at which the carbon dioxide is captured to the geologic storage facility. The storage of carbon dioxide incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(50) [(45)] Groundwater--Water below the land surface in a zone of saturation.

(51) [(46)] Groundwater protection area--A geographic area (delineated by the state under Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(52) [(47)] Hazardous waste--Hazardous waste as defined in §335.1 of this title.

(53) [(48)] Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(54) [(49)] Individual permit--A permit, as defined in the Texas Water Code (TWC), §27.011 and §27.021, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 27 (other than TWC, §27.023).

(55) [(50)] Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(56) [(51)] Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(57) [(52)] Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(58) [(53)] Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(59) [(54)] In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(60) [(55)] Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(61) [(56)] Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(62) [(57)] Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

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

(64) [(59)] Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(65) [(60)] Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(66) [(61)] Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(67) [(62)] Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(68) [(63)] Mine plan--A plan for operations at a mine, consisting of:

(A) a map of the permit area identifying the location and extent of existing and proposed production areas; and

(B) an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(69) [(64)] Monitor well--Any well used for the sampling or measurement with field instrumentation of any chemical or physical property of subsurface strata or their contained fluids. The term "monitor well" shall have the same meaning as the term "monitoring well" as defined in TWC, §27.002.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling or measurement with field instrumentation is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(70) [(65)] Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(71) [(66)] New injection well--Any well, or group of wells, not an existing injection well.

(72) [(67)] New waste stream--A waste stream not permitted.

(73) [(68)] Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(74) [(69)] Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(75) [(70)] Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(76) [(71)] Notice of change (NOC)--A written submittal to the executive director from a permittee authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the waste to be injected.

(77) [(72)] Notice of intent (NOI)--A written submittal to the executive director requesting coverage under the terms of a general permit.

(78) [(73)] Off-site--Property which cannot be characterized as on-site.

(79) Oil or gas--Oil, natural gas, or gas condensate.

(80) [(74)] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(81) [(75)] Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(82) [(76)] Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(83) [(77)] Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(84) [(78)] Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(85) [(79)] Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

(i) to humans, animal life, vegetation, or property;

or

(ii) to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(86) [(80)] Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(87) [(81)] Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(88) [(82)] Production area authorization--An authorization, issued under the terms of a Class III injection well area permit, approving the initiation of mining activities in a specified production area within a permit area, and setting specific conditions for production and restoration in each production area within an area permit.

(89) [(83)] Production well--A well used to recover uranium through in situ solution recovery, including an injection well used to recover uranium. The term does not include a well used to inject waste.

(90) [(84)] Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(91) [(85)] Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances as defined in §290.38(47) of this title (relating to Definitions).

(92) [(86)] Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, and as amended.

(93) [(87)] Registered Well--A well registered in accordance with the requirements of §331.221 of this title (relating to Registration of Wells).

(94) [(88)] Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(95) [(89)] Restored aquifer--An aquifer whose local groundwater quality, within a production area, has, by natural or artificial processes, returned to the restoration table values established in accordance with the requirements of §331.107 of this title (relating to Restoration).

(96) [(90)] Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(97) [(91)] Salt cavern confining zone--A zone between the salt cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(98) [(92)] Salt cavern injection interval--That part of a salt cavern injection zone consisting of the void space of the salt cavern into

which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(99) [(93)] Salt cavern injection zone--The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(100) [(94)] Salt cavern solid waste disposal well or salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Railroad Commission of Texas [Texas Railroad Commission], a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(101) [(95)] Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(102) [(96)] Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(103) [(97)] Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(104) [(98)] Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(105) [(99)] Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(106) [(100)] Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(107) [(101)] Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(108) [(102)] Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(109) [(103)] Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(110) [(104)] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(111) [(105)] Underground injection--The subsurface emplacement of fluids through a well.



(112) [(406)] Underground injection control--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(113) [(407)] Underground source of drinking water--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(114) [(408)] Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(115) [(409)] Verifying analysis--A second sampling and analysis or measurement with instrumentation of control parameters for the purpose of confirming a routine sample analysis or measurement which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(116) [(410)] Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sink-hole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(117) [(411)] Well injection--The subsurface emplacement of fluids through a well.

(118) [(412)] Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(119) [(413)] Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(120) [(414)] Workover--An operation in which a down-hole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

*§331.17. Pre-injection Units Registration.*

(a) Pre-injection units not otherwise authorized under this chapter, except for those pre-injection units used in conjunction with a Class I well authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, must be registered in accordance with the requirements of this section. Pre-injection units used in conjunction with a Class I well authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are not subject to authorization by registration but are subject to authorization by an individual permit or under the general permit issued under Subchapter L of this chapter (relating to General Permit Authorizing Use of a Class I Injection Well

to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals).

(b) No registration shall be approved, and registrations may be denied or revoked, if the executive director determines that:

(1) a pre-injection unit causes or allows the release of fluid that would result in the pollution of underground sources of drinking water, fresh water, or surface water; or

(2) a pre-injection unit poses an immediate threat to public health or safety.

(c) Registration procedures for pre-injection units not otherwise authorized under this chapter must include the following.

(1) The owner or operator shall submit an application for registration to the executive director, in accordance with the applicable requirements of this subchapter;

(A) for any proposed pre-injection unit, obtain approval of the registration before operating the pre-injection unit; or

(B) for any existing unauthorized pre-injection unit, submit the application on or before the date the injection well permit renewal application is submitted.

(2) The owner or operator shall cease operation of any pre-injection unit if:

(A) the registration application for an existing pre-injection unit has not been submitted before approval of the injection well permit renewal;

(B) renewal of the registration is denied by the executive director;

(C) the term of the registration expires, however, if registration renewal procedures have been initiated before the permit expiration date, the existing registration will remain in full force and effect and will not expire until commission action on the application for renewal of the registration is final;

(D) the registration is denied or revoked by the executive director; or

(E) the executive director determines that the unit poses an immediate threat to public health or safety.

(d) Design criteria are as follows:

(1) pre-injection units shall be designed in such a manner as to protect underground sources of drinking water, fresh water, and surface water from pollution;

(2) pre-injection units shall be designed in such a manner as to enable the authorized injection well to meet all permit conditions and applicable rules and law;

(3) pre-injection units shall meet the design standards contained in Chapter 217 [317] of this title (relating to Design Criteria for Domestic Wastewater [Sewerage] Systems) which apply to the type of unit being proposed; and

(4) all ponds shall be lined according to the requirements of §331.47 of this title (relating to Pond Lining).

*§331.18. Registration Application, Processing, Notice, Comment, Motion to Overturn.*

(a) Applicability. This section sets forth the requirements for applications and the manner in which action will be taken on applications filed for a registration for pre-injection units.

(b) Contents of application. Registration applications for pre-injection units must include:

(1) complete application form(s), signed and notarized, and required number of copies provided;

(2) the verified legal status of the applicant(s) as applicable;

(3) the signature of the applicant(s), in accordance with the requirements of §305.44 of this title (relating to Signatories to Applications);

(4) a notarized affidavit from the applicant(s) verifying land ownership or landowner agreement to the proposed activity. Pre-injection unit registration information on file with the commission shall be confirmed or updated, in writing, no later than 30 days after:

(A) the mailing address and/or telephone number of the owner or operator is changed; or

(B) requested by the commission or executive director;

(5) maps showing:

(A) the name and address of persons who own the property on which the existing or proposed pre-injection unit is or will be located, if different from the applicant; and

(B) the name and address of landowners adjacent to the property on which the pre-injection unit is located or is proposed to be located.

(6) plans and specifications of the pre-injection units which have the seal of a professional engineer licensed in the State of Texas. The engineer shall certify that the submission meets the applicable technical requirements of Chapter 217 [347] of this title (relating to Design Criteria for Domestic Wastewater [Sewerage] Systems);

(7) the attachment of technical reports and supporting data required by the application; and

(8) any other information the executive director or the commission may reasonably require.

(c) Administrative completeness. Upon receipt of an application for a registration, the executive director or his designee shall assign the application a number for identification purposes. Applications for registrations shall be reviewed by the staff for administrative completeness within the period specified by §281.3(a) of this title (relating to Initial Review).

(d) Technical completeness. When the application is declared to be technically complete, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of technical completeness which is suitable for mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification as stated in subsection (e) of this section. The notice of receipt of an application for registration and declaration of technical completeness shall contain the following information:

(1) the location of the pre-injection unit;

(2) the identifying number given the application by the executive director;

(3) the type of registration sought under the application;

(4) the name, address, and telephone number of the applicant and the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information about the application to register the unit;

(5) the date on which the application was submitted;

(6) a brief summary of the information included in the application;

(7) a statement that the registration application has been provided to the county judge and that it is available for review by interested parties;

(8) a brief description of public comment procedures; and

(9) the deadline to file public comment. The deadline shall be not less than 30 days after the date notice is mailed.

(e) Notice requirements.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment or renewal of a registration for pre-injection units.

(2) The chief clerk of the commission shall mail Notice of Receipt of Application and Technical Completeness, along with a copy of the registration application, to the county judge in the county where the pre-injection unit is located or proposed to be located.

(3) The chief clerk of the commission shall mail Notice of Receipt of Application and Technical Completeness to the adjacent landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(f) Application processing procedures. Any person who is required to obtain approval of a registration, or who requests an amendment, modification, or renewal of a registration for pre-injection units is subject to the application processing procedures and requirements found in Chapter 281 of this title (relating to Applications [Application] Processing).

(g) Major amendment. A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration. Notice requirements of subsection (e) of this section are applicable to major amendments.

(h) Minor amendment. A minor amendment is an amendment to improve or maintain the quality or method of management of waste, and includes any other change to a registration issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of waters in the state. Notice requirements of subsection (e) of this section are not applicable to minor amendments.

(i) Public comment on registrations. A person may provide the commission with written comments on any new, major amendment, or renewal applications to register pre-injection units. The executive director shall review any written comments received within the public comment period. The written information received shall be utilized by the executive director in determining what action to take on the application for registration, in accordance with §331.17 of this title (relating to Pre-injection Units Registration [Registration of Pre-Injection Units]). After the deadline for submitting public comment, the executive director may take final action on the application.

(j) Delegation, effective date of registration, term. The commission delegates to the executive director the authority to approve pre-injection unit registrations. The effective date for the registration of a site at which pre-injection units are located is the date that the executive director by letter, approves the application. The term for registration shall not exceed ten years and shall be synchronized with the term of the injection well permit.

(k) Motion to overturn. The applicant or a person affected may file with the chief clerk a motion to overturn the executive director's final approval of an application, under §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision).

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

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



## SUBCHAPTER N. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE

### 30 TAC §331.241, §331.243

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.046(c), which requires the commission to adopt rules to implement and administer §27.046.

The proposed new sections implement TWC, §27.046.

#### §331.241. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to implement the provisions of the Injection Well Act, Texas Water Code, §27.046, as it applies to the commission.

(b) This subchapter does not apply to the injection of fluid through the use of a Class II injection well as defined by 40 Code of Federal Regulations §144.6(b) for the primary purpose of enhanced recovery operations.

#### §331.243. Letter from Executive Director.

(a) As provided by Texas Water Code, §27.046(a), "Letter From Executive Director," the Railroad Commission of Texas may not issue a permit under Texas Water Code, Chapter 27, Subchapter C-1, until the applicant for the permit provides to the Railroad Commission of Texas a letter from the executive director stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) To make the determination required by subsection (a) of this section, the executive director shall review:

- (1) the area of review and corrective action plans;
- (2) any subsurface monitoring plans required during injection or post-injection;
- (3) any post-injection site care plans; and

(4) any other elements of the application reasonably required in order for the executive director to make the determination required by subsection (a) of this section.

(c) An applicant shall provide any information requested by the executive director to allow the executive director to make a determination under this section.

(d) Upon performing the review required by subsection (b) of this section and making the determination under subsection (a) of this section, the executive director shall provide a letter to the applicant stating the results of that determination.

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

Filed with the Office of the Secretary of State on April 5, 2010.

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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) 239-2548



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

#### SUBCHAPTER R. ACCOUNTING PROCEDURES

### 37 TAC §1.231

The Texas Department of Public Safety (the department) proposes amendments to §1.231, concerning Procedures for Vendor Protests of Procurements. The proposed amendments are necessary to change the title of the department individual to whom a solicitation, evaluation, or award of a contract may formally be protested.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no significant fiscal implications for state or local government, or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code,

§2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Kevin Jones, Procurement and Contract Administrator/HUB Coordinator, Procurement and Contract Services, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5836.

The amendments are proposed pursuant to: Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §2155.076, which requires the department to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

Texas Government Code, §411.004(3) and §2155.076 are affected by this proposal.

§1.231. *Procedures for Vendor Protests of Procurements.*

(a) Definitions.

(1) Working days-- [~~"Working days" are~~] Monday through Friday, except national and state holidays as defined by Texas Government Code, §662.003 [~~of the Texas Government Code~~]. When counting working days, do not count the day of the act or event after which the ten-day period of time begins to run. The last day of the ten-day period is included in the count, unless the last day is a Saturday, Sunday, national holiday or state holiday, in which event the ten-day period runs until the end of the next day which is not a Saturday, Sunday, national holiday or state holiday.

(2) Interested parties--All [~~"Interested parties" are all~~] contractors who have submitted bids, offers, responses or proposals for the contract at issue.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract, may formally protest to the assistant director, administration [chief of finance]. Such protests must be in writing, addressed to the assistant director, administration [chief of finance] and filed within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. A protest is considered filed when received by the assistant director, administration [chief of finance]. Formal protests must conform to the requirements herein and shall be resolved in accordance with the procedure set forth herein. Copies of the protest must be mailed or delivered by the protesting party to all other identifiable interested parties.

(c) In the event of a timely protest under this section, the department shall not proceed further with the solicitation or award of the contract unless the director, after consultation with the end user and the assistant director, administration [chief of finance], makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

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

(f) The assistant director, administration [chief of finance] shall have the authority, prior to appeal to the director, to settle and resolve a protest concerning the solicitation or award of a contract. The assistant director, administration [chief of finance] may solicit written responses to the protest from other interested parties.

(g) If the protest is not resolved by mutual agreement, the assistant director, administration [chief of finance] will issue a written determination on the protest.

(1) If the assistant director, administration [chief of finance] determines that no violation of rules or statutes has occurred, the assistant director, administration [chief of finance] shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the assistant director, administration [chief of finance] determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the assistant director, administration [chief of finance] shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the assistant director, administration [chief of finance] determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the assistant director, administration [chief of finance] shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(h) The assistant director, administration's [chief of finance's] determination on a protest may be appealed by the protesting party to the director. The appeal shall be limited to review of the assistant director, administration's [chief of finance's] determination. Copies of the appeal must be mailed or delivered by the appealing party to the other interested parties and must contain an affidavit that such copies have been provided. An appeal of the assistant director, administration's [chief of finance's] determination must be in writing and must be received in the director's office no later than ten working days after the protestor's receipt of the assistant director, administration's [chief of finance's] determination. The protestor is deemed to have received the assistant director, administration's [chief of finance's] determination upon the earliest of the following:

(1) - (3) (No change.)

(i) - (k) (No change.)

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

Filed with the Office of the Secretary of State on April 5, 2010.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 15. DRIVER LICENSE RULES  
SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.89

The Texas Department of Public Safety (the department) proposes amendments to §15.89, concerning Moving Violations.

The 81st Legislature, 2009, enacted House Bill 3389, creating Code of Criminal Procedure, §102.022, requiring Texas state and local courts to assess a fine of ten cents for any moving violation conviction defined by Texas Transportation Code, §708.052. Section 15.89 was originally published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3776) to provide a definition of a moving violation and identify by rule a listing of moving violations applicable to the Driver Responsibility Program.

The department proposes these amendments to remove discontinued moving violations and to incorporate new moving violations that result in a driver being assigned points under the Driver Responsibility Program, as defined by Texas Transportation Code, §708.052.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment. There are no economic costs to individuals who are required to comply with the amendment. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has also determined that for each year of the first five-year period the amendments are in effect, the public benefit anticipated will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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 the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the amendment.

Comments on the proposal may be submitted to Rebekah Hibbs, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDRuleComments@txdps.state.tx.us.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and along with Texas Transportation Code, §708.052, which requires the department to designate offenses that constitute moving violation of the traffic law.

Texas Government Code, §411.004(3), and Texas Transportation Code, §708.052, are affected by this proposal.

§15.89. *Moving Violations.*

(a) (No change.)

(b) A list of traffic offenses that constitute a moving violation is available in Table 1.

Figure: 37 TAC §15.89(b)

(c) (No change.)

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

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Stuart Platt

General Counsel

Texas Department of Public Safety

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## CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

### SUBCHAPTER K. PRESERVATION OF BIOLOGICAL EVIDENCE

#### 37 TAC §§28.171 - 28.175

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

The Texas Department of Public Safety (the department) repeals §§28.171 - 28.175, concerning Preservation of Biological Evidence. Repeal of these sections is necessary due to the addition of new Subchapter E and subsequent renumbering to leave room for later expansion within Chapter 28. The repealed rules are renumbered as new §§28.181 - 28.185 in a simultaneous filing. New §28.181 and §28.184 (former §28.171 and §28.174) are proposed with nonsubstantive changes to the text of the original sections and new §§28.182, 28.183, and 28.185 (former §§28.172, 28.173, and 28.175) are proposed without changes to the text of the original sections.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 risks to human health from environmental exposure and

that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007 does not apply to this repeal. Accordingly, the department is not required to complete a takings impact assessment regarding this repeal.

Comments on the repeal may be submitted to D. Pat Johnson, Deputy Assistant Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143.

The repealed sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.052, which states the department shall adopt rules relating to the delivery, cataloging, and preservation of evidence stored under these sections.

Texas Government Code, §411.004(3) and §411.052 are affected by this proposal.

§28.171. *Applicability.*

§28.172. *Preservation of Evidence.*

§28.173. *Cataloging.*

§28.174. *Delivery.*

§28.175. *Disposition of Evidence.*

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

Filed with the Office of the Secretary of State on April 5, 2010.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



### 37 TAC §§28.181 - 28.185

The Texas Department of Public Safety (the department) proposes new §§28.181 - 28.185, concerning Preservation of Biological Evidence. New §§28.181 - 28.185 (former §§28.171 - 28.175) set forth the preservation and transfer of biological evidence as specified in Code of Criminal Procedure, Article 38.43. New §28.181 and §28.184 (former §28.171 and §28.174) are proposed with nonsubstantive changes to the text of the original sections and new §§28.182, 28.183, and 28.185 (former §§28.172, 28.173, and 28.175) are proposed without changes to the text of the original sections.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. MacBride has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to D. Pat Johnson, Deputy Assistant Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.052, which states the department shall adopt rules relating to the delivery, cataloging, and preservation of evidence stored under these sections.

Texas Government Code, §411.004(3) and §411.052 are affected by this proposal.

§28.181. *Applicability.*

This subchapter applies to the preservation and transfer of biological evidence as specified in Article 38.43, Code of Criminal Procedure.

§28.182. *Preservation of Evidence.*

(a) Each item of biological evidence is to be packaged separately to prevent contamination.

(b) Each package of evidence will be labeled and marked for identification and sealed to preserve its chain-of-custody.

(c) The evidence will be stored in climate controlled conditions in a department facility, which provides security and limited access.

§28.183. *Cataloging.*

(a) The following information must accompany all evidence:

(1) full name of convicted person;

(2) date of offense for which he/she was convicted;

(3) county of offense;

(4) offense for which convicted;

- (5) sentence that convicted person received;
- (6) name of victim of offense; and
- (7) name of investigating agency with agency case/incident number.

(b) The department will maintain a catalog of information on all evidence received. It will include the information in subsection (a) of this section.

§28.184. Delivery.

(a) The items of biological evidence must be packaged in a manner to avoid contamination.

(b) Each item shall be in a separate paper package completely sealed.

(c) Each package shall be labeled for identification.

(d) Multiple packages related to a single offense may be placed into one outer container (box).

(e) The sealed and labeled box may be delivered to the department warehouse site in person, by U.S. Postal Service, or by private carrier. The Department of Public Safety Crime Laboratory warehouse address will be posted on the department's web site at [www.txdps.state.tx.us](http://www.txdps.state.tx.us).

(f) The items must include a packing slip containing the cataloging information as specified in §28.183(a) of this title (relating to Cataloging).

§28.185. Disposition of Evidence.

(a) The submitting agency, prosecutor's office, or clerk's office shall notify the department at the warehouse address posted on the department's web site within 30 days of the date the inmate either completes his/her sentence, is released on parole or mandatory supervision, or dies.

(b) Upon receiving such notification, the department shall return the evidence to the submitting agency, prosecutor's office, or clerk's office.

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

Filed with the Office of the Secretary of State on April 5, 2010.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 36. METALS REGISTRATION

### 37 TAC §§36.1 - 36.21

The Texas Department of Public Safety (the department) proposes new Chapter 36, §§36.1 - 36.21, concerning Metals Registration, to administer Texas Occupations Code, Chapter 1956.

New §36.1 defines words used throughout Chapter 36. New §36.2 outlines the need for a current mailing and e-mail address on file with the department to aid the department in sending notice to entities.

New §36.3 sets forth how the department intends to provide notice to regulated entities and new §36.4 sets forth the procedure for regulated entities to register with the department and renew registrations.

New §36.5 outlines the requirement regarding statutory agent disclosure for purposes of legal notice. New §36.6 sets forth the procedure for which regulated entities may notify the department of a change in their ownership structure.

New §§36.7 - 36.9 outline the application review process, the length the certificate of registration is valid, and the process to renew a certificate of registration.

New §36.10 sets forth criteria for which the department will deny an application for registration.

New §36.11 and §36.12 set forth criteria for which the department will reprimand a certificate holder or suspend or revoke a certificate of registration. New §36.13 sets forth the criteria for which the department will recertify a certificate holder after a revocation.

New §36.14 outlines the method the department receives reports from regulated entities and new §36.15 sets forth disqualifying offenses for the certificate holder. New §§36.16 - 36.18 outline enforcement actions and hearing procedures.

New §36.19 sets forth the temporary location registration requirements of dealers of crafted precious metal.

New §36.20 outlines the forms the department requires regulated entities to use and new §36.21 sets forth the fees to be collected by the department.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. MacBride has determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be a reduction in metal theft.

Ms. MacBride has also determined that there will be an economic effect on small businesses and micro-businesses required to comply with the registration requirements as proposed. The projected economic impact of the proposed rule on small and micro businesses through the next two fiscal years is \$500 registration fee per business.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposed new rules may be submitted to Jessica Cathey, Manager, Metals Registration Program, P.O. Box 4087, Austin, Texas 78773-0245.

The new chapter is proposed pursuant to: Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013 and §1956.014 are affected by this proposal.

#### §36.1. Definitions.

- (a) Act--Texas Occupations Code, Chapter 1956.
- (b) Applicant--Any owner, corporate officer, and/or operator of a metal recycling entity, or a dealer of crafted precious metal who has applied for registration under the Act.
- (c) Business owner--A proprietor, partner, member, or individual.
- (d) Commission--The Public Safety Commission.
- (e) Department--The Texas Department of Public Safety.
- (f) Fixed location--A building or structure for which a certificate of occupancy can be issued.
- (g) On-site representative--A person responsible for the day-to-day operation of the location.
- (h) Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, and any other legal entity.
- (i) Program--The Metals Registration Program.
- (j) Registrant--A person who holds a certificate of registration covered by this chapter.
- (k) Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.
- (l) Statutory agent--The person or entity to whom any legal notice may be delivered at each location.
- (m) Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

#### §36.2. Address on File.

- (a) All registrants or applicants shall at all times maintain on file with the department their current mailing and principal place of business address. The principal place of business address must be a physical address and may not be a post office box.
- (b) All registrants or applicants shall at all times maintain on file with the department a current and valid electronic mail address.
- (c) All registrants shall notify the department of any change of their mailing or electronic mail address by completing the Change of Address Form on the program's website prior to the effective date of the change of address.

#### §36.3. Notice.

- (a) The department is entitled to rely on the mailing and electronic mail address currently on file for all purposes relating to notification. The failure to maintain a current mailing and electronic mail

address with the department is not a defense to any action based on the registrant's or applicant's failure to respond.

(b) Service upon the registrant or applicant of notice is complete and receipt is presumed upon the date the notice is sent, if by facsimile or electronic mail, and three days following the date sent, if by regular United States mail.

(c) The department shall notify the applicant of the denial of an application for a certificate of registration or renewal application for a certificate of registration and the registrant of reprimands, suspensions, or revocations of certificates of registration by certified mail, return receipt requested.

#### §36.4. Application for Certificate of Registration.

(a) No metal recycling entity may operate until they have received a certificate of registration certifying a completed application and payment of fees. Any metal recycling entity that had an active free registration may continue to operate until that registration expires or for 60 days, whichever is earlier, before obtaining a certificate of registration which requires the payment of fees. A person who is required to register and who is not registered may apply for registration at any time.

(b) A certificate of registration as required by subsection (a) of this section may only be obtained by submitting an Application for Certificate of Registration (MRB 1) to the department using on-line forms provided by the department via the program's website at [https://records.txdps.state.tx.us/DPS\\_WEB/MetalsNew/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/MetalsNew/index.aspx).

(c) The MRB 1 includes, but is not limited to, the following:

(1) Criminal history disclosure of all convictions and deferred adjudications for each person providing a signature for the application, each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application, and each person designated as an on-site representative on the application.

(2) Proof of entity form and current status as required by the department. Such proof includes, but is not limited to:

(A) For corporations. A current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts.

(B) For partnerships. A Partnership Agreement signed and dated by all partners and Articles of Partnership filed with the Office of the Secretary of State.

(C) For limited liability companies. Articles of Organization, Operating Agreement, and Certificate of Organization.

(3) All fees required pursuant to §36.21 of this title (relating to Fees).

(d) Applicants conducting business at more than one location must complete an MRB 1 for each location at which the applicant proposes to conduct business and obtain a certificate of registration for each location at which the applicant proposes to conduct business.

(e) An applicant for a certificate of registration may not, within two years prior to the date of the application, have previously:

- (1) had a certificate of registration revoked;
- (2) obtained a certificate of registration by means of fraud, misrepresentation, or concealment of material fact;
- (3) sold, bartered, or offered to sell or barter a certificate of registration; or
- (4) violated §1956.040(b) of the Act.



(f) An applicant must submit a Statutory Agent Disclosure as described in §36.5 of this title (relating to Statutory Agent Disclosure (MRB 2)) along with the MRB 1.

(g) The failure of an applicant to meet any of the conditions of subsections (a) - (f) of this section will be grounds for denial of the application under §1956.151 of the Act.

§36.5. Statutory Agent Disclosure (MRB 2).

(a) The Statutory Agent Disclosure (MRB 2) form must be completed by all applicants for each location at which the applicant is seeking to conduct business. The statutory agent is the person or entity to whom any legal notice may be delivered at each location. Any entity requiring registration and designation of an agent for service with the Office of the Secretary of State must use the same agent on the MRB 2. Any person or entity for which registration and designation of an agent for service with the Secretary of State is not required must designate a natural person and a physical address where that natural person may be located.

(b) A new MRB 2 must be filed whenever the statutory agent changes.

(c) A \$10 fee for filing will be charged for filing a form MRB 2 alone, without an initial application or application for renewal.

§36.6. Change in Ownership (MRB 3).

(a) A registrant must notify the department each time the ownership structure of a registrant changes by completing a Change in Ownership (MRB 3) form as soon as such a change has taken effect.

(b) The registrant must submit amended proof of entity form and status as required by the department.

(c) A \$10 fee for filing will be charged for filing a form MRB 3 alone, without an initial application or application for renewal.

§36.7. Application Review.

(a) Initial review. If an incomplete application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for acceptance.

(b) Incomplete application. The applicant has 20 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be deemed to be withdrawn by the applicant.

(c) Complete application. An application is complete when it:

(1) contains all of the items required in §36.4 of this title (relating to Application for Certificate of Registration);

(2) conforms to the Act, this chapter, and the program's instructions;

(3) all fees have been paid as provided by §36.21 of this title (relating to Fees); and

(4) all requests for additional information have been satisfied.

§36.8. Term of Certificate of Registration.

(a) A certificate of registration is valid for two years from the date of issuance.

(b) An initial certificate of registration may be extended for a period of less than 12 additional months, if an extension is necessary to evenly allocate the expiration dates of all certificates.

(c) A person whose certificate of registration has expired may not act as a metal recycling entity, represent to the public that the person

is a metal recycling entity, or perform collections until the certificate has been renewed.

§36.9. Renewal of Certificate of Registration.

(a) To renew a certificate of registration, a person must submit an Application for Renewal (MRB 4) to the department using online forms provided by the department via the program's website and by submitting the appropriate renewal fee as outlined in §36.21 of this title (relating to Fees) prior to the certificate's expiration date.

(b) A person may not apply for a renewal of registration more than 45 days before the expiration date of the current certificate of registration.

(c) If a person submits a timely MRB 4, but the department has not acted upon it before the old certificate of registration expires, the old certificate of registration continues in effect until the MRB 4 is approved or denied by the department.

(d) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for 90 days or less may renew the certificate by paying \$750 to the department.

(e) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying \$1,000 to the department.

(f) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for one year or more may not renew the certificate. This person must obtain a new certificate of registration utilizing the initial application procedure set forth in §36.4 of this title (relating to Application for Certificate of Registration), submitting the initial application fee, and paying an additional administrative penalty of \$1,000.

§36.10. Denial of Application for Certificate of Registration.

(a) The department may deny an application for a certificate of registration if:

(1) the applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) the applicant has sold, bartered, or offered to sell or barter a certificate of registration;

(3) the applicant has previously been convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act;

(4) the applicant fails to disclose the required persons involved in the regular course of the business of a metal recycling entity on the Application for Certificate of Registration pursuant to §36.4(c) of this title (relating to Application for Certificate of Registration); or

(5) the applicant has been convicted of a felony or misdemeanor offense as outlined in §36.15 of this title (relating to Disqualifying Offenses).

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department as outlined in §36.17 of this title (relating to Informal Hearings).

§36.11. Reprimands and Suspensions of a Certificate of Registration.

(a) The department may reprimand a person who is registered under the Act or suspend a certificate of registration of a person who is registered under the Act if the person:

(1) fails to submit the required reports to the department pursuant to §36.14 of this title (relating to Reporting Requirements);

(2) willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to §36.14 of this title;

(3) fails to preserve the records required pursuant to §1956.034 of the Act; or

(4) violates the Act or this chapter.

(b) For a first time violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period of no less than three months.

(d) For a third violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period of no less than six months.

(e) Upon the suspension of a certificate of registration under this section, a person may request a hearing before the department as outlined in §36.17 of this title (relating to Informal Hearings).

#### §36.12. Revocation of a Certificate of Registration.

(a) The department may revoke a certificate of registration of a person who is registered under the Act if the person:

(1) commits multiple violations of the same type as outlined in §36.11(a) of this title (relating to Reprimands and Suspensions of a Certificate of Registration);

(2) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barter, or offers to sell or barter a certificate of registration;

(4) is convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act;

(5) is convicted of a felony or misdemeanor offense as outlined in §36.15 of this title (relating to Disqualifying Offenses); or

(6) violates the Act or this chapter.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department as outlined in §36.17 of this title (relating to Informal Hearings).

#### §36.13. Recertification after Revocation.

A person whose certificate of registration has been revoked may not reapply prior to the passage of at least five years from the date of revocation. The previously revoked applicant must follow the procedures set forth in §36.4 of this title (relating to Application for Certificate of Registration) for new applications.

#### §36.14. Reporting Requirements.

(a) Not later than the seventh day after the date of purchase or other acquisition of regulated material for which a record is required under §1956.033 of the Act, a metal recycling entity shall collect and submit to the department a Report of Purchase for Metal Recycling Entity (MRB 5), containing:

(1) the place and date of the purchase;

(2) the name and physical address, the address may not be a post office box, of each individual from whom the regulated material is purchased or obtained;

(3) the identifying number of the seller's personal identification document;

(4) a written description made in accordance with the custom of the trade of the type and quantity of the purchased regulated material; and

(5) written documentation that the person is the legal owner of or is lawfully entitled to sell the regulated material.

(b) A completed MRB 5 shall be sent to the department by facsimile, electronic mail, or electronic upload via the program's website.

(c) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall notify the department of the purchase by the close of the next business day by submitting an MRB 5 to the department via facsimile, electronic mail, electronic upload via the program's website, or by calling the department at the number listed on the program's website and shall file an MRB 5 with the department within five business days.

#### §36.15. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration on the grounds that a person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined that the following offenses directly relate to the duties and responsibilities of metal recycling entities. A conviction for one or more of the following offenses may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. Such offenses (as reflected in the Texas Penal Code) include, but are not limited to, the following:

(1) Blackmail;

(2) Bribery;

(3) Burglary;

(4) Counterfeiting;

(5) Embezzlement;

(6) Extortion;

(7) False Pretenses;

(8) Forgery;

(9) Fraud against revenue or other government functions;

(10) Larceny (grand or petit);

(11) Mail fraud;

(12) Malicious destruction of property;

(13) Perjury;

(14) Receiving stolen goods (with guilty knowledge);

(15) Tax evasion (willful);

(16) Theft (when it involves the intention of permanent taking); and

(17) Transporting stolen property (with guilty knowledge).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section that directly relates to the duties and responsibilities metal recycling entities, a sexually violent offense as defined by Code of Criminal Procedure, Article 62.001, or an offense listed in Code of Criminal Procedure, Article 42.12, §3(g), is disqualifying for ten years from the date of the conviction, unless a full pardon has been granted for reasons relating to a wrongful conviction.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five years from the date of conviction, unless a full pardon has been granted for reasons relating to a wrongful conviction.

(e) A conviction for a felony or class A offense that does not relate to the duties and responsibilities metal recycling entities is disqualifying for five years from the date of commission, pursuant to Texas Occupations Code, §53.021(a)(2).

(f) A person's certificate of registration shall be revoked for the imprisonment of the certificate holder following a felony conviction, felony community supervision, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation for which the certificate is sought and is disqualifying for five years from the date of the conviction.

(g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.

§36.16. Additional and Accelerated Enforcement Actions.

(a) The department may seek any additional enforcement actions authorized by the Act, including civil penalties and injunctive relief. Operating without a required registration or any action prohibited by this chapter or by the Act is subject to additional enforcement actions.

(b) Although in §36.11 of this title (relating to Reprimands and Suspensions of a Certificate of Registration) and §36.12 of this title (relating to Revocation of a Certificate of Registration), the department outlines a graduated enforcement schedule for failing to file reports or filing false, inaccurate or incomplete information to the department under §36.14 of this title (relating to Reporting Requirements), the department may accelerate the graduated enforcement schedule if it finds that the failure to report or the filing of false, inaccurate or incomplete information was a deliberate attempt to conceal other violations under this chapter or under the Act.

§36.17. Informal Hearings.

(a) A person whose application for a certification of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department, governed by Chapter 29 of this title (relating to Practice and Procedure) and Texas Government Code, Chapter 2001, if the person submits to the department a written request for the hearing in compliance with subsection (b) of this section.

(b) A written request for a hearing must be submitted by mail, facsimile, or e-mail, to the department within 20 calendar days after receipt of notice of denial, suspension, revocation, or reprimand. If a written request for a hearing is not made within 20 calendar days of the date notice was received, the person has waived their right to a hearing under this section.

(c) An informal hearing will be scheduled and conducted by the manager of the program or the manager's designee in the manner prescribed by the department on the program's website.

(d) After the conclusion of the informal hearing, the hearing officer will issue a written statement of findings to the person at the person's address on file.

(e) Within 20 calendar days of the date the statement of findings was received, the person may request an administrative hearing before the State Office of Administrative Hearings (SOAH).

§36.18. Hearings Before the State Office of Administrative Hearings.

(a) A request for a hearing before the State Office of Administrative Hearings (SOAH) must be submitted in writing (by mail, fac-

simile, or e-mail) within 20 calendar days of the receipt of the statement of findings sent to the person's address on file.

(b) Procedures for a hearing before SOAH shall follow the process set forth in Texas Government Code, Chapter 2001.

§36.19. Temporary Location Registration of Dealers of Crafted Precious Metal.

(a) A dealer of crafted precious metal is considered to be conducting business at a temporary location if the dealer buys precious metal or used items made of precious metal at a location for a period of less than 90 days.

(b) A dealer of crafted precious metal who conducts business at a temporary location must complete and submit a Temporary Location Registration Statement (MRB 6) and the required fee in the manner prescribed by the department on the program's website within a 12 month period at least 30 days before a purchase is made at a temporary location.

(c) The MRB 6 must contain:

- (1) the name and address of the dealer;
- (2) the location where the business is to be conducted;
- (3) the time period, including hours of operation, that business is to be conducted at the temporary location;
- (4) a description of the specific nature of the business to be conducted at the temporary location;
- (5) if the dealer is an association, the name and address of each member of the association; and
- (6) if the dealer is a corporation, the name and address of each officer and director of the corporation.

(d) Upon completion of the MRB 6 and the submission of the required fee, a dealer of crafted precious metal may obtain a certificate of registration in the manner prescribed by the department.

(e) A fee of \$25 is required for each certificate of registration issued pursuant to a MRB 6.

(f) A dealer commits a criminal offense if the dealer fails to file a registration statement as required by §1956.067 of the Act.

§36.20. Forms.

The department has prescribed the following forms for purposes of administering the Act:

- (1) Application for Certificate of Registration as a Metal Recycling Entity (MRB 1);
- (2) Statutory Agent Disclosure (MRB 2);
- (3) Change in Ownership (MRB 3);
- (4) Renewal Application for Metal Recycling Entity (MRB 4);
- (5) Report of Purchase for Metal Recycling Entity (MRB 5);
- (6) Temporary Location Registration Statement for Dealer of Crafted Precious Metal (MRB 6);
- (7) Change of Address Form (MRB 7); and
- (8) Request for an Informal Hearing (MRB 8).

§36.21. Fees.

The department has prescribed the following fees for purposes of administering the Act:

(1) Initial Application. A \$500 fee is assessed each time an application for a new certificate of registration is filed in accordance with §36.4 of this title (relating to Application for Certificate of Registration). Applicants conducting business at more than one location must submit a \$500 fee for a new certificate of registration for the first location and an additional \$500 fee for each additional location applying for a certificate of registration at the same time. These fees are non-refundable.

(2) Statutory Agent Disclosure. A \$10 fee is assessed each time a Statutory Agent Disclosure form is filed alone, without an initial application or application for renewal.

(3) Change in Ownership. A \$10 fee is assessed each time a Change of Ownership form is filed alone, without an initial application or application for renewal.

(4) Renewal Certificate of Registration. A \$500 fee is assessed each time a certificate of registration is renewed in accordance with §36.9 of this title (relating to Renewal of Certificate of Registration). For registrants conducting business at more than one location, a \$500 fee is assessed for the first location renewing a certificate of registration and an addition \$500 fee is assessed for each additional location submitting a renewal at the same time. A person continuing to conduct business as a metal recycling entity whose certificate of registration has

been expired for 90 days or less may renew the certificate by paying \$750 to the department. A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying \$1,000 to the department. These fees are non-refundable.

(5) Certificate of Registration for Temporary Location for Dealer of Crafted Precious Metal. A \$25 fee is assessed each time a dealer of crafted precious metal is issued a certificate of registration.

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

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001543

Stuart Platt

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: May 16, 2010

For further information, please call: (512) 424-5848

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 61. COMBATIVE SPORTS

##### 16 TAC §§61.1, 61.10, 61.22, 61.30, 61.40, 61.44, 61.105

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §§61.1, 61.10, 61.22, 61.30, 61.40, 61.44, and 61.105 which appeared in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8147).

Filed with the Office of the Secretary of State on April 1, 2010.

TRD-201001513

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: April 1, 2010

For further information, please call: (512) 463-7348



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 23. ROSE GRADING

The Texas Department of Agriculture (the department) adopts the repeal of §23.3 and amendments to §23.5, regarding rose grading, without changes to the proposal published in the March 5, 2010, issue of the *Texas Register* (35 TexReg 1845). The repeal and amendments are adopted to comply with current law. During the 81st Legislative Session of 2009, §5.35 of Senate Bill 1016 (SB 1016) repealed §121.004 of the Texas Agriculture Code, relating to the certificate of authority for grading roses. SB 1016 eliminated the need to issue a certificate of authority to rose graders in the state of Texas. After SB 1016 was adopted, TDA proposed and subsequently adopted amendments to Chapter 23; however, the repeal of §23.3 and amendments to §23.5 were inadvertently omitted. The adopted amendments will complete the necessary changes in Chapter 23 in order to become compliant with current law.

No comments were received on the proposal.

#### 4 TAC §23.3

The repeal of §23.3 is adopted under the Texas Agriculture Code, §121.007, which authorizes the department to adopt rules as necessary concerning rose grading, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law and has recently taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001554

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 25, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 463-4075



#### 4 TAC §23.5

The amendment to §23.5 is adopted under the Texas Agriculture Code, §121.007, which authorizes the department to adopt rules

as necessary concerning rose grading, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law and has recently taken effect.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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Proposal publication date: March 5, 2010

For further information, please call: (512) 463-4075



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

#### 19 TAC §33.2

The State Board of Education (SBOE) adopts new §33.2, concerning the Available School Fund. The new section is adopted with changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 742). The adopted new section implements Texas Attorney General Opinion No. GA-0707 regarding transfers from the Permanent School Fund to the Available School Fund.

The rules in 19 TAC Chapter 33 establish provisions supporting the management and investment of the Permanent School Fund.

On November 4, 2008, the chair of the SBOE sought an opinion from the Attorney General regarding the implementation of the Texas Constitution, Article VII, §5(a)(2), in limiting transfers from the Permanent School Fund to the Available School Fund. A supplementary request was made on January 14, 2009. On April 13, 2009, the Attorney General responded to the requests, noting that Article VII, §5(a)(1) and §5(a)(2), require distinct calculations using different methodologies and covering different time periods.

The Attorney General Opinion No. GA-0707 stated that the SBOE is the entity authorized to apply the limits of Article VII,

§5(a)(2), in the first instance to the amount distributed from the Permanent School Fund to the Available School Fund.

Article VII, §5(a)(2), requires an annual determination by the SBOE of whether a transfer can be made from the Permanent School Fund to the Available School Fund based on the preceding nine state fiscal years and the current fiscal year.

Adopted new §33.2 establishes in rule the procedures and the requirement that the SBOE determine whether a distribution to the Available School Fund shall be made for the current state fiscal year.

In response to public comment, the new section was modified at adoption to clarify language related to the maximum distribution.

The adopted new section has no procedural and reporting implications. The adopted new section has no locally maintained paperwork requirements.

The Texas Education Agency (TEA) determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year in order to implement the latest policy in a timely manner. The effective date is 20 days after filing as adopted.

Following is a summary of the public comment received and the corresponding response regarding proposed new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, §33.2, Distributions to the Available School Fund.

**Comment.** The state auditor's office recommended clarifying language related to the maximum distribution as stated in the Texas Constitution.

**Response.** The SBOE agreed and added language in line with the Texas Constitution, Article VII, §5(a)(2).

The new section is adopted under the Texas Constitution, Article VII, §5(a)(2) and (f), which authorizes the SBOE to determine the amount to be distributed from the Permanent School Fund to the Available School Fund and to manage the assets of the Permanent School Fund.

The new section implements the Texas Constitution, Article VII, §5(a)(2) and (f).

*§33.2. Distributions to the Available School Fund.*

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §5(a)(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF, excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, §4, as determined under the Texas Constitution, Article VII, §5(a)(1).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2010.

TRD-201001515

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 21, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 475-1497



## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER A. REQUIRED CURRICULUM

#### 19 TAC §74.1, §74.3

The State Board of Education (SBOE) adopts amendments to §74.1 and §74.3, concerning curriculum requirements. The amendment to §74.1 is adopted without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 750) and will not be republished. The amendment to §74.3 is adopted with changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 750). The rules provide for curriculum requirements for school districts and establish the description of a required secondary curriculum. The adopted amendments add a requirement that students in middle school take a fine arts course as required by House Bill (HB) 3, 81st Texas Legislature, 2009. The adopted amendments also include technical edits to update the rules.

HB 3 requires the SBOE to adopt rules requiring students enrolled in grade levels six, seven, and eight to complete at least one fine arts course during those grade levels as part of a district's fine arts curriculum. The SBOE did not have any specific course requirements for middle school.

The adopted amendments to 19 TAC Chapter 74, Subchapter A, require students to take one Texas essential knowledge and skills-based fine arts course in Grade 6, Grade 7, or Grade 8 beginning with students who enter Grade 6 in the 2010-2011 school year. The adopted amendments also include technical edits to update the rules.

The amendment to §74.3(b)(2)(F) was modified at adoption to remove Athletics from and include Team or Individual Sports in the list of courses from which districts must choose to offer for physical education credit.

The adopted amendments have no new procedural and reporting implications. The adopted amendments have no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will allow districts to begin preparing for implementation. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendments are adopted under the TEC, §7.102(c)(4), which requires the SBOE to establish curriculum and graduation requirements; and the TEC, §28.002, as amended by HB 3, 81st Texas Legislature, 2009, which requires the SBOE to adopt rules requiring students enrolled in grade levels six, seven, and eight to complete at least one fine arts course during those grade levels as part of a district's fine arts curriculum.

The amendments implement the TEC, §7.102(c)(4) and §28.002.

§74.3. *Description of a Required Secondary Curriculum.*

(a) Middle Grades 6-8.

(1) A school district that offers Grades 6-8 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to learn English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must ensure that, beginning with students who enter Grade 6 in the 2010-2011 school year, each student completes one Texas essential knowledge and skills-based fine arts course in Grade 6, Grade 7, or Grade 8.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, and Physics. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since Reconstruction, World History Studies, United States Government, and World Geography Studies;

(E) economics, with emphasis on the free enterprise system and its benefits--Economics with Emphasis on the Free Enterprise System and Its Benefits;

(F) physical education--at least two courses selected from Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, or Team or Individual Sports;

(G) health education--Health 1;

(H) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(I) career and technical education--coherent sequences of courses selected from at least three of the following sixteen career clusters:

(i) Agriculture, Food, and Natural Resources;

(ii) Architecture and Construction;

(iii) Arts, Audio/Video Technology, and Communications;

(iv) Business Management and Administration;

(v) Education and Training;

(vi) Finance;

(vii) Government and Public Administration;

(viii) Health Science;

(ix) Hospitality and Tourism;

(x) Human Services;

(xi) Information Technology;

(xii) Law, Public Safety, Corrections, and Security;

(xiii) Manufacturing;

(xiv) Marketing;

(xv) Science, Technology, Engineering, and Mathematics; and

(xvi) Transportation, Distribution, and Logistics.

(J) languages other than English--Levels I, II, and III or higher of the same language;

(K) technology applications--at least four courses selected from Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications; and

(L) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. The school district must teach a course in which ten or more students indicate they will participate or that is required for a student to graduate. For a course in which fewer than ten students indicate they will participate, the district must either teach the course or employ options described in Subchapter C of this chapter (relating to Other Provisions) to provide the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.



(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

(d) Notwithstanding any other graduation requirements in this chapter, a student is required to complete one credit in physical education to satisfy the graduation requirements under the recommended high school program. A student is also not required to complete one-half credit of health or one credit of technology applications to satisfy the graduation requirements under the recommended high school program. A student entering Grade 9 in the 2010-2011 school year and thereafter and who opts into the minimum high school program must complete one fine arts credit to satisfy the graduation requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201001516

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## CHAPTER 101. ASSESSMENT

### SUBCHAPTER E. LOCAL OPTION

#### 19 TAC §101.101

The State Board of Education (SBOE) adopts an amendment to §101.101, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 752) and will not be republished. The section addresses group-administered tests and requirements relating to the reporting of test results. The adopted amendment implements Senate Bill (SB) 759, 81st Texas Legislature, 2009, which amended the Texas Education Code (TEC), §39.032, Assessment Instrument Standards; Civil Penalty.

In 2009, through the enactment of SB 759, the 81st Texas Legislature amended the TEC, §39.032, which governs the use of district-commissioned group-administered achievement tests. The amended statute allows the sale and use of the same form of an assessment instrument for a maximum of eight years, instead of the current six-year limit. Further, for purposes of renorming a test, the eight-year limit on norms does not apply if at the end of eight years there are not sufficient data to update the sample. Finally, the amended statute no longer requires a company or organization that scores the assessment instrument to report the results by campus and district and in comparison to state and national averages to the district and to the Texas Education Agency (TEA), nor does it hold the company or organization civilly liable for failing to comply with the TEC, §39.032.

The adopted amendment to 19 TAC §101.101 updates the rule to correspond with modifications made to the TEC, §39.032.

The adopted amendment removes the requirement by rule that companies or organizations that score assessment instruments report the results to the TEA. The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will allow implementation during the 2009-2010 school year. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendment is adopted under the TEC, §39.032, which requires the SBOE to adopt rules for implementation of assessment instrument standards and for the maintenance of the security of the contents of all assessment instruments.

The amendment implements the TEC, §39.032.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER BB. COMMISSIONER'S

### RULES CONCERNING GRADE ADVANCEMENT AND ACCELERATED INSTRUCTION

The Texas Education Agency (TEA) adopts amendments to §§101.2001, 101.2003, 101.2007, and 101.2009; new §101.2006; and repeal of §101.2013, concerning assessment. The amendment to §101.2001 is adopted with a technical change to the proposed text as published in the January 22, 2010, issue of the *Texas Register* (35 TexReg 432). The amendments to §§101.2003, 101.2007, and 101.2009; new §101.2006; and repeal of §101.2013 are adopted without changes to the proposed text as published in the January 22, 2010, issue of the *Texas Register* (35 TexReg 432) and will not be republished. The sections address the Student Success Initiative (SSI). The adopted revisions remove Grade 3 reading as an SSI requirement and establish new accelerated instruction requirements for students failing any Texas Assessment of Knowledge and Skills (TAKS) assessment in Grades 3-8. Both the SSI modification and the accelerated instruction requirements will be implemented for the 2009-2010 school year.

House Bill (HB) 3, Section 28, 81st Texas Legislature, 2009, amended the Texas Education Code (TEC), §28.021, Student Advancement, to specify that in making grade promotion determinations, school districts must consider the recommendation of

the student's teacher, the student's grades, the student's assessment scores, and any other necessary academic information. In addition, the TEC, §28.021(d), as added by HB 3, specifies that districts must make public at the beginning of the school year grade promotion requirements.

HB 3, Section 29, 81st Texas Legislature, 2009, amended the TEC, §28.0211, Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction, to remove all requirements that students in Grade 3 pass the TAKS reading assessment to be eligible for promotion to Grade 4. In addition, under the TEC, §28.0211(a-1), as added by HB 3, a student who fails any TAKS assessment in Grades 3-8 must receive accelerated instruction in the applicable subject area after each attempt on an assessment instrument. The accelerated instruction may include instruction outside normal school operating hours. HB 3 also added the TEC, §28.0211(a-2), which states that students covered by SSI requirements who are promoted to the next grade despite not performing satisfactorily on SSI assessments must complete all accelerated instruction requirements of subsection (a-1) before placement in the next grade level. HB 3 also added the TEC, §28.0211(n), requiring that students covered by SSI requirements who are promoted despite not performing satisfactorily on SSI assessment instruments will be assigned the following year to teachers meeting all state and federal qualifications to teach in the applicable subject areas.

To implement changes made by HB 3, the proposed revisions to 19 TAC Chapter 101, Subchapter BB, include the following.

Section 101.2001, Policy, is amended to remove reference to the Grade 3 testing requirement and specify that a student who does not demonstrate proficiency in the subjects required by the TEC, §28.0211(a), may advance to the next grade only if the student completes all required accelerated instruction. New language is added requiring that students who are promoted despite not performing satisfactorily on SSI assessments be assigned to qualified teachers. In addition, a requirement is added that, to determine grade promotion for a student, a Grade Placement Committee (GPC) must consider teacher recommendations, the student's grades and assessment scores, and any other applicable academic information. Language is also added to specify that school districts must implement grade advancement requirements in accordance with 19 TAC Chapter 101, Subchapter BB, and the procedures in the GPC manual published annually by the TEA and that school districts must make their grade advancement requirements public at the beginning of the school year. A technical edit was made at adoption to define the acronym TEC in 19 TAC §101.2001(b).

Section 101.2003, Grade Advancement Testing Requirements, is amended to remove references to the Grade 3 reading testing requirement and outdated implementation language. The adopted amendment modifies language relating to the enrollment criteria that subjects a student to the automatic retention component of the grade advancement requirements and clarifies enrollment criteria for students to be covered by the SSI. In addition, the adopted amendment specifies that relevant guidance pertaining to testing requirements for students receiving special education services will be found in the GPC manual published annually by the TEA. The adopted amendment also modifies language relating to limited English proficient (LEP) students to include reference to the new commissioner's rule, 19 TAC §101.1011, pertaining to LEP students and SSI grade advancement requirements. No changes were made to this section since published as proposed.

Adopted new §101.2006, Accelerated Instruction, is added to incorporate language from §101.2013, which is repealed. The new section adds the new accelerated instruction requirements for students in Grades 3-8 who fail any state-developed assessment and specifies that students who failed to perform satisfactorily on SSI assessments and who are still promoted must meet all accelerated instruction requirements in the TEC, §28.0211(a-1), before being placed in the next grade level. In addition, the new section clarifies that SSI students are to receive accelerated instruction after each instance of not performing satisfactorily on SSI assessment instruments, that the accelerated instruction must occur before the next administration of the applicable assessment instruments, and that all accelerated instruction must be completed before placement in the next grade level. No changes were made to this section since published as proposed.

Section 101.2007, Role of Grade Placement Committee, is amended to add the new accelerated instruction requirements to the GPC promotion criteria. The section is amended to add the requirements from the TEC, §28.021, specifying that to determine grade promotion, the GPC must consider teacher recommendations, the student's grades and assessment scores, and any other necessary academic information in addition to all guidelines in the GPC manual. No changes were made to this section since published as proposed.

Section 101.2009, Notice to Parents or Guardians, is amended to state that school districts and charter schools must notify parents and guardians of all grade advancement requirements at the start of the school year. The adopted amendment also removes reference to the Grade 2 reading inventory. No changes were made to this section since published as proposed.

Section 101.2013, Accelerated Instruction, is repealed, and its language would be incorporated as part of adopted new §101.2006. No changes were made to this section since published as proposed.

Other conforming and technical changes relating to word usage and punctuation are made throughout the sections.

The removal of Grade 3 reading from SSI requirements has affected the testing schedule beginning with the 2009-2010 school year. The TEA has revised other materials, including testing manuals, the GPC manual, and parent information brochures, to account for the elimination of Grade 3 reading from the SSI and the addition of accelerated instruction requirements for all students failing any TAKS assessment in Grades 3-8. The adopted revisions will have no new locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began January 22, 2010, and ended February 22, 2010. Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 101, Assessment, Subchapter BB, Commissioner's Rules Concerning the Student Success Initiative.

#### §101.2003. Grade Advancement Testing Requirements

Comment. An administrator from Tomball Independent School District (ISD) expressed concern about the removal of third grade from the SSI program. The administrator commented that be-

cause third grade is such a critical time for students, it is necessary that third grade students receive targeted intervention. The administrator also commented that when third grade was included in SSI, teachers and parents paid a great deal of attention to it because it seemed to be elevated in importance. The administrator expressed concern that with the removal of third grade from SSI, the state will see a downward trend in reading at the third grade level. In addition, the administrator indicated that research shows that the older a child is, the more intervention he or she needs.

**Agency Response.** The agency provides the following clarification. The TEA must adhere to statutory requirements and cannot reinstate Grade 3 SSI requirements that the 81st Texas Legislature removed from law with the enactment of House Bill 3 in 2009.

#### §101.2006. Accelerated Instruction

**Comment.** The Texas Classroom Teachers Association (TCTA) commented that the requirement in proposed new §101.2006(e)(1) to limit the size of accelerated instruction groups in Grades 5 and 8 for SSI subject areas to a maximum ratio of 10 students for each teacher contravenes statutory authority, as the enabling statute, TEC, §28.0211, requires the 10-student maximum ratio in accelerated instruction to apply to all students receiving accelerated instruction, including those in Grades 3, 4, 6, and 7.

The TCTA commented that because existing TEC, §28.0211(c), requires that an accelerated instruction group not have a ratio of more than 10 students to each teacher, and because all students in Grades 3-8 are now required under the amended TEC, §28.0211(a-1), to receive accelerated instruction if they fail a TAKS assessment, all accelerated instruction groups for Grades 3-8 may not exceed a ratio of 10 students to every teacher.

The TCTA requested that proposed new §101.2006(a) be amended to add the sentence, "A student shall be assigned to an accelerated instruction group that does not have a ratio larger than ten students for each teacher." The TCTA also requested that a corresponding sentence be deleted from proposed new §101.2006(e)(1).

**Agency Response.** The agency disagrees and maintains language as published as proposed. TEC, §28.0211, does not require a maximum ratio of 10 students to every teacher for accelerated instruction in Grades 3-8. TEC, §28.0211(c), states that a student failing to perform satisfactorily on an assessment instrument required under TEC, §28.0211(a)--assessments for SSI purposes in Grades 5 and 8--shall receive accelerated instruction and that these accelerated instruction groups shall not exceed a student-teacher ratio of 10 to 1.

**Comment.** The TCTA recommended that the commissioner consider adding an exception to proposed new §101.2006(e)(2), which reads, "... although exceptions may be allowed by the GPC for extenuating circumstances that may have adversely affected the student's ability to participate in accelerated instruction," to allow for consideration of extenuating circumstances.

**Agency Response.** The agency disagrees and maintains language as published as proposed. TEC, §28.0211(a-1), (a-2), and (c), lay out clear requirements for accelerated instruction for Grades 3-8. The TEC does not allow for a specific exemption from accelerated instruction as requested by the TCTA.

**Comment.** Administrators from Garland ISD and North East ISD and an individual commented on proposed new §101.2006(e)(2)

and accelerated instruction requirements for grade promotion. The Garland ISD administrator noted that, because the third opportunity to test for SSI grades occurs in late June or early July and results are not available until mid-to-late July, there is little opportunity to provide accelerated instruction before the new school year begins. The Garland ISD administrator also noted that if a decision is made by the Grade Placement Committee (GPC) to promote the student to the next grade level, the current wording of the rule puts school districts in the difficult position of trying to provide meaningful accelerated instruction between the GPC meeting in late July or early August and the start of school later in August. The North East ISD administrator commented that teachers are not on contract at many school districts at the time summer school is over. The individual commented that in the past, accelerated instruction was provided after the start of the new school year for those students promoted by the GPC who had not passed the state assessment.

**Comment.** An individual expressed concern with the proposed rule stating that SSI students must receive accelerated instruction after each instance of not performing satisfactorily on an SSI assessment instrument. The individual asked for clarification if accelerated instruction for SSI students who do not pass the assessment instrument after the third administration must occur before the start of the school year.

**Comment.** An administrator from Tulosso-Midway ISD asked how year-round school districts will meet the accelerated instruction requirements with the new school year typically beginning around the fourth week of July, a week after teachers have returned.

**Agency Response to Comments from North East ISD, Garland ISD, Tulosso-Midway ISD, and an Individual.** The agency provides the following clarification. TEC, §28.0211(a-2), states that a "student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and who is promoted to the next grade level must complete accelerated instruction required under Subsection (a-1) before placement in the next grade level. A student who fails to complete required accelerated instruction may not be promoted." Section 101.2006(e)(2) does not require that the accelerated instruction after the third administration occur before the beginning of the school year. Instead the rule, consistent with statute, does not allow placement in the next grade level until all required accelerated instruction has been completed. Students may be promoted to the next grade level or placed at the next grade level at anytime during the subsequent school year, once the accelerated instruction requirements have been met.

**Comment.** An administrator from Tulosso-Midway ISD noted that proposed new §101.2006(e)(2) seems to require that accelerated instruction be provided for all students in Grades 3-8 after each TAKS administration on which they do not meet the standard, including after the third administration, and commented that this requirement would be difficult to meet.

**Agency Response.** The agency provides the following clarification. Section 101.2006(e)(2) does not refer to all students in Grades 3-8; rather, the rule refers to students in Grades 5 and 8 who take an SSI assessment by stating, "a student who fails to perform satisfactorily on an assessment instrument specified under the TEC, §28.0211(a), after the first, second, and third testing opportunities and who is promoted to the next grade level must complete, in accordance with state and local school board policy, all the accelerated instruction required under this section before placement in the next grade level. A student who

fails to complete all the required accelerated instruction may not be promoted." TEC, §28.0211(a), the statutory authority for §101.2006(e)(2), is specific to SSI assessments only, and new §101.2006(e)(2) does not refer to any assessments other than SSI assessments in Grades 5 and 8.

#### §101.2007. Role of Grade Placement Committee

**Comment.** The TCTA commented that the requirement in §101.2007(f) to make promotion or placement in the next grade level contingent on the completion of all required accelerated instruction specified in §101.2006 apply to all students receiving accelerated instruction appears to exceed statutory authority. Additionally, the TCTA requested that a unanimous GPC decision to promote an individual student substitute for student completion of all required accelerated instruction specified in §101.2006.

**Agency Response.** The agency provides the following clarification. Section 101.2007(f) does not state that all students in Grades 3-8 must receive accelerated instruction before being promoted or placed in the next grade level. Instead, language in the rule limits accelerated instruction requirements for promotion and/or placement to Grades 5 and 8 only. Concerning the request to substitute a unanimous GPC decision, the TEC does not allow a GPC decision to substitute for meeting statutory requirements related to accelerated instruction.

#### **19 TAC §§101.2001, 101.2003, 101.2006, 101.2007, 101.2009**

The amendments and new section are adopted under the TEC, §28.0211, which authorizes the commissioner of education to adopt rules necessary to implement grade advancement testing requirements, including accelerated instruction. The TEC, §28.021, requires the commissioner to provide guidelines to districts based on best practices that a district may use when considering factors for promotion.

The amendments and new section implement the TEC, §28.0211 and §28.021.

#### *§101.2001. Policy.*

(a) School districts shall implement grade advancement requirements in accordance with this subchapter and the Texas Education Agency (TEA) procedures outlined in the official Grade Placement Committee (GPC) manual, published annually by the TEA. As specified in §101.2009 of this title (relating to Notice to Parents or Guardians), school districts will make public at the beginning of the school year grade advancement requirements as determined by the school district.

(b) In addition to local policy relating to grade advancement, students in Grades 5 and 8 shall demonstrate proficiency in the subjects required by the Texas Education Code (TEC), §28.0211(a), in order to advance to the next grade. Demonstrated proficiency is defined under this section as meeting the passing standard on the appropriate assessment instruments specified by §101.2003(a) of this title (relating to Grade Advancement Testing Requirements) or on a state-approved alternate assessment authorized in §101.2011 of this title (relating to Alternate Assessment). A student who does not demonstrate proficiency as described in this section may advance to the next grade only if:

(1) the student has completed the required accelerated instruction under §101.2006 of this title (relating to Accelerated Instruction);

(2) the student's GPC, as specified in §101.2007 of this title (relating to Role of Grade Placement Committee), determines by unanimous decision, in accordance with the standards for promotion estab-

lished by the local school board, that the student is likely to perform at grade level at the end of the next year given additional accelerated instruction. In accordance with the TEC, §28.021, to determine grade promotion, a school district is required to consider the recommendation of the student's teacher, the student's grades, the student's assessment scores, and any other necessary academic information; and

(3) in accordance with the TEC, §28.0211(n), the school district will ensure that a student who is promoted by a GPC under §101.2007 of this title shall be assigned in each subject in which the student failed to perform satisfactorily on an assessment instrument specified under the TEC, §28.0211(a), to a teacher who meets all state and federal qualifications to teach that subject and grade.

(c) Students in Grades 3-8 shall be provided accelerated instruction required by the TEC, §28.0211, as specified in §101.2006 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2010.

TRD-201001503

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

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For further information, please call: (512) 475-1497



#### **19 TAC §101.2013**

The repeal is adopted under the TEC, §28.0211, which authorizes the commissioner of education to adopt rules necessary to implement grade advancement testing requirements, including accelerated instruction. The TEC, §28.021, requires the commissioner to provide guidelines to districts based on best practices that a district may use when considering factors for promotion.

The repeal implements the TEC, §28.0211 and §28.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

## CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts an amendment to §741.44, the repeal of §741.64, and new §741.64, concerning the regulation and licensure of speech-language pathologists and audiologists. New §741.64 is adopted with changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8945). The amendment to §741.44 and the repeal of §741.64 are adopted without changes, and the sections will not be republished.

### BACKGROUND AND PURPOSE

The rules reflect the board's current operational procedures in processing and approving licensure applications and provide clarification of the rules, so that the intent is not ambiguous for license holders and the public.

### SECTION-BY-SECTION SUMMARY

The amendment to §741.44(b)(3) is adopted to reflect the board's current operational procedure in the supervisory agreement.

The repeal of existing §741.64 and new §741.64 update and clarify the licensure requirements and responsibilities of a licensed assistant and a licensed speech-language pathologist supervisor.

### COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. There were two individual commenters and one state association - Texas Speech-Language-Hearing Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §741.64(e)(4)(C) and (e)(5), two commenters requested deleting the words "of the licensed assistant," and "licensed assistant with the" respectively as unnecessary.

Response: The Board agrees with the commenters, and the phrases have been deleted from the paragraphs.

Comment: Concerning §741.64(e)(6), two commenters asked for the deletion of the phrase "100% face-to-face."

Response: The Board disagrees with the commenters as this follows the Clinical Deficiency Plan that an assistant applicant submits. No change was made as a result of this comment.

Comment: Concerning §741.64(g)(1), one commenter requested deleting the word "diagnostic."

Response: The Board agrees with the commenter. Speech-language pathologists do not diagnose, and subsection (g)(1) and (2) were revised.

Comment: Concerning §741.64(g)(1), two commenters requested deleting the word "directly."

Response: The Board disagrees with the commenters. The initial contacts must be directly with the client. No change was made as a result of this comment.

Comment: Concerning §741.64(g)(5), two commenters expressed their concern with the statement "An exception to paragraph (3) of this subsection may be requested."

Response: The Board disagrees with the commenters, as an alternate supervision plan must be submitted for approval by the supervision board designee. No change was made as a result of this comment.

Comment: Concerning §741.64(g)(5)(E), two commenters expressed their concern regarding the use of the word "license" which should be changed to "licensed."

Response: The Board agrees with the commenters and the word was corrected to "licensed."

Comment: Concerning §741.64(g)(7)(A), two commenters requested deleting the words "an evaluation."

Response: The Board disagrees with the commenters. Public school system assessments are different from evaluations. No change was made as a result of the comment.

Comment: Concerning §741.64(g)(7)(B), two commenters requested deleting the words "conduct assessments."

Response: The Board disagrees with the commenters. The wording is consistent with the subsection. No change was made as a result of the comment.

Comment: Concerning §741.64(j)(2), two commenters noted in paragraph (2) of the proposed rule "...goals and objective..." should read "...goals and objectives..."

Response: The Board agrees with the commenters, and "objective" was changed to the plural form.

Comment: Concerning §741.64(m)(2), two commenters questioned the use of "speech-language pathologist supervisor."

Response: The Board agrees with the commenters and the wording was changed from "speech-language pathologist supervisor" to "speech-language pathology supervisor."

## SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

### 22 TAC §741.44

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001528

Kerry Ormson  
Presiding Officer  
State Board of Examiners for Speech-Language Pathology and  
Audiology  
Effective date: April 25, 2010  
Proposal publication date: December 11, 2009  
For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

### 22 TAC §741.64

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kerry Ormson  
Presiding Officer  
State Board of Examiners for Speech-Language Pathology and  
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### 22 TAC §741.64

#### STATUTORY AUTHORITY

The new rule is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.64. Requirements for an Assistant in Speech-Language Pathology License.*

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section. The applicant for the assistant license must:

- (1) possess a baccalaureate degree with an emphasis in communicative sciences and disorders;
- (2) have acquired the following:
  - (A) at least 24 semester hours in speech-language pathology and/or audiology;
  - (B) and at least 18 semester hours of the 24 hours must be in speech-language pathology;
  - (C) at least three semester hours in language disorders;

(D) at least three semester hours in speech disorders;  
and

(E) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. Within 15 working days of receipt, the board's designee shall evaluate the documentation and shall either approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed 24 semester credit hours in communicative sciences or disorders, which may include some leveling hours. Within 15 working days of receipt, the board's designee shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(e) An applicant who has not acquired the 25 hours of clinical observation and 25 hours of clinical experience referenced in subsection (a)(3) of this section shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in

§741.112(d) of this title (relating to Required Application Materials) and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the licensed assistant with the training to acquire these hours shall submit:

- (A) the supervisory responsibility statement form; and
- (B) the prescribed Clinical Deficiency Plan.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within 60 days of the issue date of the assistant's license or the licensed assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the licensed assistant's performance; and

(C) a signed statement that the licensed assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under 100% face-to-face supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the board office evaluates the documentation identified in paragraph (4) of this subsection.

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraph (4) of this subsection has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the licensed assistant. The licensed speech-language pathology supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit the board prescribed Exception Request to Supervise with less than Three Years Experience form. The board's designee shall evaluate the request and approve or not approve the request within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the licensed assistant. The supervisor responsibility statement shall be submitted upon:

- (A) application for an assistant license;
- (B) license renewal when there is a change in supervisor;
- (C) other changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the licensed assistant, each licensed speech-language pathology supervisor shall be identified on the supervisor responsibility statement, and meet the minimum requirement of supervision as referenced in subsection (g)(4) of this section. The licensed assistant shall only provide services for the supervising speech-language pathologist's caseload.

(3) A licensed assistant may renew the license if there is a change in supervision, but may not practice until a new supervisory responsibility statement form is approved.

(4) In the event the licensed speech-language pathology supervisor ceases supervision of the licensed assistant, the licensed speech-language pathology supervisor shall be responsible for the practice of the licensed assistant until written notification has been received in the board office.

(5) Should the licensed assistant practice without approval from the board office, disciplinary action may be initiated against the licensed assistant. If the licensed speech-language pathology supervisor had knowledge of this violation, disciplinary action against the licensed speech-language pathology supervisor may also be initiated.

(g) A licensed speech-language pathology supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) Initial contacts directly with the client shall be conducted by the supervising speech-language pathologist.

(2) Following the initial contact, the supervising speech-language pathologist shall determine whether the licensed assistant has the competence to perform specific duties before delegating tasks.

(3) Indirect methods of supervision may include audio and/or video tape recording, report review, telephone or electronic communication, or other means of reporting.

(4) The supervising speech-language pathologist shall provide a minimum of two hours per week of supervision, at least one hour of which is face-to-face supervision where the licensed assistant is providing the therapy. This applies whether the licensed assistant's practice is full or part-time.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit the prescribed alternate supervision request plan form for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the licensed assistant;
- (B) the name and signature of the supervising speech-language pathologist;
- (C) the proposed plan of supervision;
- (D) the exact time frame for the proposed plan;

(E) the length of time the licensed assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan.

(7) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant's and client's performance. Such documentation may be requested by the board.

(A) A licensed assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(B) A licensed assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the licensed assistant has been appropriately trained and the assessments are conducted under the direction of the licensed speech-language pathology supervisor. A licensed assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed supervising speech-language pathologist need not be present when the licensed assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the licensed assistant.

(2) The licensed supervising speech-language pathologist shall keep job descriptions and performance records of the licensed assistant. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The licensed speech-language pathology supervisor of the licensed assistant shall:

(A) in writing, determine the skills and assigned tasks the licensed assistant is able to carry out within the licensed assistant's scope of practice. This document must be agreed upon by the licensed assistant and the supervising speech-language pathologist;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review them with the licensed assistant who will provide the service; and

(D) maintain responsibility for the services provided by the licensed assistant.

(4) The licensed assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathology supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathology supervisor

provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(5) Examples of duties which a licensed assistant may be assigned by the speech-language pathology supervisor who agreed to accept responsibility for the services provided by the licensed assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathology supervisor;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests if the test developer does not specify a graduate degreed examiner and the supervisor has determined the licensed assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials;

(H) participate with the licensed speech-language pathology supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist;

(I) may write lesson plans based on the therapy program developed by the supervising speech-language pathologist. The lesson plans shall be reviewed and approved by the supervising speech-language pathologist; and

(J) must only work with assigned cases of the supervising speech-language pathologist's caseload.

(i) The licensed assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathology supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office;



- (12) perform invasive procedures;
  - (13) screen or diagnose clients for feeding and swallowing disorders;
  - (14) use a checklist or tabulated results of feeding or swallowing evaluations;
  - (15) demonstrate swallowing strategies or precautions to clients, family, or staff;
  - (16) provide client or family counseling; or
  - (17) write or sign any formal document relating to the reimbursement for or the provision of speech-language pathology services.
- (j) The licensed, board approved supervisor of the licensed assistant, prior to the ARD, shall:

- (1) notify the parents of students with speech impairments that services will be provided by a licensed assistant and that the licensed assistant will represent Speech Pathology at the ARD;
- (2) develop the student's new IEP goals and objectives and review them with the licensed assistant; and
- (3) maintain undiminished responsibility for the services provided and the actions of the licensed assistant.

(k) A licensed assistant may represent special education and speech pathology at the ARD meetings with the following stipulations.

- (1) The licensed assistant shall have written documentation of approval from the licensed, board approved speech-language pathologist supervisor.
- (2) The licensed assistant shall have three years experience as a licensed assistant in the school setting.

(3) The licensed assistant may attend, with written approval of the supervising speech-language pathologist, a student's annual review ARD meeting if the meeting involves a student for whom the licensed assistant provides services. If a licensed assistant attends a meeting as provided by this rule, the supervising speech-language pathologist is not required to attend the meeting. A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial IEP or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

(4) The licensed assistant shall present IEP goals and objectives that have been developed by the supervising speech-language pathologist and reviewed with the parent by the speech-language pathologist.

(5) The licensed assistant shall discontinue participation in the ARD meeting, and contact the supervising speech-language pathologist, when questions or changes arise regarding the IEP document.

(l) In any professional context the licensee must indicate the licensee status as a licensed speech-language pathology assistant.

(m) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify a licensed assistant and licensed speech-language pathology supervisor by mail that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant and the licensed speech-language pathology supervisor who agreed

to accept responsibility for the services provided by the licensed assistant shall mail the requested proof of compliance to the board.

(3) The licensed assistant and the supervising speech-language pathologist shall comply with the board's request for documentation and information concerning compliance with the audit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001530

Kerry Ormson

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 217. MILK AND DAIRY

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 §§217.1 - 217.3, 217.61 - 217.71, 217.81 - 217.85, 217.91, and 217.92, and new §§217.1, 217.2, 217.41 - 217.51, 217.61 - 217.65, 217.71 - 217.81, 217.91 and 217.92 concerning the milk and dairy program. New §§217.1, 217.45, 217.46, 217.74 - 217.77, and 217.79 are adopted with changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7510). The repeal of §§217.1 - 217.3, 217.61 - 217.71, 217.81 - 217.85, 217.91, and §217.92, and new §§217.2, 217.41 - 217.44, 217.47 - 217.51, 217.61 - 217.65, 217.71 - 217.73, 217.78, 217.80, 217.81, 217.91 and 217.92 are adopted without changes and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The repeals and new sections are a result of the passage of Senate Bill (SB) 1714, 80th Legislature, Regular Session, 2007, which amended Health and Safety Code, Chapter 435 (Dairy Products).

Currently, Grade A Milk is regulated by reference to the Grade A Pasteurized Milk Ordinance (PMO) rules adopted under Health and Safety Code, Chapter 435 (Dairy Products), which generally reflect national regulatory standards. Non-Grade A manufactured milk products, such as cheese, butter, and milk powder, are subject to the Good Manufacturing Practices rules adopted under Health and Safety Code, Chapter 431 (Texas Food, Drug, and Cosmetic Act), which are less specific and provide for a less rigorous inspection process than the PMO rules.

SB 1714 mandates that non-Grade A dairy products (such as cheese, butter, and milk powder) be produced under the same or similar stringent manufacturing standards currently applied to Grade A pasteurized milk, resulting in a more uniform system

of dairy regulation in Texas. The new Subchapter E of the Milk and Dairy Rules, titled Dairy Products and Milk for Manufacturing Purposes, implements SB 1714. The new Subchapter F, titled Permits, Fees and Enforcement, imposes permit and inspection fees on the facilities that produce these non-Grade A products to cover the cost of the more intensive inspection process that will result.

The new rules also update language for Subchapter A, Grade Specifications and Requirements for Milk, Subchapter C, Rules for the Manufacture of Frozen Desserts, Subchapter D, Bulk Milk Regulations, and Subchapter F, Permits, Fees, and Enforcement. New language for Subchapter E, Dairy Products and Milk for Manufacturing Purposes, implements SB 1714. Subchapter B, Grade A Raw for Retail Milk and Milk Products, §§217.21 - 217.33, was not revised at this time and, therefore, remains in effect as it is currently published in the Texas Administrative Code.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 217.1 - 217.3, 217.61 - 217.71, 217.81 - 217.85, 217.91, and 217.92 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

Throughout new Subchapters A, and C - F of Chapter 217: sections are reformatted and/or renumbered to meet Texas Register format; references to "§403(h)(3)" are changed to "21 U.S.C. §343(h)(3)" to provide a more readily accessible citation to the provision titled "Misbranded Food" of the Federal Food, Drug and Cosmetic Act; all references to "Grade A Condensed and Dry Milk Ordinance," "Imitation frozen dessert" and "Imitation frozen dessert mix" are deleted because the definitions are obsolete; all references to "PMO" or "Pasteurized Milk Ordinance" or "U.S. Public Health Service Grade A Pasteurized Milk Ordinance" are changed to, "Grade A Pasteurized Milk Ordinance" for consistency; and other minor grammatical changes are made for clarification.

All sections of new Subchapters A, and C - F of Chapter 217 are renumbered due to the addition of new §§217.71 - 217.81.

Sections 217.1 - 217.3 are repealed and adopted as new §217.1 and §217.2, which update, add, and delete definitions and provide for the continued adoption of the requirements for the Grade A Pasteurized Milk Ordinance.

Concerning new §217.1, the following definitions are revised to be consistent with terms used throughout the chapter: "Bulk milk hauler" is revised to read, "Bulk milk hauler/sampler;" "Concentrated milk" is revised to read, "Concentrated (condensed) milk;" "Concentrated milk products" is revised to read, "Concentrated (condensed) milk products;" "Frozen low fat yogurt" is revised to read, "Frozen low fat yogurt and mix;" and "Frozen low fat yogurt mix" is revised to read, "Frozen low fat yogurt dry mix."

Concerning new §217.1, the following definitions are added and subsequent definitions were renumbered: "Dairy product manufacturer" and "Federal Food Drug and Cosmetic Act (FFDCA)."

Concerning new §217.1, the following definitions are deleted because they are obsolete and subsequent definitions were renumbered: "Grade A Condensed and Dry Milk Ordinance" and "Imitation frozen dessert mix."

Regarding new §217.2, the department name is updated and the current physical address is added to inform stakeholders where they may obtain copies of referenced documents.

Sections 217.61 - 217.71 are repealed and adopted as new §§217.41 - 217.51 which update rules for the Manufacture of Frozen Desserts. References to imitation frozen desserts mix and imitation frozen desserts were deleted throughout the subchapter because the products are obsolete.

New §217.44 changes the inspection interval each frozen desserts plant must undergo following the issuance of a permit from "once every six months" to "once every three months" to be consistent with national regulatory standards.

New §217.45(a) specifies the frequency of the examination and standards for frozen desserts to be collected during any consecutive six months. At least four samples of raw milk intended for use in the manufacture of frozen desserts shall be collected and examined by the department. "Raw cream" and "raw milk products" are removed from the list of products that must be sampled.

New §217.45(e) adds "provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the United States Food and Drug Administration (FDA) as provided in 21 U.S.C., §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department" to clarify that only FDA-recognized processes will be considered by the department.

New §217.46(e)(1)(l) adds "The milk plant, frozen dessert plant, containers, utensils, and equipment shall be used for no purpose other than the processing of milk, cream, milk products, mix, and frozen desserts, and the operation incident thereto, except as may be approved in writing by the department" to clarify that department approval shall be in writing.

New §217.46(e)(6) states that written permission from the department shall be obtained for milk or milk products to be received from a transport tank that appears to be damaged, dirty, or does not have a cleaning tag attached.

New §217.46(l) is revised to include specific frequencies and requirements for cleaning of multi-use containers and utensils and to require that the necessary documentation be submitted in writing to the department for review and approval.

New §217.46(p)(1) adds a heating and holding temperature of 180 degrees Fahrenheit for not less than 15 seconds to be consistent with national regulatory standards.

New §217.46(p)(3) adds "Nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the United States Food and Drug Administration (FDA) as provided in 21 U.S.C., §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department" to clarify that only FDA-recognized processes will be considered by the department.

New §217.46(y) adds new raw product storage requirements for the sanitation standards of frozen desserts plants to be consistent with national regulatory standards.

New §217.51(c) clarifies that adequate medical examination of an infected person or potentially infected person shall be performed before such person is permitted to return to frozen desserts handling.

Sections 217.81 - 217.85 which are repealed and adopted as new §§217.61 - 217.65, update rules for Storage and Transportation of Bulk Milk.

New §217.61(a)(2) redefines the minimum passing score for examination for bulk milk hauler/sampler certifications and adds new specifications for the examination criteria.

New §217.61(a)(3)(B) specifies that acceptance of the training program will be indicated in a letter issued by the department.

New §217.61(a)(5) adds language to allow official milk samplers, and bulk milk haulers/samplers the option to be evaluated by the authorized Regulatory Agency of another state.

New §217.61(b)(1) adds a reference to §217.2 of this title, which specifies the procedure and handling requirements for bulk milk pickup tankers.

New §217.61(b)(2) requires that a copy of the load manifest be provided and adds that the hauler/sampler name and driver's license number be provided for each route pickup load.

New §217.62(d) adds a requirement that farm bulk milk tanks shall comply with the Grade A Pasteurized Milk Ordinance.

New §217.63(a) adds language to allow official milk samplers, and bulk milk haulers/samplers the option to be permitted by the authorized Regulatory Agency of another state and clarifies that failure to obtain a permit may result in the milk tank truck and its contents being immediately removed from Grade A or food use.

New §217.63(b) is revised to read, "All vehicles and milk tank trucks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents. The permit sticker issued by the department shall be placed near the outlet valve of the tanker truck or trailer" to be consistent with national regulatory standards.

New §217.63(c) clarifies that the owner or manager of the milk transportation company report to the department verbally or in writing within 10 days any tanks taken out of service or damaged.

New §217.64(a)(4) specifies that agitation of milk in the transport tank should be done for a minimum of 15 minutes prior to obtaining samples; clarifies that samples must be collected only by a certified milk sampler; and allows the department to approve alternative procedures to achieve adequate agitation.

New §217.64(b)(1) adds "All milk tank trucks that transport milk and milk products as permitted by the department, shall be washed and sanitized at a permitted milk plant, receiving station, transfer station, or milk tank truck cleaning facility" to be consistent with national regulatory standards.

New §217.64(b)(3)(F) corrects and replaces the term "pressure recorder" with "pressure indicator."

New §217.64(b)(5) clarifies the ability to pick up multiple loads in a milk tank truck within a 24-hour period as long as the milk tank truck is washed after each day's use.

New §217.64(b)(6) revises the time interval to re-sanitize a milk tank truck and appurtenances to be consistent with national regulatory standards.

New §217.64(b)(7) changes the standards for the accountability of the cleaning and sanitizing tag for milk tank trucks to maintain equivalent national regulatory standards.

New §217.65 adds a reference to §217.2 of this title, which specifies the duties and responsibilities of the bulk milk hauler/sampler.

New §217.71 - §217.81 provide new rules for the manufacture of non-Grade A dairy products and add requirements for dairy products and milk for manufacturing purposes as a result of SB 1714 which amended Health and Safety Code, Chapter 435. The dairy products include instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey, and other dry milk products; butter and related products; cheese, pasteurized cheese and related products; and evaporated or condensed milk products.

The rules in Subchapter E, §217.91 and §217.92, are repealed and adopted as new Subchapter F, §217.91 and §217.92 which update rules for issuance of licenses, collection of fees, and enforcement provisions of Chapter 217 of this title relating to Milk and Dairy. New permit and inspection fees for non-Grade A dairy products have been added to new §217.91.

New §217.91(a) clarifies that the term of the permit/license is for two years as required by Health and Safety Code, §435.009(d).

New §217.91(a)(1) adds clarifying language that approval by the department is based on an inspection prior to the issuance of a permit.

New §217.91(a)(3) adds language to include that past due or late inspection fees shall be paid in order for a permit to be issued.

New §217.91(b) updates the department's name and adds the current physical address to inform stakeholders where they may obtain copies of referenced documents.

New §217.91(c)(1) updates all fees to reflect the new two-year permit term as required by Health and Safety Code, §435.009, and modifies language to apply fees to facilities and operations located outside Texas to reflect the application of permit and license fees for those dairy products regulated under new §§217.71 - 217.81.

New §217.91(d) updates the deadline for submitting a permit/license renewal application to reflect the new two-year permit term as required by Health and Safety Code, §435.009.

New §217.91(c)(1) and (h)(3) add permit and inspection fees for those dairy products regulated under new §§217.71 - 217.81.

## COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which responses the commission has reviewed and accepts. The comments were received from four businesses, and one association. The businesses commenting were Hammond Farm, Proverbs Farm, Maid in the Shade, and Hilmar Cheese. The association commenting was the Farm and Ranch Freedom Alliance. The commenters were in favor of the rules; however, they suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning §§217.61 - 217.65, two commenters expressed concern that these sections providing rules for transportation of large volumes of milk would require small cheese maker businesses to acquire large milk trucks and the equipment to unload and clean them.

RESPONSE: The department acknowledges the comments; however, no changes were made to these sections as a result of

the comments. The sections do contain rules that apply to milk tank trucks, but there are no requirements in these sections that require cheese maker businesses to acquire such equipment.

COMMENT: Concerning §217.64, one commenter suggested that the requirement to agitate milk in milk tank trucks for 15 minutes prior to collecting samples had a negative impact on product yields and could create a competitive disadvantage for Texas cheese manufacturers. The commenter suggested that the state broaden its acceptance of alternative methods of sampling.

RESPONSE: The department acknowledges the comment; however, no change was made to this section due to the comment received. The rule, as proposed, contains provisions to allow approval of alternative sampling methods.

COMMENT: Concerning §217.74(a)(2), two commenters were concerned that this section providing rules for the areas surrounding the facility would require small facilities to pave driveways for long distances from the licensed facility.

RESPONSE: The department agrees and the words "driveways and" have been deleted before the phrase "adjacent plant traffic areas" in the last sentence of the paragraph.

COMMENT: Concerning §217.74(b)(6)(A), two commenters were concerned that the language in this section requires small facilities to construct a separate room for the cleaning of milk cans and storage containers which could result in a significant expense to these facilities.

RESPONSE: The department agrees that the application of this section could result in a significant expense to dairy plants operating in buildings with limited space. The department adds the following sentence to this subparagraph to provide an alternate means of demonstrating compliance: "Handwashing of milk cans, portable storage bins, bottles and cases may be permitted in a single room, provided that these operations are conducted in a manner that precludes contamination of the finished dairy product."

COMMENT: Concerning §217.77(a)(2)(F), two commenters were opposed to the requirement that cheese presses be constructed from stainless steel.

RESPONSE: The department agrees that, while stainless steel construction is optimal, other safe and suitable materials could be used in this application. The words "or other approved material" were added after the words "stainless steel" and the words ", and all joints welded" were deleted before "and all surfaces" to clarify the intent of the rule.

COMMENT: Four commenters expressed general concerns about the cost incurred to small cheese makers due to the proposed rules, particularly the cost of commercial pasteurization equipment.

RESPONSE: The commenters' concerns were not accompanied by suggested changes to the proposed rules. Significant changes were made to the proposed rules to reduce the cost to small cheese makers as a result of comments received from stakeholders during the informal comment period. Pasteurization equipment that is in conformance with national standards is an important public health consideration. Therefore, no further changes were made to the rules as a result of these general comments.

Minor revisions were made to §§217.1, 217.45, 217.46, 217.74 - 217.77, and 217.79, to provide a more accessible citation to the

appropriate provision of the Federal Food, Drug and Cosmetic Act.

#### 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.

#### SUBCHAPTER A. GRADE SPECIFICATIONS AND REQUIREMENTS FOR MILK

##### 25 TAC §§217.1 - 217.3

##### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

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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Lisa Hernandez

General Counsel

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#### SUBCHAPTER C. RULES FOR THE MANUFACTURE OF FROZEN DESSERTS

##### 25 TAC §§217.61 - 217.71

##### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

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## SUBCHAPTER D. BULK MILK REGULATIONS

### 25 TAC §§217.81 - 217.85

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

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## SUBCHAPTER E. PERMITS, FEES AND ENFORCEMENT

### 25 TAC §217.91, §217.92

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

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## SUBCHAPTER A. GRADE SPECIFICATIONS AND REQUIREMENTS FOR MILK

### 25 TAC §217.1, §217.2

#### STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

§217.1. *Definitions.*

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

(1) Acidified milk--The food produced by souring cream, milk, partially skimmed milk, or skim milk or any combination, with acetic acid, adipic acid, citric acid, fumaric acid, glucono-delta-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, or tartaric acid, with or without the addition of characterizing microbial organisms. Acidified milk is further defined in Title 21, Code of Federal Regulations (CFR), §131.111.

(2) Acidified sour cream--The product resulting from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria, and as further defined in Title 21, CFR, §131.162.

(3) Adulterated milk and milk products--Any milk or milk product shall be deemed to be adulterated if:

(A) it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

(B) it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by State or Federal regulation, or in excess of such tolerance if one has been established;

(C) it consists, in whole or in part, of any substance unfit for human consumption;

(D) it has been produced, prepared, packed, or held under unsanitary conditions;

(E) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(F) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

(G) any milk or milk product shall be deemed to be adulterated if one or more of the conditions described in the Federal Food, Drug and Cosmetic Act, §402, as amended (21 U.S.C. §342) exist.

(4) Aseptic processing--The term "aseptic processing," when used to describe a milk product, means that the product has been subjected to sufficient heat processing, and packaged in a hermetically sealed container, to conform to the applicable requirements of Title 21, CFR, Part 113 and maintain the commercial sterility of the product under normal non-refrigerated conditions.

(5) Aseptically processed milk and milk products--Products hermetically sealed in a container and so thermally processed in conformance with Title 21, CFR, Part 113 and the provisions of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Grade A Pasteurized Milk Ordinance), so as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution. The product shall be free of viable microorganisms (including spores) of public health significance.

(6) Bulk milk hauler/sampler--A bulk milk hauler/sampler is any person who collects official samples and may transport raw milk from a farm and/or raw milk products to or from a milk plant, receiving station or transfer station and has in their possession a certification from the department.

(7) Bulk milk pickup tanker--A vehicle, including the truck, tank and those appurtenances necessary for its use, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(8) Certified milk sampler/collector--Any industry personnel, other than the milk hauler, or dairy plant sampler who collects more or stores an official milk sample.

(9) C-I-P or cleaned-in-place--The procedure by which sanitary pipelines or pieces of equipment are mechanically cleaned-in-place by circulation.

(10) Concentrated (condensed) milk--A fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from the milk, which, when combined with potable water in accordance with instructions printed on the container, results in a product conforming to the milkfat and milk solids not fat levels of milk as defined in this section.

(11) Concentrated (condensed) milk products--Homogenized concentrated (condensed) milk, concentrated (condensed) skim milk, concentrated (condensed) low fat milk, and similar concentrated (condensed) products made from concentrated (condensed) milk or concentrated (condensed) skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform to the definitions of the corresponding milk products in this section.

(12) Cream--The liquid milk product, high in milkfat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated (condensed) milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk, and contains not less than 18% milkfat.

(13) Cultured milk--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with characterizing microbial organisms. Cultured milk is further defined in Title 21, CFR, §131.112.

(14) Dairy farm--Any place or premises where one or more lactating animals (cows, goats or sheep, water buffalo, or other hooved animal) are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, receiving station, or transfer station.

(15) Dairy plant or plant--Any place, premise, or establishment where milk or milk products are received or handled for processing or manufacturing.

(16) Dairy plant sampler--A department employee responsible for the collection of official samples for regulatory purposes outlined in §6 of the "Grade A Pasteurized Milk Ordinance."

(17) Dairy product--Butter, cheese, dry cream, plastic cream, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, whey protein concentrates, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products derived from milk, as may be specified under the statutory standard for butter (Title 21, U.S.C. Part 321a), and the Federal Standards of Identity for Cheese and Cheese Related Products (Title 21, CFR, Part 133).

(18) Dairy product manufacturer--Any place, premises or establishment where milk or milk products for manufacturing purposes are collected, handled, processed, dried, stored, pasteurized, ultra-pasteurized, aseptically processed, bottled, or prepared for distribution.

(19) Department--The Department of State Health Services, the Commissioner of Health, or his authorized representative. For purposes of this chapter, the Texas Department of Health is an equivalent term.

(20) Distributor--Any person who offers for sale or sells to another person any milk, milk products, or frozen dessert product.

(21) Drug--The term "drug" includes:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States or official National Formulary, or any supplement to any of them;

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subparagraphs (A), (B) or (C) of this paragraph, but does not include devices or their components, parts or accessories.

(22) Eggnog--The food containing cream, milk, partially skimmed milk, or skim milk, used alone or in combination, liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs, or any one or more of the foregoing egg yolk containing products with liquid egg white or frozen egg white, and a nutritive carbohydrate sweetener. Eggnog is further defined in Title 21, CFR, §131.170.

(23) Federal Food Drug and Cosmetic Act (FFDCA)--The United States laws pertaining to food, drugs, and cosmetics as specified in 21 U.S.C. §301, *et seq.*

(24) Freezer--A piece of equipment which converts mix and/or other ingredients to a hardened or semi-hardened state using the technique of freezing during processing or manufacturing of those products commonly known as ice cream, ice cream mix, frozen dessert, frozen dessert mix, and nondairy frozen dessert mix.

(25) Frozen desserts--Any of the following: ice cream, light ice cream, ice milk, frozen custard, fruit sherbet, non-fruit water ice, frozen dietary dairy dessert, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, or nondairy frozen dessert. The term includes mix used in the freezing of one of those frozen desserts.

(26) Frozen dessert manufacturer or plant--A person who manufactures, processes, converts, partially freezes or freezes any mix, be it dairy, nondairy frozen desserts for distribution or sale at wholesale. This definition shall not include a frozen dessert retail establishment.

(27) Frozen dietary dairy dessert and frozen dietary dessert--A food for any special dietary use, prepared by freezing, with or without agitation, composed of a pasteurized mix which may contain fat, protein, carbohydrates, flavoring, stabilizers, emulsifiers, vitamins, and minerals.

(28) Frozen low fat yogurt and mix (also called low fat frozen yogurt)--Complies with the provisions of frozen yogurt, except that:

(A) the milk fat content of the finished food is not less than 0.5%, but not more than 2.0%; and

(B) the name of the food is "frozen low fat yogurt."

(29) Frozen low fat yogurt dry mix--The unfrozen dry powdered combination of ingredients which, when combined with potable water and when frozen while stirring, will produce a product conforming to the definition of frozen low fat yogurt.

(30) Frozen milk concentrate--A frozen milk product with a composition of milkfat and milk solids not fat in such proportions that when a given volume of concentrate is mixed with a given volume of water the reconstituted product conforms to the milkfat and milk solids

not fat requirements of whole milk. In the manufacturing process, water may be used to adjust the primary concentrate to the final desired concentration. The adjusted primary concentrate is pasteurized, packaged, and immediately frozen. This product is stored, transported, and sold in the frozen state.

(31) Frozen skim milk yogurt--Complies with the provision of frozen yogurt, except that:

(A) the milkfat content of the finished food is less than 0.5%; and

(B) the name of the food is either "frozen skim milk yogurt" or "frozen nonfat yogurt."

(32) Frozen yogurt--

(A) Frozen yogurt is the food which is prepared by freezing, while stirring, a mix composed of one or more of the optional dairy ingredients provided for in ice cream and frozen custard, and which may contain other safe and suitable ingredients.

(B) The dairy ingredient(s), with or without other ingredients, is/are pasteurized and subsequently cultured with bacterial cultures acceptable to the state health authority.

(C) The titratable acidity of the cultured frozen yogurt is not less than 0.5%, calculated as lactic acid, except if the frozen yogurt is flavored by the addition of a non-fruit characterizing ingredient(s).

(D) The milkfat content of frozen yogurt is not less than 3.25% by weight, except that when bulky characterizing ingredients are used the percentage milkfat is not less than 2.5%.

(E) The finished frozen yogurt shall weigh not less than five pounds per gallon.

(F) The name of the food is "frozen yogurt."

(33) Goats milk ice cream--The food defined in Title 21, CFR, §35.110(a) - (f).

(34) Goat milk--The normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5% milkfat and not less than 7.5% milk solids not fat. The word "milk" includes goat milk.

(35) Grade A dry milk and whey products--Products which have been produced for use in Grade A pasteurized or aseptically processed milk products and which have been manufactured under the provisions of the most current revision of the "Grade A Pasteurized Milk Ordinance."

(36) Grade A Pasteurized Milk Ordinance--The document published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. The document consists of the following parts: The Grade A Pasteurized Milk Ordinance with Administrative Procedures; illustrations, tables, supplements, appendices; and an index. Copies are on file in the Milk Group, Division for Regulatory Services, Department of State Health Services, 8407 Wall Street, Austin, Texas, and are available for review during normal business hours. For purposes of this chapter, "U.S. Public Health Services Grade A Pasteurized Milk Ordinance" is an equivalent term.

(37) Grade A retail raw milk--Milk as defined in paragraph (49) of this section, that is produced under the provisions of Subchapter B of this chapter (relating to Grade A Raw for Retail Milk and Milk Products), and is offered for sale to the public without benefit of pasteurization.

(38) Grade A retail raw milk products--Milk products that are manufactured under the provisions of Subchapter B of this chapter, and are offered for sale to the public without benefit of pasteurization. These products include: cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, skim milk, low fat milk, eggnog, buttermilk, cultured milk, cultured low fat milk, cultured skim milk, yogurt, low fat yogurt, and nonfat yogurt.

(39) Half-and-half--The food consisting of a mixture of milk and cream which contains not less than 10.5% but less than 18% milkfat. Half-and-half is further defined in Title 21, CFR, §131.180.

(40) Heavy cream or heavy whipping cream--Cream which contains not less than 36% milkfat and as further defined in Title 21, CFR, §131.150.

(41) Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and thereby maintain the commercial sterility of its contents after processing.

(42) Homogenized--The term "homogenized" means that milk or a milk product has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 4.4 degrees Celsius (40 degrees Fahrenheit), no visible cream separation occurs on the milk; and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10% from the fat percentage of the remaining milk as determined after thorough mixing.

(43) Ice cream and frozen custard--The foods defined in Title 21, CFR, §135.110(a) - (f).

(44) Light cream--Cream which contains not less than 18% but less than 30% milkfat, and as further defined in Title 21, CFR, §131.155.

(45) Light whipping cream--Cream which contains not less than 30% but less than 36% milkfat, and as further defined in Title 21, CFR, §131.157.

(46) Lorine--The food prepared from the same ingredients and in the same manner prescribed for mellorine and complies with all the provisions for mellorine except that:

(A) its content of fat is at least 2% but less than 6%;

(B) its content of milk solids not fat is not less than 10%;

(C) caseinates may be added when the content of total milk solids is not less than 10%;

(D) the provision for reduction in fat and milk solids not fat from the addition of bulky ingredients in mellorine does not apply;

(E) the quantity of food solids per gallon is not less than 1.2 pounds; and

(F) the name of the food is "Lorine."

(47) Low fat yogurt--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Low fat yogurt is further defined in Title 21, CFR, §131.203.

(48) Mellorine--The food defined in Title 21, CFR, §135.130(a) - (d).

(49) Milk--The lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, sheep, goats, water buffaloes or other hooved animals, and as further defined in Title 21, CFR, §131.110.

(50) Milk distributors--Any person who offers for sale or sells to another person any milk or milk products.

(51) Milk hauler--Any person who transports raw milk and/or raw milk products to or from a milk plant, receiving station, or transfer station.

(52) Milk plant--Any place, premises or establishment where milk or milk products are collected, handled, processed, dried, stored, pasteurized, ultra-pasteurized aseptically processed, bottled, or prepared for distribution. This term also means a processing plant, manufacturing plant, or bottling plant in these sections.

(53) Milk producer--Any person who operates a dairy farm and provides, sells or offers milk for sale to a milk plant, receiving station, or transfer station.

(54) Milk products--

(A) Milk products include cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated (condensed) milk, concentrated (condensed) milk products, reduced fat milk, nonfat (skim) milk, low fat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured low fat milk, cultured nonfat (skim) milk, yogurt, low fat yogurt, nonfat yogurt, acidified milk, acidified low fat milk, acidified nonfat (skim) milk, low-sodium milk, low-sodium low fat milk, low-sodium nonfat (skim) milk, lactose-reduced milk, lactose-reduced low fat milk, lactose-reduced nonfat (skim) milk, aseptically processed and packaged milk and milk products as defined in this section, milk, low fat milk, or nonfat (skim) milk with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification of milk products defined herein.

(B) Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with Title 21, CFR, §130.10, Requirements for foods named by use of nutrient content claim and standardized term.

(C) This definition shall include those milk and milk products, as defined herein, which have been aseptically processed and then packaged.

(D) Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed, or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein, or if they are labeled as Grade A.

(E) This definition is not intended to include dietary products (except as defined herein), infant formula, ice cream or other desserts, butter, or cheese.

(55) Milk for manufacturing purposes--Milk and milk products for human consumption, but not subject to Grade A requirements.

(56) Milk tank truck--The term used to describe both a bulk milk pickup tanker and a milk transport tank.



(57) Milk tank truck driver--A milk tank truck driver is any person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station. Any transportation of a direct farm pickup requires the milk tank truck driver to have responsibility for accompanying official samples.

(58) Milk transport tank or tanker--A vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

(59) Misbranded milk and milk products--Milk and milk products are misbranded if:

(A) its container(s) bear or are accompanied by any false or misleading written, printed, or graphic matter;

(B) milk does not conform to the definitions as contained in these rules;

(C) milk is not labeled in accordance with §217.25 of this title (relating to Labeling) for Grade A Raw for Retail Milk and Milk Products; §217.43 of this title (relating to Labeling) for Rules for the Manufacture of Frozen Desserts; §217.81 of this title (relating to Labeling) for Dairy Product Manufacturers; or

(D) one or more of the conditions described in §403 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. §343) exist.

(60) Milk transportation company--A milk transportation company is the person responsible for a milk tank truck(s).

(61) Multi-use container--Any container having a product-contact surface and used in the packaging, handling, storing, or serving of milk or milk products, which, if it remains in good repair and is properly washed and sanitized, may be utilized for multiple usage.

(62) Nondairy frozen dessert--

(A) Nondairy frozen dessert is the food which is prepared by freezing, while stirring, a nondairy frozen dessert mix composed of one or more of the optional characterizing ingredients specified in subparagraph (B) of this paragraph, sweetened with one or more of the optional sweetening ingredients specified in subparagraph (C) of this paragraph. The nondairy product, with or without water added, may be seasoned with salt. One or more of the ingredients specified in subparagraph (D) of this paragraph may be used. Pasteurization is not required. The optional caseinates specified in subparagraph (D)(i) of this paragraph are deemed not to be dairy products.

(B) The optional flavoring ingredients referred to in subparagraph (A) of this paragraph are natural and artificial flavoring and characterizing food ingredients.

(C) The optional sweetening ingredients referred to in subparagraph (A) of this paragraph are sugar (sucrose), dextrose, invert sugar (paste or syrup), glucose syrup, dried glucose syrup, corn sweetener, dried corn sweetener, malt syrup, malt extract, dried malt syrup, dried malt extract, maltose syrup and dried maltose syrup.

(D) Other optional ingredients referred to in subparagraph (A) of this paragraph are:

(i) casein prepared by precipitation with gums, ammonium, caseinate, calcium caseinate, potassium caseinate, or sodium caseinate;

(ii) hydrogenated and partially hydrogenated vegetable oil;

(iii) dipotassium phosphate;

(iv) coloring, including artificial coloring;

(v) monoglycerides, diglycerides, or polysorbates;

and

(vi) thickening ingredients such as agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locus bean gum, oat gum, gum tragacanth, hydroxypropyl, cethyl cellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, and sodium carboxymethylcellulose.

(E) Such nondairy frozen desserts are deemed "processed" when manufactured as a dry powdered mix. The addition of water is merely the manner in which such nondairy frozen desserts are served.

(F) The label shall comply with labeling requirements for frozen desserts with the additional clear and concise statement that the product is nondairy.

(63) Nonfat yogurt--The food produced by culturing skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Nonfat yogurt is further defined in Title 21, CFR, §131.206.

(64) Novelties--Frozen desserts, either alone or in combination with other foods such as cookies, wafers, cones, coating, confections, etc., which are packaged in single-serving units.

(65) Official laboratory--A biological, chemical or physical laboratory which is under the direct supervision of the State or a local regulatory agency.

(66) Overrun--The trade expression used to reference the increase in volume of frozen product over the volume of the mix. This increase in volume is due to air being whipped into the product during the freezing process. It is expressed as a percent of the volume of the mix.

(67) Officially designated laboratory--A commercial laboratory authorized to do official work by the regulatory or supervision agency, or a milk industry laboratory officially designated by the regulatory agency for the examination of milk, milk products, or frozen desserts.

(68) Pasteurization--

(A) The terms "pasteurization," "pasteurized," and similar terms shall mean the process of heating every particle of milk or milk product, in properly designed and operated equipment, and held continuously at or above a certain temperature for at least the corresponding specified time as shown in the following chart and referenced in the most current revision of the "Grade A Pasteurized Milk Ordinance."

Figure: 25 TAC §217.1(68)(A)

(B) Provided, that eggnog and frozen dessert mixes shall be heated to at least the temperature and time specifications in the following chart.

Figure: 25 TAC §217.1(68)(B)

(C) Provided further, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the United States Food and Drug Administration (FDA) as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(69) Permit--A license or certification to engage in the activity listed on the permit, license, or certificate.

(70) Person--The word "person" shall include any individual, plant operator, partnership, corporation, company, firm, trustee, association, or institution.

(71) Producer dairy farm--Any place or premises where one or more lactating animals (cows, goats or sheep, water buffalo, or other hooved animal) are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

(72) Quiescently frozen confection--A clean and wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain water, may be made with or without added natural or artificial flavoring, and with or without harmless coloring. The finished product shall contain not less than 17% by weight of total food solids. In the production of this food, no processing or mixing shall be used that develops in the finished food mix any physical expansion in excess of 10%.

(73) Quiescently frozen dairy confection--A clean and wholesome frozen product made from water, milk products and sugar, with added harmless natural or artificial flavoring, with or without added coloring, with or without added stabilizer, with or without added emulsifier; and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). It contains not less than 13% by weight of total milk solids, and not less than 33% by weight of total food solids. In the production of quiescently frozen dairy confections, no processing or mixing prior to quiescently freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%.

(74) Receiving station--Any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

(75) Reconstituted or recombined milk and milk products--Milk or milk products defined in this section which result from reconstituting or recombining of milk constituents with potable water when appropriate.

(76) Regulatory agency--The Department of State Health Services. For purposes of this chapter, Texas Department of Health is an equivalent term.

(77) Safe and suitable--Ingredients which perform an appropriate function in the food in which they are used, and are used at a level no higher than necessary to achieve their intended purpose in the food.

(78) Sale--Shall mean any of the following:

(A) the manufacture, production, processing, packing, exposure, offer, or holding of any milk, milk product, or frozen dessert product;

(B) the sale, dispensing, or giving of any milk, milk product, or frozen dessert product; or

(C) the supplying of any milk, milk product, or frozen dessert to a retail establishment or to a consumer.

(79) Sanitization--The application of any effective method or substance to a clean surface for the destruction of pathogens and other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product, or the health of consumers, and shall be acceptable to the regulatory agency.

(80) Sherbet--The food defined in Title 21, CFR, §135.140(a) - (i).

(81) Single service container--Any container having a milk product or frozen dessert, in contact with the containers surface and used in the packaging, handling, storing, or serving frozen desserts and/or milk products, which is intended for one usage only.

(82) Sour cream or cultured sour cream--The product resulting from the souring, by lactic acid producing bacteria, of pasteurized cream, and as further defined in Title 21, CFR, §131.160.

(83) Standard methods--Reference to the latest edition of "Standard Methods for the Examination of Dairy Products," a publication of the American Public Health Association, Washington, D.C.

(84) Sterilized--The term sterilized when applied to piping, equipment, and containers used for milk and milk products shall mean the condition achieved by the application of heat, chemical sterilant(s), or other appropriate treatment that renders the piping, equipment, and containers free of viable microorganisms.

(85) 3-A Sanitary Standards and Accepted Practices--Refers to the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards committees representing the International Association for Food Protection, the U.S. Public Health Service, and the Dairy Industry Committee that are published by the International Association of Milk, Food, and Environmental Sanitarians, 6200 Aurora Avenue, #200W, Des Moines, Iowa 50322.

(86) 3-A Sanitary Committee--The committee composed of appointees from the International Association for Food Protection, and the Food and Drug Administration/Public Health Service that reviews and establishes standards for production and processing equipment intended for use in this country.

(87) Milk tank truck cleaning facility--Any place, premise, or establishment, separate from a milk plant, receiving, or transfer station, where a milk tank truck is cleaned and sanitized.

(88) Transfer station--Any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

(89) Ultra-pasteurized--The term "ultra-pasteurized," when used to describe a dairy product, means that such product shall have been thermally processed at or above 138 degrees Celsius (280 degrees Fahrenheit) for at least two seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(90) Unloading station--Any receiving station, transfer station, or milk processing plant where milk or milk products are unloaded from milk tank trucks.

(91) Water ices--The foods defined in Title 21, CFR, §135.160.

(92) Whipped cream--Cream or light whipping cream, into which air or gas has been incorporated.

(93) Whipped light cream--Light cream into which air or gas has been incorporated.

(94) Yogurt--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Yogurt is further defined in Title 21, CFR, §131.200.

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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General Counsel

Department of State Health Services

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## SUBCHAPTER C. RULES FOR THE MANUFACTURE OF FROZEN DESSERTS

### 25 TAC §§217.41 - 217.51

#### STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

#### §217.45. Examination and Standards for Frozen Desserts.

(a) During any consecutive six months, at least four samples of raw milk intended for use in the manufacture of frozen desserts shall be collected and examined by the department. In addition, during any consecutive six months, the department shall collect and examine at least four samples of frozen desserts from dairy retail stores, food service establishments, grocery stores, and other places where frozen desserts are sold may be examined periodically as determined by the department. Proprietors of such establishments shall furnish the department, upon request, with the names of all distributors from whom frozen desserts, or frozen desserts mix are obtained. The examination of samples of pasteurized mix, and/or frozen desserts shall be performed in an official laboratory or in an officially designated laboratory.

(b) Bacterial counts, coliform determinations, phosphatase, tests, and other laboratory and screening tests shall conform to the procedures in the latest edition of "Standard Methods for the Examination of Dairy Products" of the American Public Health Association. Examinations and tests shall include such other biological, chemical, and physical determinations as the department shall deem necessary for the detection of adulteration.

(c) Whenever two of the last four consecutive bacterial counts, coliform determinations, or cooling temperatures taken on separate days exceed the limit of the standard for the milk, cream, milk products, mix or frozen desserts, the department shall send a written notice

thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standards. An additional sample shall be taken within 21 days of the date of such notice, but not before the lapse of three days. Immediate product suspension or other appropriate department or court action shall be instituted whenever the standard is violated by three of the last five bacterial counts, coliform determinations or cooling temperatures of samples collected within the six-month period.

(d) The department shall establish the frequency of sampling pasteurized mix or frozen desserts during each six month period for adequate pasteurization as determined by a phosphatase test. In the case of a confirmed positive result, the probable cause shall be determined by and corrected to the satisfaction of the department before the mix is frozen or the frozen dessert is sold.

(e) No process or manipulation other than pasteurization as set forth in §217.1 of this title (relating to Definitions), processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating organisms, provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the United States Food and Drug Administration (FDA) as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(f) Raw milk for use in the manufacture of frozen desserts shall comply with all standards set forth in §217.73 of this title (relating to Raw Milk for Manufacturing Purposes).

(g) Frozen desserts and mix shall comply with the following standards:

(1) bacterial, coliform, and temperature standards for pasteurized mix and frozen desserts as shown in the following chart:  
Figure: 25 TAC §217.45(g)(1)

(2) bacterial, coliform, and temperature standards for nondairy frozen desserts and nondairy frozen desserts mix as shown in the following chart:  
Figure: 25 TAC §217.45(g)(2)

#### §217.46. Sanitation Standards for Frozen Desserts Plants.

(a) Floors. The floors of all rooms in which mix, frozen desserts, or their ingredients are manufactured, processed, or frozen, or in which containers and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material, and shall be smooth, properly drained, provided with trapped drains, and kept clean and in good repair; provided, that cold storage rooms used for storing frozen desserts and cold storage rooms used for storing milk, cream, or milk products, frozen fruits, frozen eggs, and comparable ingredients need not be provided with floor drains but the floors shall be sloped to drain to one or more exits, and shall be kept clean and in good repair; provided that, dry storage rooms need not be drained and tight wood floor construction is optional. Provided further, that the construction requirements of this item shall be waived in the case of frozen desserts establishments, if that portion of the room in which the freezer is installed and the room in which containers or utensils are washed have floors of metal, durable grades of linoleum or plastic, or tight wood impregnated with plastic in lieu of concrete.

(b) Walls and ceilings. Walls and ceilings of rooms in which mix, frozen desserts, or their ingredients are manufactured, processed, or frozen, or in which containers or utensils are washed shall have easily cleanable, washable light-colored surfaces, and shall be kept clean and in good repair.

(c) Doors and windows. Unless other effective means are provided to prevent the access of flies, all openings to the outer air shall be effectively screened, and all doors shall be self-closing.

(d) Lighting and ventilation.

(1) All rooms shall be well lighted.

(2) All rooms shall be well ventilated.

(e) Miscellaneous protection from contamination.

(1) Frozen desserts plant operations shall be located and conducted as to prevent any contamination of the ice cream, ice cream mix, frozen desserts, frozen desserts mix, or their ingredients, or of cleaned equipment.

(A) All milk, milk products, cream, mix or frozen desserts that have been spilled, overflowed, or leaked shall be discarded.

(B) All milk, milk products, cream or mix drained from equipment at the end of a run shall be handled in a sanitary manner and shall be re-pasteurized.

(C) All necessary and appropriate means shall be used for the elimination of flies, other insects and rodents.

(D) Rooms shall be free of flies.

(E) There shall be separate rooms for:

(i) pasteurization, processing, cooling, freezing, and packaging operations; and

(ii) the washing and bactericidal treatment of multi-use containers.

(F) Unless all milk, cream, mix or milk products are received in bulk transport tanks, a receiving room separate from rooms as defined in subparagraph (E)(i) and (ii) of this paragraph shall also be required; provided, that the requirement in subparagraph (E)(i) of this paragraph shall be satisfied when a frozen dessert manufacturer blends, freezes, and packages in a manner to prevent contamination; provided further, that frozen desserts, milk, milk products, and ingredients shall not be unloaded directly into the room or rooms used for pasteurizing.

(G) Pasteurized mix or frozen desserts shall not be permitted to come in contact with equipment or containers with which unpasteurized mix, frozen desserts, cream, milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to a bactericidal treatment.

(H) Rooms in which milk or milk products, cream, mix or frozen desserts are handled or stored shall not open into any stable or living quarters.

(I) The milk plant, frozen dessert plant, containers, utensils, and equipment shall be used for no purpose other than the processing of milk, cream, milk products, mix, and frozen desserts, and the operation incident thereto, except as may be approved in writing by the department.

(2) The pump-out of the transport tank shall be done in an area where a cover extends over the complete transport tank or, where climatic and operating conditions require, in a completely enclosed area. Pump-out operations must be protected in such a manner as to prevent product contamination. If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole or the air inlet vent.

(3) The agitating and sampling of the transport tank milk shall be accomplished in such a manner as to provide maximum pro-

tection against product contamination. In no instance shall this be done at a place other than an approved unloading station.

(4) The frozen dessert plant shall record the following information on each load of milk received, and maintain these records for a period of not less than 90 days:

(A) the date the load was received;

(B) the time received;

(C) the number of pounds in the load;

(D) the temperature of the milk or milk products when received;

(E) the permit number of the truck delivering the milk; and

(F) the name of the station operator receiving the milk.

(5) If the frozen dessert plant is also utilized as the milk tank truck cleaning facility, the transport tank cleaning tag shall be removed and kept with the other records for a period of 15 days.

(6) In no case shall milk or milk products be received from a transport tank that appears to be damaged, dirty, or does not have a cleaning tag attached without the written permission of the department.

(f) Toilet facilities. Every frozen desserts plant shall be provided with conveniently located toilet facilities conforming with the state, local and county ordinances. Toilet rooms shall not open into any room in which mix is processed or handled. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair and well ventilated. A sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees.

(g) Water supply. The water supply shall be easily accessible, adequate, and of a safe sanitary quality.

(h) Hand-washing facilities. Convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved sanitary towels. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. Employees shall not resume work after using the toilet room without washing their hands.

(i) Sanitary piping and fittings. All piping and fittings used to conduct milk, cream, milk products, mix or frozen desserts shall be of sanitary design and construction which meets 3-A Sanitary Standards and Accepted Practices. Mix, frozen desserts, fluid milk products, and ingredients shall be conducted from one piece of equipment to another only by sanitary piping and fittings.

(j) Construction and repair of containers, utensils, and equipment.

(1) All multi-use containers, utensils, and equipment with which mix, frozen desserts, milk, cream, and milk products, and ingredients come in contact shall be of smooth, impervious, noncorrodible, nontoxic, relatively low absorbent material; shall be easily cleanable and shall be kept in good repair.

(2) All single-service containers, closures, gaskets, and other articles shall be manufactured, packaged, transported, and handled in a sanitary manner.

(k) Disposal of wastes. All wastes shall be disposed of in a sanitary manner. All plumbing and appurtenances thereto shall be so designed and installed as to prevent the contamination of frozen desserts or any ingredient, utensil, container, or equipment by drip, condensation, or backflow.

(l) Cleaning and bactericidal treatment of multi-use utensils, containers, and equipment. All multi-use containers and utensils shall be thoroughly cleaned after each use and all equipment shall be thoroughly cleaned at least once each day of use, unless the department has reviewed and accepted information in writing, supporting the cleaning of multi-use containers and utensils at frequencies extending beyond one day or 72 hours in the case of storage tanks, or 44 hours in the case of evaporators, which are continuously operated. Supporting information shall be submitted to and approved by the department prior to initiating the qualification period if required. Any significant equipment or processing changes shall be communicated to the department, and may result in a re-verification of the extended run proposal, if it is determined that the change could potentially affect the safety of the finished milk or milk product(s).

(m) Storage of multi-use utensils, containers, and equipment. After cleaning, all multi-use utensils, containers, and equipment shall be stored to drain dry, and in such a manner as not to be contaminated before usage.

(n) Storage of single-service containers, utensils, and materials. Caps, parchment papers, wrappers, liners, gaskets and single-service sticks, spoons, covers, and containers for frozen desserts, mix, or their ingredients shall be purchased and stored only in sanitary tubes, wrappings, or cartons; shall be kept thereafter in a clean, dry place until used; and shall be handled in a sanitary manner. Reuse of single-service articles is prohibited.

(o) Handling of containers and equipment. Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such a manner as to permit contamination of the mix, frozen desserts, or their ingredients. Pasteurized mix and frozen desserts shall not be permitted to come into contact with equipment with which unpasteurized mix, milk, cream, or milk products have been in contact, unless the equipment has been thoroughly cleaned and effectively subjected to an approved bactericidal process.

(p) Pasteurization of mix.

(1) Every particle of the combined milk, cream, milk product, or other ingredients used in the manufacture of a frozen dessert mix shall be heated and held at temperatures of not less than 155 degrees Fahrenheit for not less than 30 minutes; 180 degrees Fahrenheit for not less than 15 seconds; or 175 degrees Fahrenheit for not less than 25 seconds.

(2) All pasteurization equipment and related appurtenances shall meet construction and operational requirements outlined in the latest edition of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Grade A Pasteurized Milk Ordinance).

(3) Nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the United States Food and Drug Administration (FDA) as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(q) Cooling and handling. All milk, cream, and milk products in fluid form received at the frozen desserts plant for use in frozen desserts mix shall be cooled to a temperature of 45 degrees Fahrenheit or less and maintained at that temperature until pasteurized; and all pasteurized mix shall be cooled in approved equipment to a temperature of 45 degrees Fahrenheit or less and shall be maintained thereat until frozen.

(r) Packaging and dispensing. Packaging, cutting, molding, dispensing, and other preparation of mix, or frozen desserts, or their

ingredients shall be done in a sanitary manner. Containers shall be completely covered immediately after filling unless dispensed to a patron. Closures, covers, and wrappers shall be handled in such a manner as to prevent contamination of the package content.

(s) Returns. Packaged mix, or frozen desserts which have physically left the premises or the frozen dessert plant shall not be re-pasteurized to be sold or used for making frozen desserts.

(t) Overflow and spillage. Product drip or overflow, or spilled mix, or frozen desserts, or their ingredients, shall not be sold for human consumption.

(u) Personnel health. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall engage in pasteurizing, handling of ingredients, filling, packaging, or freezing operations or in any capacity in which there is a likelihood of such person contaminating mix and frozen desserts, or mix and frozen dessert-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such a capacity. If the management of the frozen desserts plant has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, the employee shall notify the department immediately.

(v) Personnel cleanliness. All persons who come in contact with milk, cream, milk products, mix, and frozen desserts containers or equipment, shall wear clean outer garments, hair restraints and shall keep their hands clean at all times while engaged in such work.

(w) Vehicles.

(1) All vehicles used for the transportation of mix, frozen desserts, cream, milk, and milk products shall be constructed and operated so as to protect their contents from the sun and contamination. Such vehicles shall be kept clean, and no substance capable of contaminating mix, frozen desserts, cream, milk, and milk products shall be transported therein. Such vehicles shall have the name of the distributor prominently displayed thereon.

(2) Tank cars and tank trucks used for transporting mix, cream, milk, and milk products shall comply with the construction, cleaning, bactericidal treatment, storing, and handling requirements of subsections (e), (j), (l), and (m) of this section. Each shipment shall be sealed and labeled in a manner approved by the department.

(x) Ingredients. All mix and frozen dessert ingredients shall be clean, have a fresh wholesome flavor and odor and normal appearance, be of satisfactory quality, and be stored, handled, and processed in a sanitary manner.

(y) Raw product storage.

(1) All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Raw milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees Fahrenheit or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

(2) The bacteriological quality of commingled raw milk for use in the manufacture of frozen desserts shall not exceed 500,000 per milliliter.

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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Lisa Hernandez

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Department of State Health Services

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## SUBCHAPTER D. BULK MILK REGULATIONS

### 25 TAC §§217.61 - 217.65

#### STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

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## SUBCHAPTER E. DAIRY PRODUCTS AND MILK FOR MANUFACTURING PURPOSES

### 25 TAC §§217.71 - 217.81

#### STATUTORY AUTHORITY

The new rules are authorized adopted under Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs;

Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

#### §217.74. Requirements for Milk Plants Producing Dairy Products.

##### (a) General requirements.

(1) Plant cleanliness. All rooms in which dairy products are handled, processed or stored, or in which containers, utensils and/or equipment are washed or stored, shall be kept clean, neat and free of evidence of insects and rodents. Only insecticides and rodenticides approved for use by the department and/or registered with the U.S. Environmental Protection Agency (EPA) shall be used for insect and rodent control. Only equipment directly related to processing operations or the handling of containers, utensils, and equipment shall be permitted in the pasteurizing, processing, cooling, condensing, drying, packaging, and bulk milk or milk product storage rooms. All piping, floors, walls, ceilings, fans, shelves, tables and the non-product-contact surfaces of other facilities and equipment shall be clean. No trash, solid waste or waste dry product shall be stored within the milk plant, except in covered containers. Excessive product dust shall be kept under effective control by the use of exhaust and collective systems designed for in-plant dust control. Tailings and materials collected from exhaust collective systems shall not be used for human consumption.

(2) Surroundings. The adjacent surroundings shall be free from refuse, rubbish, and waste materials to prevent harborage of rodents, insects, and other vermin. The premises shall be kept in a clean and orderly condition, and shall be free from strong or foul odors, or smoke. Construction and maintenance of adjacent plant traffic areas shall be of concrete, asphalt, or similar material to keep dust and mud to a minimum.

(3) Drainage. A suitable drainage system shall be provided which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard and in compliance with state, district, and local regulations.

##### (b) Buildings.

(1) The building or buildings shall be of sound construction and shall be kept in good repair to prevent the entrance or harboring of rodents, birds, insects, vermin, dogs, and cats. All service pipe openings through outside walls shall be sealed around the opening or provided with tight metal collars.

(2) All openings to the outer air shall be effectively protected by: screening or effective electric screen panels; fans or air curtains which provide sufficient air velocity so as to prevent the entrance of insects; properly constructed flaps where it is impractical to use self-closing doors or air curtains; or any effective combination of the above or by any other method which prevents the entrance of insects. All outer doors shall be tight and self-closing. Screen doors shall open outward. All outer openings shall be rodent-proofed to the extent necessary to prevent the entry of rodents.

(3) The walls, ceilings, partitions, and posts of rooms in which milk or dairy products are processed, manufactured, handled, packaged, or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored, shall be smooth with material that is light colored, resistant to moisture, and easy to keep clean.

(4) Floors.

(A) The floors of all rooms in which milk or dairy products are processed, manufactured, packaged, or stored or in which utensils are washed shall be constructed of tile laid with impervious joint material, concrete, or other equally impervious material. The floors shall be smooth, kept in good repair, graded so that there will be no pools of standing water or milk products after flushing, and all openings to the drains shall be equipped with traps properly constructed and kept in good repair.

(B) Sound, smooth wood floors which can be kept clean, may be used in rooms where new containers and supplies and packaged finished products are stored.

(5) Lighting and ventilation.

(A) Adequate light sources shall be provided (natural, artificial or a combination of both) which furnish at least 20 foot-candles (220 lux) of light in all working areas. This shall apply to all rooms where milk or milk products are handled, processed, packaged, or stored; or where containers, utensils and/or equipment are washed. Dry storage and cold storage rooms shall be provided with at least five foot-candles (55 lux) of light.

(B) Ventilation in all rooms shall be sufficient to keep them reasonably free of odors and excessive condensation on equipment, walls and ceilings.

(C) Pressurized ventilating systems, if used, shall have a filtered air intake.

(D) For milk plants that condense and/or dry milk or milk products, ventilating systems in packaging rooms, where used, shall be separate systems and where possible have the ducts installed in a vertical position.

(6) Rooms and compartments.

(A) Pasteurizing, processing, reconstitution, cooling, condensing, drying, and packaging of milk and milk products shall be conducted in a single room, or separate rooms, but not in the same room used for the cleaning of milk cans, portable storage bins, bottles and cases, or the unloading and/or cleaning and sanitizing of milk tank trucks, provided that these rooms may be separated by solid partitioning doors that are kept closed. Handwashing of milk cans, portable storage bins, bottles and cases may be permitted in a single room, provided that these operations are conducted in a manner that precludes contamination of the finished dairy product. Cooling, either plate or tubular, may be done in the room where milk tank trucks are unloaded and/or cleaned and sanitized. Separation/clarification of raw milk may be done in an enclosed room where milk tank trucks are unloaded and/or cleaned and sanitized.

(B) Coolers and freezers. Coolers and freezers where dairy products are stored shall be clean, dry and maintained at a uniform temperature and humidity to protect the product from deterioration, and minimize the growth of mold. Circulation of air shall maintain uniform temperature and humidity at all times. Coolers and freezers shall be free from rodents, insects, and pests. Shelves shall be kept clean and dry. Refrigeration units shall have provisions for collecting and disposing of condensate.

(i) Bulk milk and milk products shall be handled and stored to maintain an internal temperature of 45 degrees F or below.

(ii) Packaged milk and milk products shall be handled and stored to maintain an internal temperature of 41 degrees F or below.

(iii) Freezers shall be maintained so that frozen food remains frozen at all times.

(C) Supply rooms. The supply rooms used for the storing of packaging materials, containers, and miscellaneous ingredients shall be kept clean, dry, orderly, free from insects, rodents, and mold, and maintained in good repair. These items stored therein shall be adequately protected from dust, dirt, or other extraneous matter, and so arranged on racks, shelves, or pallets to permit access to the supplies and cleaning and inspection of the room. Insecticides, rodenticides and cleaning compounds shall be properly labeled and segregated, and stored in a separate room or cabinet away from milk, dairy products, ingredients, or packaging supplies.

(D) Boiler and tool rooms. The boiler and tool rooms shall be separated from other rooms where milk and dairy products are processed, manufactured, packaged, handled, or stored. The rooms shall be kept orderly and reasonably free from dust and dirt.

(E) Toilet and dressing rooms. Toilet facilities shall be provided and be conveniently located. Toilet rooms may not open directly into any room in which milk and/or milk products are processed, condensed or dried, and stored. Toilet rooms shall be completely enclosed and have tight-fitting, self-closing doors. Dressing rooms, toilet rooms, and fixtures are kept in a clean condition, in good repair and are well ventilated and well lighted. Toilet tissue and easily cleanable covered waste receptacles shall be provided in toilet rooms. All plumbing shall be installed to meet the applicable provisions of the state or local plumbing code. Sewage and other liquid wastes shall be disposed of in a sanitary manner, and non-water-carried sewage disposal facilities shall not be used.

(F) Starter facilities. Sanitary facilities shall be provided for the handling of starter cultures.

(7) Handwashing facilities. Handwashing facilities shall be provided, including hot and cold running water, soap or other detergents, and sanitary single-service towels or air dryers. The facilities shall be located in or adjacent to toilet and dressing rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products. Vats for washing equipment or utensils shall not be used as handwashing facilities. Self-closing metal or plastic containers shall be provided for used towels and other wastes.

(8) Drinking water facilities. Drinking water facilities shall be provided in the plant and shall be conveniently located.

(c) Facilities.

(1) Water supply.

(A) Water for milk plant purposes shall be from an adequate supply, properly located, protected, and operated. It shall be easily accessible and of a safe, sanitary quality.

(B) The water supply shall be approved as safe by the State Water Control Authority and, in the case of individual water systems, complies with the specification outlined in Appendix D of the most current revision of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Grade A Pasteurized Milk Ordinance), and the Bacteriological Standards outlined in Appendix G of the most current revision of the "Grade A Pasteurized Milk Ordinance."

(C) There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or any source of pollution through which the safe water supply might become contaminated. A connection between the water supply piping and a make-up tank, such as for cooling or condensing, unless protected by an air gap or effective backflow preventer, constitutes a violation of this requirement. An approved air gap is defined as the unobstructed vertical distance through the free atmosphere of at least twice the diameter of the largest incoming water supply pipe or faucet to the flood level of the vessel or receptacle. The distance of the air gap is to be measured from the bottom of the potable inlet supply pipe or faucet to the top of the effective overflow, i.e., flood level rim or internal overflow, of the vessel. In no case, may the effective air gap be less than one inch (2.54 cm).

(D) Condensing water for milk or milk product evaporators, and water used to produce vacuum and/or to condense vapors in vacuum heat processing equipment, shall be from a source complying with subparagraph (B) of this paragraph. When approved by the department, water from sources not complying with subparagraph (B) of this paragraph, may be used when the evaporator or vacuum heat equipment is constructed and operated to preclude contamination of such equipment, or its contents, by condensing water or by water used to produce vacuum. Means of preventing such contamination are:

(i) use of a surface type condenser in which the condensing water is physically separated from the vapors and condensate; or

(ii) use of reliable safeguards to prevent the overflow of condensing water from the condenser into the evaporator. Such safeguards include a barometric leg extending at least 35 feet vertically from the invert of the outgoing condensing water line to the free level at which the leg discharges, or a safety shutoff valve, located on the water feed line to the condenser, automatically actuated by a control which will shut off the in-flowing water when the water level rises above a predetermined point in the condenser. This valve may be actuated by water, air or electricity, and shall be designed so that failure of the primary motivating power will automatically stop the flow of water into the condenser.

(E) Condensing water for milk or milk product evaporators, complying with subparagraph (D) of this paragraph, and water reclaimed from milk or milk products may be reused when all necessary means of protection are afforded and it complies with the procedures outlined in Appendix D, Part V of the most current revision of the "Grade A Pasteurized Milk Ordinance."

(F) New individual water supplies and water supply systems, which have been repaired or otherwise become contaminated, shall be disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before any sample for bacteriological testing shall be collected.

(G) Samples for bacteriological testing of individual water supplies shall be taken upon the initial approval of the physical structure, each six months thereafter, and when any repair or alteration of the water supply system has been made. Samples shall be taken by the department and examinations shall be conducted in an official laboratory. To determine if water samples have been taken at the frequency established in this section, the interval shall include the designated six month period plus the remaining days of the month in which the sample is due.

(H) Current records of water test results are retained by the department.

(I) A potable water supply, which meets the criteria of this section, may be connected to the product feed line of a steam vacuum evaporator, provided that the water supply is protected at the point of connection by an approved backflow prevention device.

(2) Air under pressure which is in direct contact with milk and milk products and milk product-contact surfaces.

(A) Filter media. Air intake and pipeline filters shall consist of fiberglass with a downstream backing dense enough to prevent fiberglass breakoff from passing through cotton flannel, wool flannel, spun metal, electrostatic material, or other equally acceptable filtering media, which are non-shedding and which do not release to the air, toxic volatiles or volatiles which may impart any flavor or odor to the milk or milk product.

(B) Filter performance. Intake air filter efficiency shall be at least 98% using air cleaner coarse test dust. Final filter efficiency shall be at least 99% as measured by the Dioctylphthalate Fog Method (DOP) test (with a mean particle diameter of 0.3 microns). When commercially sterile air is required, the final filter efficiency shall be at least 99.99% as measured by the DOP test.

(C) Air supply equipment. The compressing equipment shall be designed to preclude contamination of the air with lubricant vapors and fumes. Oil-free air may be produced by one of the following methods or their equivalent:

(i) use of a carbon ring piston compressor;

(ii) use of oil-lubricated compressor with effective provision for removal of any oil vapor by cooling the compressed air; or

(iii) water-lubricated or non-lubricated blowers. The air supply shall be taken from a clean space or from relatively clean outer air and shall pass through a filter upstream from the compressing equipment. This filter shall be located and constructed so that it is easily accessible for examination and the filter media are easily removable for cleaning or replacing. The filter shall be protected from weather, drainage, water, product spillage, and physical damage.

(D) Moisture removal equipment. Air under pressure systems in excess of one bar, i.e., 103.5 kPa (15 psi), shall be provided with methods of moisture removal. The removal of moisture may be achieved by condensation and coalescing filtration or absorption, or equivalent, to prevent free water in the system. If it is necessary to cool the compressed air, an after-cooler shall be installed between the compressor and the air storage tank for the purpose of removing moisture from the compressed air.

(E) Filters and moisture traps. Filters shall be constructed so as to ensure effective passage of air through the filter media only. The coalescing filter and associated traps shall be located in the air pipeline downstream from the compressing equipment, and from the air tank, if one is used. The filter shall be readily accessible for examination, cleaning, and for replacing the filter media. The moisture trap shall be equipped with a petcock or other means for draining accumulated water. When coalescing filters are used, a means shall be provided to measure the differential pressure across the filter. The differential pressure device is required to indicate the need for filter media replacement. All coalescing filter housings shall be provided with a means of removing the condensed liquid from the filtration device. This can be accomplished by an automatic or manual drain installed on the base of the filter housing. The final filter media shall be disposable. The filter media shall be located in the air line upstream from, and as close as possible to, the point of application except that a final filter shall not be required where the compressing equipment is of a fan or blower type and operating at a pressure of less than



one (1) bar, i.e., 103.5 kPa (15 psi). Electronic air cleaners utilizing electrostatic precipitation principles to collect particulate matter may be used. Disposable filter media shall not be cleaned and reused.

(F) Air piping. The air piping from the compressing equipment to the filter and moisture trap shall be readily drainable. A milk or milk product check-valve of sanitary design shall be installed in the air piping, downstream from the disposable media filter, to prevent backflow of milk or milk product into the air pipeline, except that a check-valve shall not be required if the air piping enters the milk or milk product zone from a point higher than the milk or milk product overflow level, which is open to the atmosphere, or is for dry product applications, or for other dry application where liquids are not present. When a check-valve is not required, plastic or rubber or rubber-like tubing and suitable compatible fittings and connections made of plastic or stainless steel may be used between the final filter and the point of application. Air distribution piping and fittings after the final filter shall be of corrosion-resistant materials. Air distribution piping, fittings and gaskets between the discharge of the sanitary check-valve to the processing equipment shall be sanitary piping.

(3) Culinary steam for milk and milk products. The following methods and procedures will provide steam of culinary quality for use in the processing of milk and milk products.

(A) Source of boiler feed water. Potable water or water supplies, acceptable to the department, shall be used.

(B) Feed water treatment. Feed water may be treated, if necessary, for proper boiler care and operation. Boiler feed water treatment and control shall be under the supervision of trained personnel or a firm specializing in industrial water conditioning. Such personnel shall be informed that the steam is to be used for culinary purposes. Pretreatment of feed waters for boilers or steam generating systems to reduce water hardness, before entering the boiler or steam generator by ion exchange or other acceptable procedures, is preferable to the addition of conditioning compounds to boiler waters. Only compounds complying with Title 21, Code of Federal Regulations (CFR), §173.310, may be used to prevent corrosion and scale in boilers, or to facilitate sludge removal. Amounts of the boiler water treatment compounds greater than the minimum necessary for controlling boiler scale or other boiler water treatment purposes shall not be used. No greater amount of steam than necessary shall be used for the treatment and/or pasteurization of milk and milk products. It should be noted that tannin, which is also frequently added to boiler water to facilitate sludge removal during boiler blow-down, has been reported to give rise to odor problems, and should be used with caution. Boiler compounds containing cyclohexylamine, morpholine, octadecylamine, diethylaminoethanol, trisodium nitrilotriacetate, and hydrazine shall not be permitted for use in steam in contact with milk and milk products.

(C) Boiler operation. A supply of clean, dry saturated steam is necessary for proper equipment operation. Boilers and steam generation equipment shall be operated in such a manner as to prevent foaming, priming, carryover and excessive entrainment of boiler water into the steam. Carryover of boiler water additives can result in the production of milk or milk product off-flavors. Manufacturers' instructions regarding recommended water level and blow-down should be consulted and rigorously followed. The blow-down of the boiler should be carefully watched, so that an overconcentration of the boiler water solids and foaming is avoided. It is recommended that periodic analyses be made of condensate samples. Such samples should be taken from the line between the final steam separating equipment and the point of the introduction of steam into the milk or milk product.

(4) Disposal of wastes. Dairy wastes shall be properly disposed of from the plant and premises. The sewer system shall have sufficient slope and capacity to readily remove all waste from the various processing operations. Where a public sewer is not available, all wastes shall be properly disposed of in a manner in compliance with local and state regulations. Containers used for the collection and holding of wastes shall be constructed of metal, plastic, or other equally impervious material and kept covered with tight-fitting lids and placed outside the plant on a concrete slab or on a rack raised at least 12 inches above the floor. Alternatively, waste containers may be kept inside an enclosed, clean, and fly-proof room. Solid wastes shall be disposed of at regular intervals to prevent the unsanitary accumulation of waste.

(d) Equipment and utensils - General construction, repair, and installation.

(1) All multi-use containers and equipment that milk and milk products come into contact with shall be of smooth, impervious, corrosion-resistant, non-toxic material shall be constructed for ease of cleaning and shall be kept in good repair. All single-service containers, closures, gaskets and other articles that milk and milk products come in contact with shall be non-toxic and shall have been manufactured, packaged, transported and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

(2) All equipment and piping shall be designed and installed so as to be easily accessible for cleaning, and shall be kept in good repair, free from cracks and corroded surfaces. New or rearranged equipment shall be set away from any wall or spaced in such a manner as to facilitate cleaning and to maintain good housekeeping. All parts or interior surfaces of equipment, pipes (except certain piping cleaned in place) or fittings, including valves and connections, shall be accessible for inspection. Milk and dairy product pumps shall be of a sanitary type and easily dismantled for cleaning or shall be of approved construction to allow effective cleaning in place in accordance with 3-A Sanitary Standards.

(3) All CIP systems shall comply with the 3-A Sanitary Practices for permanently installed sanitary product, pipelines, and cleaning systems.

(4) All joints in containers, utensils and equipment shall be flush and finished as smooth as adjoining surfaces, or if the surface is vitreous, it must be continuous. Tile floors are not acceptable in dryers. Joints on equipment coming in contact with dry milk or milk products only or used for hot air piping may be sealed by other acceptable means. Where a rotating shaft is inserted through a surface with which milk or milk products come into contact, the joint between the moving and stationary surfaces shall be close fitting. Grease and oil from gears, bearings, and cables shall be kept out of the milk and milk products. Where a thermometer or temperature sensing element is inserted through a surface with which milk or milk products come into contact a pressure-tight seal shall be provided ahead of all threads and crevices.

(5) Can washers. Can washers shall have sufficient capacity and ability to discharge a clean, dry can and cover and shall be kept properly timed in accordance with the instructions of the manufacturer. The water and steam lines supplying the washer shall maintain a uniform pressure and be equipped with pressure regulating valves.

(6) Product storage tanks or vats. Storage tanks or vats shall be fully enclosed or tightly covered and well insulated. The entire interior surface, agitator and all appurtenances shall be accessible for thorough cleaning and inspection. Any opening at the top of the tank or vat including the entrance of the shaft shall be protected against the entrance of dust, moisture, insects, oil, or grease. The sight glasses, if used, shall be sound, clear, and in good repair. Vats which have hanged covers shall be so designed that moisture or dust on the surface cannot

enter the vat when the covers are raised. If the storage tanks or vats are equipped with air agitation, the system shall be of an approved type and properly installed in accordance with the 3-A Accepted Practices for Supplying Air Under Pressure. Storage tanks or vats intended to hold product for longer than approximately eight hours shall be equipped with refrigeration and/or have insulation. All new storage tanks or vats shall meet the appropriate 3-A Sanitary Standards and shall be equipped with thermometers in good operating order.

(7) Surface coolers. Surface coolers shall be equipped with hinged or removable covers for the protection of the product. The edges of the fins shall be so designed as to divert condensate on non-product-contact surfaces away from product-contact surfaces. All gaskets or swivel connections shall be leak proof.

(8) Plate-type heat exchangers. Plate-type heat exchangers shall meet the 3-A Sanitary Standards for Construction and Installation. All gaskets shall be tight and kept in good operating order. Plates shall be opened for inspection by the operator at sufficiently frequent intervals to determine if the equipment is clean and in good repair (e.g. free of dents, holes, broken gaskets and cracks). A cleaning regimen shall be posted to insure cleaning procedures between inspection periods.

(9) Internal return tubular heat exchangers. Internal return tubular heat exchangers shall meet the 3-A Sanitary Standards for Construction and Installation.

(10) Pumps. Pumps used for milk and dairy products shall be of the sanitary type and constructed to meet 3-A Sanitary Standards. Unless pumps are specifically designed for effective cleaning in place, they shall be disassembled and thoroughly cleaned after use.

(11) New equipment and replacements. New equipment and replacements, including all plastic parts, rubber and rubber-like materials for parts and gaskets having product-contact surfaces, shall meet the 3-A Sanitary Standards. If equipment or replacements are not approved by 3-A Sanitary Standards, such equipment and replacements shall meet the general requirements of this section.

(e) Personnel cleanliness. All employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expecting or use of tobacco in any form shall be prohibited in each room and compartment where any milk, dairy product, or supplies are prepared, stored, or otherwise handled. All persons shall wear clean outer garments while engaged in the handling, processing, storage, transporting, or packaging of dairy products. Clean outer garments shall also be worn by persons handling containers, utensils, and equipment used for these activities. Adequate hair coverings shall be worn by all persons engaged in receiving, testing, processing, packaging, or handling of dairy products.

(f) Personnel health. No person afflicted with a communicable disease shall be permitted in any room or compartment where milk and milk products are prepared, manufactured, or otherwise handled. No person who has a discharging or infected wound, sore or lesion on hands, arms, or other exposed portion of the body shall work in any dairy processing rooms or in any capacity which brings them into direct contact with associated milk or milk product-contact surfaces. Milk plant operators who have received verifiable and confirmed reports from or about employees who have these conditions and who have handled pasteurized milk or milk products or associated milk or milk product-contact surfaces, shall immediately report these facts to the department. Milk plant employees or applicants to whom a conditional offer of employment has been made shall be instructed by the milk plant that the employee or applicant is responsible to report to the milk plant management, in a manner that allows the milk plant to pre-

vent the likelihood of the transmission of diseases that are transmissible through foods, if the employee or applicant:

(1) is diagnosed with an illness due to Hepatitis A virus, Salmonella typhi, Shigella species, Norovirus, Staphylococcus aureus, Streptococcus pyogenes, Escherichia coli O157:H7, enterohemorrhagic Escherichia coli, enterotoxigenic Escherichia coli, Campylobacter jejuni, Entamoeba histolytica, Giardia lamblia, Non-typhoidal Salmonella, Rotovirus, Taenia solium, Yersinia enterocolitica, Vibrio cholerae O1 or other infectious or communicable disease that has been declared by the U.S. Secretary of Health and Human Services (HHS) to be transmissible to others through the handling of food, or has been clearly shown to be transmissible based upon verifiable epidemiological data; or

(2) is exposed to, or suspected of causing, a confirmed foodborne disease outbreak of one of the diseases specified in paragraph (1) of this subsection, including an outbreak at an event such as a family or communal meal, (e.g., church supper or ethnic festival) because the employee or applicant:

(A) prepared food implicated in the outbreak; or

(B) consumed food implicated in the outbreak; or

(C) consumed food at the event prepared by a person who is infected or ill.

(3) lives in the same household as a person who attends or works in a day care center, school or similar institution if the institution experiencing a confirmed outbreak of one of the diseases specified in paragraph (1) of this subsection. Similarly, milk plant employees shall be instructed by the milk plant management to report to the milk plant management if the employee, or applicant:

(4) has a symptom associated with acute gastrointestinal illness such as: Abdominal cramps or discomfort, diarrhea, fever, loss of appetite for three or more days, vomiting, jaundice; or

(5) has a pustular lesion such as a boil or infected wound that is:

(A) on the hands, wrists or exposed portions of the arms, unless the lesion is covered by a durable, moisture proof, tight-fitting barrier; or

(B) on other parts of the body if the lesion is open or draining, unless the lesion is covered by a durable, moisture proof, tight-fitting barrier.

(g) Raw product storage.

(1) All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Raw milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees Fahrenheit or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

(2) The bacteriological quality of commingled raw milk for use in dairy products for manufacturing purposes shall not exceed 500,000 per ml.

(3) During any consecutive six months, at least four samples of raw milk intended for use in manufactured milk products shall be taken by and examined by the department.

(h) Pasteurization. When pasteurization is required, or when a product is designated "pasteurized," every particle of the milk or milk product shall be subjected to such temperatures and holding periods in

properly designed and operated equipment sufficient to ensure proper pasteurization of the product in accordance with the most current revision of the "Grade A Pasteurized Milk Ordinance." Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by FDA as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(i) Composition and wholesomeness. All necessary precautions shall be taken to prevent contamination or adulteration of the milk or dairy products during manufacturing in accordance with these rules. All substances and ingredients used in the processing or manufacturing of any dairy product shall be subject to inspection and shall be wholesome and practically free from impurities.

(j) Cleaning and sanitizing treatment.

(1) All multi-use containers and utensils shall be thoroughly cleaned after each use and all equipment shall be thoroughly cleaned at least once each day used, unless the department has reviewed and accepted information, in consultation with FDA, supporting the cleaning of multi-use containers and utensils at frequencies extending beyond one day or 72 hours in the case of storage tanks, or 44 hours in the case of evaporators, which are continuously operated. Approval by the department will be conveyed in writing. Supporting information shall be submitted to and approved by the department prior to initiating the qualification period if required. Any significant equipment or processing changes shall be communicated to the department, and may result in a re-verification of the extended run proposal, if it is determined that the change could potentially affect the safety of the finished milk or milk product(s). The supporting information may include but is not limited to:

- (A) statement of proposal, including desired cleaning frequency;
- (B) product and equipment description;
- (C) intended use and consumers;
- (D) distribution and storage temperatures of product;
- (E) diagram of process of interest;
- (F) process parameters, including temperature and times;
- (G) hazard evaluation and safety assessment; and
- (H) review of equipment for sanitary design.

(2) When indicated by a hazard evaluation and safety assessment, a plan for initial qualification shall be developed to address identified critical process parameters.

(3) Storage tanks shall be cleaned when emptied and shall be emptied at least every 72 hours. Records must be available to the department to verify that milk storage in these tanks does not exceed 72 hours. These records shall be available for at least the previous three months or from the time of the last regulatory inspection, whichever is longer. Storage tanks, which are used to store raw milk or milk products or heat-treated milk products longer than 24 hours and silo tanks used for the storage of raw milk or milk products or heat-treated milk products shall be equipped with a seven day temperature recording device complying with the specifications of the most current revision of the Grade A Pasteurized Milk Ordinance.

(4) Evaporators shall be cleaned at the end of a continuous operation, not to exceed 44 hours, and records must be available to the department to verify that the operation time does not exceed 44 hours.

Drying equipment, cloth-collector systems, packaging equipment and multi-use dry milk products and dry whey storage containers shall be cleaned at intervals and by methods recommended by the manufacturer and approved in writing by the department. Such methods may include cleaning without water by use of vacuum cleaners, brushes, or scrapers. After cleaning, such equipment is sanitized by a method approved in writing by the department. Cloth collector systems and all dry product-contact surfaces downstream from the dryer shall be sanitized or purged at intervals and by methods recommended by the manufacturer and approved by the department. Storage bins used to transport dry milk or milk products shall be dry cleaned after each usage and washed and sanitized at regular intervals.

(5) All milk tank trucks that transport milk and milk products shall be washed and sanitized at a permitted milk plant, receiving station, transfer station, or milk tank truck cleaning facility. The milk tank truck shall be cleaned and sanitized prior to its first use. When the time elapsed after cleaning and sanitizing, and before its first use, exceeds 96 hours, the tank must be re-sanitized. Whenever a milk tank truck has been cleaned and sanitized, as required by the department, it shall bear a tag or a record shall be made showing the date, time, place and signature or initials of the employee or contract operator doing the work, unless the milk tank truck delivers to only one receiving facility where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag shall be removed at the location where the milk tank truck is next washed and sanitized and kept on file for 15 days.

(6) Pipelines and/or equipment designed for mechanical cleaning shall meet the following requirements.

(A) An effective cleaning and sanitizing regimen for each separate cleaning circuit shall be followed.

(B) A temperature recording device, complying with the most current revision of the Grade A Pasteurized Milk Ordinance, or a recording device which provides sufficient information to adequately evaluate the cleaning and sanitizing regimen which is approved by the department in writing, shall be installed in the return solution line or other appropriate area to record the temperature and time during which the line or equipment is exposed to cleaning and sanitizing solutions. For purposes of this section, recording devices which produce records not meeting the specifications of the most current revision of the "Grade A Pasteurized Milk Ordinance" may be acceptable if:

(i) the device provides a continuous record of the monitoring of the cleaning cycle time and temperature, cleaning solution velocity or cleaning pump operation and the presence or strength of cleaning chemicals for each cleaning cycle;

(ii) the record shows a typical pattern of each circuit cleaned, so that changes in the cleaning regimen may be readily detected; or

(iii) electronic storage of required cleaning records, with or without hard copy printouts, may be acceptable, provided, the electronically generated records are readily available. Electronic records must meet the criteria of this section and those provisions of with the most current revision of the Grade A Pasteurized Milk Ordinance, which are determined to be applicable by the department and FDA. Except that, electronic storage of required cleaning records, with or without hard copy, shall be acceptable, provided the computer and computer generated records are readily available and meet the criteria of this section and Title 21, CFR, Part 11.

(k) Packaging and labeling.

(1) Containers:

(A) The size, style, and type of packaging used for dairy products shall be packaged in materials which will cover and protect the quality of the contents during storage and regular channels of trade and under conditions of handling. The weights and shape within each size or style shall be as nearly uniform as is practical.

(B) Packaging materials for dairy products shall be selected which will provide sufficiently low permeability to air and vapor to prevent the formation of mold growth and surface oxidation. In addition, the wrapper shall be resistant to puncturing, tearing, cracking, or breaking under normal conditions of handling, shipping, and storage. When special-type packaging is used, the instructions of the manufacturers shall be followed closely as to its application and methods of closure.

(2) Packaging and repackaging. Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and packaging material shall be free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by the most current edition of "Standard Methods for the Examination of Dairy Products" of the American Public Health Association as defined in §217.1 of this title (relating to Definitions).

(3) Labeling. All commercial bulk packages containing dairy products manufactured under the provisions of this subpart shall be adequately and legibly marked with the name of the product, name and address of processor or manufacturer or other assigned plant identification, lot number, and any other identification as may be required by the department. Consumer packaged products shall be legibly marked with the name of the product, name and address of packer, manufacturer, or distributor.

(1) Storage of finished product.

(1) Dry storage. The product shall be stored at least 18 inches from the wall in aisles, rows, or sections and lots, in such a manner as to be orderly and easily accessible for inspection. Rooms should be cleaned regularly. Care shall be taken in the storage of any other product foreign to dairy products in the same room, in order to prevent impairment or damage to the dairy product from mold, absorbed odors, or vermin or insect infestation. Control of humidity and temperature shall be maintained at all times to prevent conditions detrimental to the product and container.

(2) Refrigerated storage. The finished product shall be placed on shelves, dunnage, or pallets and identified. It shall be stored under temperatures that will best maintain the initial quality. The product shall not be exposed to anything from which it might absorb any foreign odors or be contaminated by drippage or condensation.

§217.75. *Supplemental Requirements for Plants Manufacturing, Processing and Packaging Instant Nonfat Dry Milk, Nonfat Dry Milk, Dry Whole Milk, Dry Buttermilk, Dry Whey, and Other Dry Milk Products.*

(a) Sanitation and construction requirements. Facility and equipment shall be constructed and maintained in compliance with §217.74 of this title (relating to Requirements for Milk Plants Producing Dairy Products) and the most current revision of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Grade A Pasteurized Milk Ordinance).

(b) Operations and operating procedures for pasteurization. All milk, buttermilk, and whey used in the manufacture of dry dairy products shall be pasteurized at the plant where dried, except that condensed whey and acidified buttermilk containing 40% or more solids may be transported to another plant for drying without pas-

teurization. When pasteurization is required, or when a product is designated "pasteurized," every particle of the milk or milk product shall be subjected to such temperatures and holding periods in properly designed and operated equipment to ensure proper pasteurization of the product in accordance with the most current revision of the "Grade A Pasteurized Milk Ordinance." Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by FDA as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(c) Product adulteration. All necessary precautions shall be taken throughout the entire operation to prevent the adulteration of one product with another. The commingling of one type of liquid or dry product with another shall be considered an adulteration of both products. This does not prohibit the standardization of like products or the production of specific products for special uses provided labeling requirements are met as set forth in 21 Code of Federal Regulations, Parts 133 and 135.

(d) Checking quality. All milk products and dry milk products shall be subject to inspection and analysis by the dairy plant for quality and condition throughout each processing operation. Line samples shall be taken as an aid to quality control in addition to the regular routine analysis made on the finished products.

(e) Requirements for instant nonfat dry milk.

(1) Sampling and testing. All instant nonfat dry milk offered for sale shall be sampled and tested by the department routinely for the purpose of ensuring that the product meets requirements in accordance with the most current edition of "Standard Methods for the Examination of Dairy Products" of the American Public Health Association, as defined in §217.1 of this title (relating to Definitions).

(2) Requirements for instant nonfat dry milk.

(A) Flavor and odor. The flavor and odor shall be sweet, pleasing and desirable but may possess the following flavors to a slight degree:

- (i) chalky;
- (ii) cooked;
- (iii) feed; or
- (iv) flat.

(B) Physical appearance. The physical appearance shall possess a uniform white to light cream natural color and shall be free-flowing and free from lumps except those that readily break up with very slight pressure.

(C) Bacterial estimate. The standard plate count shall not be more than 30,000 per gram.

(D) Coliform count. The coliform count shall not be more than 10 per gram.

(E) Milkfat content. The milkfat shall not be more than 1.25%.

(F) Moisture count. The moisture shall not be more than 4.5%.

(G) Scorched particle content. Scorched particles shall not be more than 15 milligrams per gram.

(H) Solubility index. The solubility index shall not be more than 1 milliliter.

(I) Titratable acidity. The titratable acidity shall not be more than 0.15%.

(J) Dispersibility. The dispersibility shall not be less than 85%.

(K) Direct microscopic clump count. The direct microscopic clump count shall not be more than 75 million per gram.

*§217.76. Supplemental Requirements for Plants Manufacturing, Processing, and Packaging Butter and Related Products.*

(a) Rooms and compartments - Coolers and freezers. The coolers and freezers shall be equipped with facilities for maintaining temperature and humidity conditions to protect the quality and condition of the products during storage or during tempering prior to further processing. Coolers and freezers shall be kept clean, orderly, free from insects, rodents, and mold, and maintained in good repair. Coolers and freezers shall be adequately lighted and proper circulation of air shall be maintained at all times. The floors, walls, and ceilings shall be of such construction as to permit thorough cleaning.

(b) Churn rooms. Churn rooms, in addition to meeting standards of proper construction and sanitation, shall be equipped to ensure that the air is kept free from odors and vapors by means of adequate ventilation and exhaust systems or air conditioning and heating facilities.

(c) Print and bulk packaging rooms. Rooms used for packaging print or bulk butter and related products shall, in addition to meeting standards of proper construction and sanitation, provide an atmosphere relatively free from mold (no more than 10 mold colonies per cubic foot of air), dust or other airborne contamination and be maintained at a reasonable room temperature.

(d) Equipment and utensils - General construction, repair, and installation. All equipment and utensils necessary to the manufacture of butter and related products shall meet the same general requirements as outlined in §217.74 of this title (relating to Requirements for Milk Plants Producing Dairy Products). In addition, the following requirements shall be met for other equipment.

(1) Continuous churn. All product-contact surfaces shall be of non-corrosive material. All nonmetallic product-contact surfaces shall comply with 3-A Standards for Plastic, Rubber, and Rubber-Like Materials. All product-contact surfaces shall be readily accessible for cleaning and inspection.

(2) Conventional churn. Churns shall be constructed of aluminum, stainless steel or equally corrosion-resistant metal, free from cracks, and in good repair. All gasket material shall be fat resistant, nontoxic and durable. Seals around the churn doors shall be tight.

(3) Bulk butter trucks, boats and packers. Bulk butter trucks, boats and packers shall be constructed of aluminum, stainless steel or equally corrosion-resistant metal free from cracks, seams and must have a surface that is smooth and easily cleanable.

(4) Butter, frozen or plastic cream melting machine. Shavers, shredders or melting machines used for rapid melting of butter, frozen or plastic cream shall be of stainless steel or equally corrosion-resistant metal, sanitary construction, and readily cleanable in accordance with 3-A Sanitary Standards.

(5) Printing equipment. All printing equipment shall be designed to be readily demountable for cleaning of product-contact surfaces. All product-contact surfaces shall be aluminum, stainless steel or equally corrosion-resistant metal, or plastic, rubber and rubber like material which meet 3-A Standards, except that conveyors may be con-

structed of material which can be properly cleaned and maintained in good repair.

(6) Brine tanks. Brine tanks used for the treating of parchment liners shall be constructed of non-corrosive material and have an adequate and safe means of heating the salt solution for the treatment of the liners. The tank shall also be provided with a drainage outlet.

(7) Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and constructed according to applicable 3-A Sanitary Standards. The vats shall be in good repair, equipped with tight-fitting lids, and have temperature controls.

(e) Operations and operating procedures for pasteurization. The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product.

(1) Cream for buttermaking. The cream for buttermaking shall be pasteurized at a temperature of not less than 165 degrees Fahrenheit for not less than 30 minutes or at a minimum temperature of not less than 185 degrees Fahrenheit for not less than 15 seconds. Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the Food and Drug Administration (FDA) as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act (FFDCA). Only such FDA recognized processes and no other shall be considered by the department.

(2) Cream for plastic or frozen cream. The pasteurization of cream for plastic or frozen cream shall be accomplished in the same manner as in subsection (a) of this section, except that the temperature for the vat method shall be not less than 170 degrees Fahrenheit for not less than 30 minutes, or not less than 190 degrees Fahrenheit for not less than 15 seconds. Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by FDA as provided in 21 U.S.C. §343(h)(3) of the FFDCA. Only such FDA recognized processes and no other shall be considered by the department.

(f) Composition and wholesomeness. All ingredients used in the manufacture of butter and related products shall be subject to inspection and shall be wholesome and free from impurities. Chlorinating facilities shall be provided for butter wash water if needed, and all other precautions shall be taken to prevent contamination of products.

(g) Containers.

(1) Containers used for the packaging of butter and related products shall be containers or packaging material that will protect the quality of the contents in regular channels of trade. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less to protect the product from contamination during subsequent handling.

(2) Liners and wrappers.

(A) Supplies of parchment liners, wrappers, and other packaging material shall be protected against dust, mold, and other possible contamination.

(B) Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt in a container constructed of stainless steel or other equally noncorrosive material. The liners shall be maintained in the solution for not less than 30 minutes. The solution should consist of at least 15 pounds of salt for every 85 pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition.

(C) Other liners such as polyethylene shall be treated or handled in such a manner as to prevent contamination of the liner prior to filling.

(3) Filling bulk butter containers. The lined butter containers shall be protected from possible contamination prior to filling.

(4) Printing and packaging. Printing and packaging of consumer size containers of butter shall be conducted under sanitary conditions.

(5) General identification. Commercial bulk shipping containers shall be legibly marked with the name of the product, net weight, name and address of manufacturer, processor or distributor or other assigned plant identification (manufacturer's lot number, churn number, etc.). Packages of plastic or frozen cream shall be marked with the percent of milkfat.

(6) Storage of finished product in coolers. All products shall be kept under refrigeration at temperatures of 40 degrees Fahrenheit or lower after packaging and until ready for distribution or shipment. The products shall not be placed directly on floors or exposed to foreign odors or conditions such as drippage due to condensation which might cause package or product damage.

(7) Storage of finished product in freezer.

(A) Sharp freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging, for rapid and complete freezing within 24 hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at -10 degrees Fahrenheit or lower and shall be equipped to provide sufficient high-velocity air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage.

(B) Freezer storage.

(i) The room shall be maintained at a temperature of 0 degree Fahrenheit or lower. Adequate air circulation is desirable.

(ii) Butter intended to be held more than 30 days shall be placed in a freezer room as soon as possible after packaging. If not frozen before being placed in the freezer, the packages shall be spaced in such a manner as to permit rapid freezing and repiled, if necessary, at a later time.

*§217.77. Supplemental Requirements for Plants Manufacturing and Packaging Cheese.*

(a) Sanitation and construction requirements. Effective six months after adoption of these rules, facilities shall be constructed and maintained in compliance with §217.74 of this title (relating to Requirements for Milk Plants Producing Dairy Products). In addition, the following requirements shall be met.

(1) Rooms and compartments.

(A) Starter rooms. Starter rooms or areas shall be properly equipped and maintained for the propagation and handling of starter cultures. All necessary precautions shall be taken to prevent contamination of starter, of the room, equipment, and the air therein (such as filtered air, locked doors, and entry by only specified personnel).

(B) Make rooms. The rooms, or areas, in which the cheese is manufactured shall be of adequate size and the vats adequately spaced to permit movement around the vats and presses for proper cleaning and satisfactory working conditions. Adequate ventilation shall be provided.

(C) Drying rooms. If cheese is to be paraffined, a drying room, or area, of adequate size shall be provided to accommodate the maximum production of cheese during the flush period. Shelving and air circulation shall be provided for proper drying. Temperature and humidity control facilities shall be provided.

(D) Paraffining rooms. For rind cheese, a separate room or compartment shall be provided for paraffining and boxing the cheese. The room or compartment shall be of adequate size and the temperature maintained near the temperature of the drying room to avoid sweating of the cheese prior to paraffining.

(E) Rindless block wrapping area. For rindless blocks, a space shall be provided for proper wrapping and boxing of the cheese. The area shall be free from dust, condensation, mold or other conditions which may contaminate the surface of the cheese or contribute to an unsatisfactory packaging of the cheese.

(F) Coolers or curing rooms. Coolers, curing rooms, or areas where cheese is held for curing or storage shall be clean and maintained at the uniform temperature and humidity to protect the cheese. Circulation of air shall be maintained at all times. The rooms shall be free from rodents, insects, and pests. The shelves shall be kept clean and dry.

(G) Cutting and packaging rooms. When small packages of cheese are cut and wrapped, a separate room, or area, shall be provided for the cleaning and preparation of the bulk cheese. In addition, a separate room shall be provided for the cutting and wrapping operation. The rooms shall be well lighted, ventilated, and provided with filtered air. Air movement shall be outward to minimize the entrance of unfiltered air into the cutting and packaging room.

(2) Equipment and utensils--General construction, repair, and installation. All equipment and utensils necessary to the manufacture of cheese and related products shall meet the same general requirements as outlined in §217.74 of this title. In addition, for certain other equipment, the following requirements shall be met.

(A) Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and shall be in good repair, equipped with tight-fitting lids and have adequate temperature controls such as valves or indicating and/or recording thermometers. New vats shall be constructed according to the applicable 3-A Sanitary Standards.

(B) Cheese vats.

(i) The vats used for making cheese shall be of metal construction with adequate jacket capacity for uniform heating in accordance with 3-A Sanitary Standards. The inner liner shall be minimum 16-gauge stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The liner shall be smooth, free from excessive dents or creases and shall extend over the edge of the outer jacket. The outer jacket, when metal, shall be constructed of stainless steel or other metal which can be kept clean and sanitary. The junction of the liner and outer jackets shall be constructed to prevent milk or cheese from entering the inner jacket.

(ii) The vat shall be equipped with a suitable sanitary outlet valve. Effective valves shall be provided and properly maintained to control the application of heat to the vat.

(C) Mechanical agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be constructed to prevent the dropping of dirt or grease into the vat. Metal blades, forks, or stirrers shall be constructed of stainless steel and of material approved in the 3-A Sanitary Standards for Plastic and

Rubber or Rubberlike Materials, and shall be free from rough or sharp edges which might scratch the equipment or remove metal particles.

(D) Curd mill and miscellaneous equipment. Knives, hand rakes, shovels, paddles, strainers, and miscellaneous equipment shall be stainless steel or of material approved in the 3-A Sanitary Standards for Plastic and Rubberlike Material. The product-contact surfaces of the curd mill shall be of stainless steel. All pieces of equipment shall be so constructed that they can be kept clean. The wires in the curd knives shall be stainless steel, kept tight and replaced when necessary. All guards shall be in place.

(E) Hoops and followers. The hoops, forms, and followers shall be constructed of stainless steel, heavy tinned steel, or other approved suitable material in accordance with 3-A Sanitary Standards. If tinned, they shall be kept tinned and free from rust. All hoops, forms, and followers shall be kept in good repair. Drums or other special forms used to press and store cheese shall be clean and sanitary.

(F) Press. The cheese press shall be constructed of stainless steel or other approved material and all surfaces, seams, and openings readily cleanable. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths shall be used only once.

(G) Rindless cheese press. The press used to heat-seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surface and controls that shall provide uniform pressure and heat equally to all surfaces.

(H) Paraffin tanks. The metal tank shall be adequate in size, have wood rather than metal racks to support the cheese, heat controls, and an indicating thermometer. The cheese wax shall be kept clean.

(b) Operations and operating procedures.

(1) Cheese from pasteurized milk. When pasteurization is required, or when a product is designated "pasteurized," every particle of the milk or milk product shall be subjected to such temperatures and holding periods in properly designed and operated equipment to ensure proper pasteurization of the product in accordance with the most current revision of the U.S. Public Health Service, FDA, Grade A Pasteurized Milk Ordinance. Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by FDA as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(2) Cheese from unpasteurized milk shall conform to the processing and aging requirements of the most current revision of Title 21, Code of Federal Regulations, Part 133.

(3) Whey disposal.

(A) Adequate sanitary facilities shall be provided for the disposal of whey. If outside, necessary precautions shall be taken to minimize flies, insects, and objectionable odors.

(B) Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures of this subpart as specified for handling milk and dairy products.

(4) Packaging and repackaging. Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under sanitary conditions. The atmosphere of the packaging rooms,

the equipment and the packaging material shall be free from mold and bacterial contamination.

(5) General identification. Each bulk cheese shall be legibly marked with the name of the product, code or date of manufacture, vat number, officially designated code number or name and address of manufacturer. Each consumer sized container shall be plainly marked with the name and address of the manufacturer, packer or distributor, net weight of the contents, and name of product.

§217.79. *Supplemental Requirements for Plants Manufacturing, Processing, and Packaging Evaporated or Condensed Milk Products.*

(a) Sanitation and construction requirements. Facility and equipment shall be constructed and maintained in compliance with §217.74 of this title (relating to Requirements for Milk Plants Producing Dairy Products), and the most current revision of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Grade A Pasteurized Milk Ordinance). In addition, for certain other equipment, the following requirements shall be met.

(1) Evaporators and vacuum pans. All equipment used in the removal of moisture from milk or milk products for the purpose of concentrating the solids shall meet the requirements of the 3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans. All new or used replacements for this type of equipment shall meet the appropriate 3-A Sanitary Standards.

(2) Fillers. Both gravity-and vacuum-type fillers shall be of sanitary design and all product-contact surfaces, if metal, shall be made of stainless steel or equally corrosion-resistant material; except that certain evaporated milk fillers having brass parts shall be approved by the department if free from corroded surfaces and kept in good repair. Nonmetallic product-contact surfaces shall meet the requirements for 3-A Sanitary Standards for Rubber and Rubberlike Materials or for Multiple-Use Plastic Materials. Fillers shall be designed so that they will contaminate or detract from the quality of the product being packaged.

(3) Batch or continuous in-container sterilizers shall be equipped with accurate temperature controls and effective valves to regulate the sterilization process. The equipment shall be maintained in such a manner to ensure control of the length of time of processing and to minimize the number of damaged containers.

(4) Homogenizers, where applicable, shall be used to reduce the size of the fat particles and to evenly disperse them in the product. New homogenizers shall meet the applicable 3-A Sanitary Standards.

(b) Operations and operating procedures regarding pasteurization. When pasteurization is required, or when a product is designated "pasteurized," every particle of the milk or milk product shall be subjected to such temperatures and holding periods in properly designed and operated equipment as will ensure proper pasteurization of the product in accordance with the most current revision of the "Grade A Pasteurized Milk Ordinance." Provided, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by FDA as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(c) Filling containers.

(1) The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product. After filling, the container shall be hermetically sealed.

(2) Bulk containers for unsterilized product shall protect the product from contamination in storage or transit. The bulk container (including bulk tankers) shall be cleaned and sanitized before filling and filled and closed in a sanitary manner.

(d) Storage. Facilities shall be provided for the storage and handling of finished product.

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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Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: October 30, 2009

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER F. PERMITS, FEES AND ENFORCEMENT

### 25 TAC §217.91, §217.92

#### STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license sufficient to recover costs; Health and Safety Code, §12.0112 and §435.009(b), which require the term of each license issued to be two years; Health and Safety Code, §§431.241, 435.003, 435.009(c), 435.012(c), and 440.006, which provide the department with the authority to adopt regulations to implement and enforce the requirements of Chapters 431, 435, and 440 of the Health and Safety Code; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, requiring agency rule review every four years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## TITLE 28. INSURANCE

## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER B. RETURN TO WORK

#### 28 TAC §§137.41 - 137.51

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §§137.41 - 137.49 concerning the administration of the Return-to-Work Reimbursement Program that reimburses employers for expenses that facilitate an injured employee's return to work in the same or modified duty. The Division also adopts new §137.50 relating to an Optional Advance of Funds Plan and new §137.51 relating to Monitoring and Enforcement of the program. Sections 137.42 - 137.44, 137.46 and 137.48 - 137.51 are adopted with changes to the proposed text published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 484). Sections 137.41, 137.45 and 137.47 are adopted without changes. The public comment period ended on March 8, 2010. The Division did not receive a request for a public hearing.

These amendments and new sections are necessary to implement Senate Bill (SB) 1814, enacted by the 81st Legislature, Regular Session, effective June 19, 2009, which, in part, amended Labor Code §413.022 to change this from a pilot program to a permanent Return-to-Work Reimbursement Program for Employers. In addition the amendments address changes to the eligibility requirements and administration of the program. SB 1814 amended Labor Code §413.022 to increase the amount an employer may receive from the program from \$2,500 to \$5,000 for an allowable expense. In addition to having a reimbursement and optional preauthorization plan, SB 1814 allowed for the creation of an optional advance of funds plan for eligible employers who participate in the Return-to-Work Reimbursement Program. Under this plan, an eligible employer may, prior to making workplace modifications, submit to the Division an application that describes the workplace modifications that the employer proposes to make to accommodate an injured employee's return to work. If the Division approves the application, the Division may, up to the permitted amount, advance the funds for the expenses the employer will incur to implement the workplace modifications.

The adopted amendments to §137.41 (relating to Purpose) change the title from the Return-to-Work Pilot Program for Small Employers and replace it with a permanent title, the Return-to-Work Reimbursement Program for Employers. In addition to amending §137.41, the Division adds adopted §137.50 (relating to the Optional Advance of Funds Plan) and §137.51 (relating to Monitoring and Enforcement) to the purpose provision of Subchapter B.

The adopted amendments to §137.42 (relating to Definitions) add definitions for an applicant in §137.42(2), application in §137.42(3), the Division in §137.42(6), and the Return-to-Work Reimbursement Program in §137.42(8). In addition, adopted §137.42(5) changes the definition of an eligible expense to an allowable expense to conform with the Labor Code. This definition also changes the requirement that a cost must be incurred on or after January 1, 2006 to qualify as an allowable expense to a requirement that a request be submitted no



later than one year from the date the cost was incurred, see §137.45(b) (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program) for more information regarding allowable expenses. Also, adopted §137.42 deletes the definition of the Return-to-Work Account and any reference to the Account is deleted from §137.44 (relating to the Return-to-Work Reimbursement Program for Employers) since no specific account was created by the Texas Legislature for the Return-to-Work Reimbursement Program. Any other reference to the Return-to-Work Account has been deleted from the adopted amendments to §§137.43 - 137.49, accordingly.

Adopted amendments to §137.43 (relating to the Return-to-Work Reimbursement Program Administrator) make grammatical changes to conform with the revisions to Labor Code §413.022 and make changes for consistency, clarity, editorial reasons, and to correct typographical errors.

Adopted §137.44(b) changes the total amount that may be disbursed each state appropriation year to an eligible employer for an allowable expense from \$2,500 to \$5,000 in accordance with statutory amendments in SB 1814.

Adopted §137.45 deletes subsection (b) regarding violations of these rules and adopts new §137.51. Adopted §137.45(c) has been added to provide notice to applicants that the Texas Comptroller of Public Accounts may not release the funds for an approved application if the applicant does not meet the requirements of the Texas Comptroller of Public Accounts. Each applicant's factual circumstances may vary but one such example which could withhold disbursement by the Texas Comptroller of Public Accounts is if an applicant owes back taxes.

Adopted §137.46 (relating to Application for Funds for the Return-to-Work Reimbursement Program) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors.

Adopted §137.47 (relating to Criteria for Return-to-Work Reimbursement Program Applications) has been revised to enumerate the minimum standards the Division requires to process and approve an application for reimbursement, preauthorization, or for an advance of funds for workplace modifications.

Adopted §137.48 (relating to Return-to-Work Reimbursement Program Administrator Determinations) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors. Adopted §137.48(d) clarifies that the administrator may use any of the criteria enumerated throughout §§137.44 - 137.47 to evaluate an application.

Adopted §137.49 (relating to the Optional Preauthorization Plan) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors. In addition, §137.49(b)(1) - (3) and (c) - (e) have been deleted since they repeated the criteria of §§137.44 - 137.48 and references to these sections have been inserted into adopted §137.49.

Adopted new §137.50 specifies who is eligible to apply for an advance of funds. Generally, for an employer to be eligible to receive an advance of funds from the program, the advance of funds should expedite the delivery of the approved workplace modifications to accelerate an injured employee's return to work. This adopted rule states that an eligible employer, which is defined by Labor Code §413.022(a)(2) and §137.42(4), may ap-

ply for an advance of funds. Adopted §137.50(a) states that an eligible employer, as provided by §137.45, may apply for an advance of funds for allowable expenses. Adopted new §137.50(b) specifies how an eligible employer applies for an advance of funds. It requires the employer to submit to the Division a completed application as defined by §137.47, which includes a description of the proposed workplace modifications, the estimated costs of those modifications, and a copy of the Division's "Work Status Report" from the injured employee's doctor. Adopted new §137.50(b) also provides that the Division will make the application form available on the Division's website and will provide the form to an employer upon request in accordance with §137.46. Adopted new §137.50(c) provides that the Division will review applications in accordance with §137.48. Adopted new §137.50(d) allows the Division to advance funds to the employer for the costs the employer will incur in making the approved workplace modifications after receipt of an application and subject to §137.44. This adopted new section does not allow the employer to make workplace modifications that materially differ from the accepted application unless the employer receives prior written approval from the Division. Adopted new §137.50(e) requires the employer to complete the approved workplace modifications within six months of receiving funds from the Division or the funds must be returned unless an extension is requested and granted in writing. Adopted new §137.50(f) requires the employer to submit to the Division proof, in the form of a receipt, when the approved workplace modifications have been made. The adopted amendments to §§137.41 - 137.48 have been updated to allow for both reimbursements and advancements.

Adopted new §137.51 gives notice to participating employers that the Division may inspect the employer's business before any funds have been given by the Division or spent by the employer to insure that the proposed workplace modifications are appropriate. The Division may also inspect the business after any funds have been spent to insure that the funds were used appropriately and the new rule would allow for the Division to request records or information from the employer regarding the requested or spent funds. In addition, new §137.51 gives notice to participating employers that misuse of funds provided by this program shall be considered an administrative violation by the Division.

The Division has changed some of the language in the text of the rule previously published in the proposal. These changes introduce no new subject matter and do not affect persons in addition to those subject to the proposal as published. The changes were made for consistency, clarity, editorial reasons, and to correct typographical or grammatical errors.

The amendment to §137.41 clarifies that the Return-to-Work Pilot Program for Small Employers has been replaced with the permanent Return-to-Work Reimbursement Program for Employers. The terms, conditions, and requirements for this program are set forth in §§137.41 - 137.51.

The adopted amendments to §137.42 clarify and add definitions for the Return-to-Work Reimbursement Program for Employers. Adopted §137.42(5) changes the definition of an eligible expense to an allowable expense to conform with the Labor Code. The definition for applicant was added to adopted §137.42(2); the definition for application was added to §137.42(3), the definition for the Division was added to §137.42(6); and the definition for the Return-to-Work Reimbursement Program was added to §137.42(8).

Adopted §137.43 requires the Commissioner to appoint an administrator for the Return-to-Work Reimbursement Program.

Adopted §137.44 clarifies how the Division may process applications and disburse funds for approved applications. Adopted §137.44(b) changes the total amount that may be disbursed each state appropriations year to an eligible employer for an allowable expense from \$2,500 to \$5,000.

Adopted §137.45 clarifies the requirements for an allowable expense and for an employer to be eligible to receive a disbursement from the Return-to-Work Reimbursement Program. Adopted §137.45(c) has been added to provide notice to applicants that the Texas Comptroller of Public Accounts may not release the funds for an approved application if the applicant does not meet the requirements of the Texas Comptroller of Public Accounts.

Adopted §137.46 clarifies how employers should submit requests for disbursements from the Return-to-Work Reimbursement Program to the Division, where employers can obtain an application, and how applications will be processed.

Adopted §137.47 enumerates the minimum standards the Division requires to process and approve an application for reimbursement, preauthorization, or for an advance of funds for workplace modifications.

Adopted §137.48 clarifies the determinations the Return-to-Work Reimbursement Program administrator shall make and the standards the Return-to-Work Reimbursement Program administrator shall use to make those determinations.

Adopted §137.49 sets forth the terms, conditions, and requirements for a participating employer to receive a preauthorization for the disbursement of funds from the Return-to-Work Reimbursement Program.

Adopted new §137.50 sets forth the terms, conditions, and requirements for a participating employer to receive an advance of funds from the Return-to-Work Reimbursement Program.

Adopted new §137.51 clarifies that the Division may inspect a participating employer's business or records before or after any funds have been given by the Division or spent by the employer to insure that the proposed workplace modifications are appropriate and that the funds were used appropriately. In addition, new §137.51 gives notice to participating employers that misuse of funds provided by this program shall be considered an administrative violation by the Division.

Comment: A commenter supports the proposed rule but believes the Division should promote the program more and should help develop return-to-work programs with employers who do not have such programs.

Agency Response: The Division appreciates the supportive comments and agrees the Return-to-Work Reimbursement Program should be promoted. Notice of this program must be distributed by an insurance carrier to employers in accordance with Labor Code §413.021(a). Currently, the Division provides notice of the Return-to-Work Reimbursement Program on the Division's website and the Division promotes the program at employer related seminars and conferences that the Division presents at or hosts.

Comment: A commenter supports the proposed rule and the commenter requests that the Division elaborate in its responses to comments in the adoption order on whether it would consider

the cost of providing the injured employee a helper as eligible "other costs" entitled to reimbursement from the program.

Agency Response: The Division appreciates the supportive comment but the Division declines to provide a detailed set of examples of "other costs" that the Division would consider as allowable expenses eligible for reimbursement from the Return-to-Work Reimbursement Program as part of the adoption order. Adopted §137.42 defines "allowable expense" broadly as "an expenditure of funds, costs incurred, or costs that will be incurred by an eligible employer for workplace modifications or other costs that are necessary to reasonably assist an injured employee's doctor-identified restrictions that are intended to facilitate the early and sustained return to work of an employee who has a compensable injury." The review of a workplace modification to determine if it qualifies as an "allowable expense" is conducted by the Division on a case-by-case basis and depends upon numerous factors which are defined by and elaborated in the adopted rules.

Comment: A commenter supports the proposed rule and believes the proposed rule is necessary to implement SB 1814.

Agency Response: The Division agrees and appreciates the supportive comment.

Comment: A commenter supports the proposed rule but questions why language regarding the return-to-work account was deleted in §137.44(a). The commenter believes that a reference to the \$100,000.00 cap per year on spending for this program, per Labor Code §413.022(d), is necessary and will prevent any confusion regarding the continued application of the mandatory statutory restrictions on the program. The commenter requests that the language that was deleted by the proposal in §137.44(a) be included.

Agency Response: The Division appreciates the supportive comment but declines to make the recommended change. Labor Code §413.022 was originally created by HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. All funds and accounts in the state treasury must be separately created or recreated by each legislature. SB 1605, enacted by the 79th Legislature, Regular Session, effective June 18, 2005, did not create a return-to-work reimbursement account. In 2009 during the 81st legislature no statutory authority was enacted to create the return-to-work reimbursement account. The Division will fund approved applications on a case-by-case basis as funds become available. Labor Code §413.022(f) sets restrictions on the distribution of funds regarding this program; the Division may distribute funds only to the extent that funds are available. Adopted §137.44(a), (e) and (f) address this statutory restriction found in Labor Code §413.022(f).

For: Property Casualty Insurers Association of America; Office of Injured Employee Counsel; one individual.

For with changes: American Insurance Association.

Against: None.

Neither for nor against, with recommended changes: None.

These amendments and new sections are adopted under Labor Code §§413.022, 402.00111, 402.061, and 415.0036.

Labor Code §413.022 requires the Commissioner of Workers' Compensation to adopt rules to implement the Return-to-Work Reimbursement Program for Employers; it also allows for the establishment by rule of an optional advance of funds plan for

eligible employers who participate in the program and states that an employer who willingly applies for or receives reimbursement knowing that the employer is not eligible commits an administrative violation. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rule making authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §415.0036 provides that an employer may be held responsible for an act that violates the Labor Code or applicable rules.

§137.42. *Definitions.*

The following words and terms shall have the following meanings only for the purposes of the return-to-work reimbursement program for employers:

(1) Allowable expense--An expenditure of funds, costs incurred, or costs that will be incurred by an eligible employer for workplace modifications or other costs that are necessary to reasonably assist an injured employee's doctor-identified restrictions that are intended to facilitate the early and sustained return to work of an employee who has a compensable injury. An indemnity benefit, medical benefit, or health care for which an insurance carrier is liable is not an allowable expense under the program.

(2) Applicant--The employer requesting funds from the return-to-work reimbursement program.

(3) Application--The return-to-work reimbursement program application provided by the division for reimbursement, preauthorization, or advancement of funds used or proposed to be used by employers for workplace modifications.

(4) Alternative duty--Job duties that are different from the injured employee's normal or regular pre-injury job duties and that are assigned specifically to facilitate the injured employee's doctor-identified work restrictions or limitations.

(5) Eligible employer--Any employer that:

(A) is not a state agency or political subdivision of the state;

(B) employed at least two but not more than 50 employees on each business day during the preceding calendar year; and

(C) has workers' compensation insurance coverage in Texas.

(6) Division--The Texas Department of Insurance, Division of Workers' Compensation.

(7) Modified duty--The injured employee's normal or regular pre-injury job with workplace modifications to facilitate doctor-identified work restrictions or limitations.

(8) Return-to-work reimbursement program (program)--The division's program for the reimbursement, preauthorization, or advancement of funds to eligible employers for allowable expenses which facilitate the early and sustained return to work of an employee who has a compensable injury.

(9) Return-to-work reimbursement program administrator (administrator)--The administrator of the Texas Department of Insurance, Division of Workers' Compensation return-to-work reimbursement program for employers.

(10) Single employer--An employer operating one or more businesses under the same federal employer identification number. In

the absence of a federal employer identification number, a single employer is established by the employer's social security number.

(11) State appropriation year--The State of Texas' fiscal accounting year that begins September 1 and ends August 31 of the following year.

(12) Workplace modification--Physical modifications to the worksite; equipment, devices, furniture, or tools; or other reasonable costs necessary to facilitate an employee's return to restricted, modified or alternative duty.

§137.43. *Return-to-Work Reimbursement Program Administrator.*

The Commissioner of Workers' Compensation shall appoint a qualified employee of the Texas Department of Insurance, Division of Workers' Compensation to serve as the return-to-work reimbursement program administrator to implement the provisions of this subchapter.

§137.44. *Return-to-Work Reimbursement Program for Employers.*

(a) Disbursements of funds for the program are dependent on the availability of funds identified by the division.

(b) The disbursement that any single employer may receive from the program may not exceed \$5,000 for all workplace modification expenditures made during the state appropriation year for all injured employees.

(c) Disbursements from the program to approved eligible employers shall be made on a reimbursement basis, or at the discretion of the commissioner or the commissioner's designee on an advancement basis, subject to verification of employer eligibility, receipts and expenditures, workplace modifications, the employee's return to work, approval of the employer's application, and any other requirements listed in §§137.45 - 137.50 of this title (relating to the Return-to-Work Reimbursement Program).

(d) Applications shall be processed in the order that completed applications are received by the division.

(e) Approved applications shall be funded from the program as funds become available.

(f) Applications may be denied in whole or in part due to the lack of available funds for the program or if the division determines that all or part of the application does not meet the requirements listed in §§137.45 - 137.50 of this title.

§137.46. *Application for Funds from the Return-to-Work Reimbursement Program.*

(a) An eligible employer seeking funds from the program shall submit to the division an application as defined in §137.42 of this title (relating to Definitions).

(b) Applications shall be available on the division's website ([www.tdi.state.tx.us/wc](http://www.tdi.state.tx.us/wc)) and through the division. Upon request, the division shall provide an application form to an employer.

(c) Applications shall be submitted to the division in the form prescribed by the division and must meet the minimum requirements provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(d) The date the completed application is received by the division shall be the official date for purposes of processing the application. An application shall not be processed for approval until all required or requested documentation has been received by the division and any other applicable requirements listed on the application have been met.

(e) An application that has information missing or that does not include the information described in §137.47 of this title, receipts,

or other documentation necessary to support the application and to justify the workplace modification may be returned to the employer for completion, documentation supplementation, or the application may be denied.

*§137.48. Return-to-Work Reimbursement Program Administrator Determinations.*

(a) The administrator shall make determinations regarding the following:

- (1) the employer's eligibility to participate in the program;
- (2) the appropriateness of the workplace modification in facilitating the injured employee's return to work based on doctor-identified restrictions;
- (3) the effectiveness of the workplace modification in facilitating the injured employee's early and sustained return to work;
- (4) the cost of the workplace modification in relation to usual and customary costs of the same or similar modification; and
- (5) the appropriateness of other costs incurred or to be incurred by the employer to return the injured employee to work in a modified or alternative duty capacity.

(b) The administrator or designee may make an on-site evaluation or request information from the employer or providers of a workplace modification in order to verify that:

- (1) the workplace modification was or will be provided;
- (2) the workplace modification was or will be a reasonable modification and expenditure; and
- (3) the injured employee returned to work as a result of the workplace modification.

(c) The administrator may utilize the National Institute of Health's "Searchable Online Accommodation Resource," U.S. Department of Labor resources, Texas Department of Assistive and Rehabilitative Services resources, or similar resources in evaluating and verifying workplace modifications and associated costs. The administrator may consult with a rehabilitation counselor or specialist when verifying the appropriateness of workplace modifications and costs.

(d) The administrator may approve or deny in whole or in part the employer's request for funds from the program pursuant to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program), and §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(e) Decisions regarding approval or denial of applications, the reason for approval or denial of an application, and the amount to be disbursed from the program are final, may not be appealed, and are the discretion of the administrator.

(f) Upon completion of the application evaluation, the employer will be notified in writing of the approval or denial of the application by the administrator.

*§137.49. Optional Preauthorization Plan.*

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work

reimbursement program for employers may apply to the division for a preauthorized reimbursement of allowable expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for a preauthorized reimbursement of allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of division approval of the application, the employer may begin all approved workplace modifications set out in the approved application. Upon completion of the approved workplace modifications, the employer may obtain reimbursement from the program by submitting to the division sufficient documentation and receipts to show that the approved workplace modification has been completed.

(e) Upon receipt of the information described in subsection (d) of this section and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division shall reimburse the employer the costs incurred by the employer in making the approved workplace modifications unless the division determines that the modifications differ materially from the employer's application.

(f) Release of funds are subject to §137.45(c) of this title.

*§137.50. Optional Advance of Funds Plan.*

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work reimbursement program for employers may apply to the division for an advance of funds for allowable expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for an advance of funds for allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of a completed application and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division may advance funds to the employer to make approved workplace modifications. The employer shall not make workplace modifications that materially differ from the employer's approved application unless the employer receives written approval from the division for the materially different modifications.

(e) Upon the receipt of the advanced funds from the division, the employer shall complete all approved workplace modifications set out in the approved application within six months of receiving funds from the division. For good cause, the division or the administrator

may extend this six-month requirement. Any extension of time for completing workplace modifications must be granted by the division in writing and for a determinable period of time.

(f) Upon completion of the approved workplace modifications, the employer shall submit to the division all receipts for the payments made by the employer for the approved modifications. Any funds not spent after the six-month time frame must be immediately returned to the division.

(g) Release of funds are subject to §137.45(c) of this title.

§137.51. *Monitoring and Enforcement.*

(a) Once an application is submitted, the commissioner or the commissioner's designated representative(s), including the administrator, may inspect the applicant's business to insure that the funds have been or will be spent according to what was or could be authorized. The commissioner or the commissioner's designated representative(s), including the administrator, are authorized to make a complete on-site review of the operations of each applicant at the place of business where the workplace modification has been or will be made, as often as is deemed necessary.

(b) At a minimum, notice of an on-site inspection shall be in writing and be presented by the commissioner or the commissioner's designated representative(s), including the administrator, upon arrival. On-site inspections shall not be conducted during legal holidays as defined in the Government Code §662.003(a).

(c) During an on-site review or upon written request of the commissioner or the commissioner's designated representative(s), including the administrator, the applicant shall make available all records relating to the requested or spent funds. Employers must maintain all relevant records for at least one year from the date of disbursement from the division.

(d) An employer commits an administrative violation if any part of the reimbursed or advanced funds are not used for the purpose or in the manner that the division previously approved in writing. Any unused funds must be returned to the division within six months of disbursement and any funds that are used not in accordance with the plan approved by the division must be immediately returned to the division.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001542

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: April 25, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 804-4703



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 290. PUBLIC DRINKING WATER

##### SUBCHAPTER G. WATER SAVING PERFORMANCE STANDARDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §290.267; amendments to §§290.251 - 290.254, 290.256, and 290.260; and the repeal of §290.255.

These amendments, new section, and the repeal of §290.255 are adopted *without changes* as published in the October 23, 2009 issue of the *Texas Register* (34 TexReg 7299) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 2009, the 81st Legislature passed House Bill (HB) 2667, relating to performance standards for plumbing fixtures sold in this state. HB 2667 amends Texas Health and Safety Code (THSC), §372.001 and §372.002 to increase efficiency standards, add performance, labeling, and testing requirements, add exemptions, add a five-year phase-in of new standards, and repeal TCEQ labeling and fee requirements for plumbing fixtures sold in this state. HB 2667 adds THSC, §§372.0025, 372.0045, and 372.006 to add exceptions for municipalities or counties, a phase-in of water saving performance standards, and performance standards for nonwater-supplied urinals, respectively. HB 2667 amends Texas Water Code, §5.701(q) to remove the commission's authority to collect fees for testing a product to ensure that the certification is accurate.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts an amendment to 30 TAC Chapter 291, Utility Regulations.

#### SECTION BY SECTION DISCUSSION

##### §290.251. *Purpose, Authority, and Definitions.*

The commission adopts the amendment to §290.251 to revise definitions for various plumbing fixtures relating to the subchapter. Terms to be revised are plumbing fixture and toilet. Terms to be added are plumbing fixture fitting, pressurized flushing device, and water closet. The term "ASME" will be deleted, as this acronym is no longer used throughout the subchapter, and the term "ASTM" will be deleted, as this organization is currently known only as ASTM International. As a result of the additions and deletions, some existing definitions will be renumbered accordingly. This amendment is required by THSC, §372.001, as amended by HB 2667.

##### §290.252. *Design Standards.*

The commission adopts the amendment to §290.252 to include new performance standards and revise testing requirements for plumbing fixtures. A reference to testing standards established by the American National Standards Institute is removed. All references to testing procedures adopted by the commission for plumbing fixtures are removed. Performance, testing, and labeling requirements for plumbing fixtures prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 are added. Performance standards for nonwater-supplied urinals are also added. This amendment is required by THSC, §372.002, as amended by HB 2667.

##### §290.253. *Plumbing Fixture List.*

The commission adopts the amendment to §290.253 to change the process of providing test results for plumbing fixtures to the commission. All references to testing by the commission and fees were removed by the statute and therefore are removed

from this section. This amendment is required by THSC, §372.002, as amended by HB 2667.

#### *§290.254. Removal from List.*

The commission adopts the amendment to §290.254 to remove the references to the commission charging fees, which was removed by the statute. The commission replaced a reference to "the department" with "the agency." As a result of the removals, paragraphs are renumbered accordingly. This amendment is required by THSC, §372.002, as amended by HB 2667.

#### *§290.255. Fees.*

The commission repeals §290.255, concerning fees charged by the commission. This repeal is required because THSC, §372.002(d) is repealed by HB 2667.

#### *§290.256. Exemptions.*

The commission adopts the amendment to §290.256 to add additional exemptions for municipalities and counties that have situations that would require a greater quantity of water, non-water-supplied urinals, and plumbing fixtures certified by the United States Environmental Protection Agency under the WaterSense program. This amendment is required by THSC, §372.0025, as amended by HB 2667. The commission adopts the amendment to §290.256 to add additional exemptions for heavy-duty commercial urinals, and toilets that are mounted on the wall and discharge to the drainage system on the floor, are located in a correctional facility, are used in a bariatric application, are used by children at a daycare, or consist of a non-tank type commercial bowl connected to the plumbing system through a pressurized device. As a result of these additions, existing subsection (b) is relettered accordingly. This amendment is required by THSC, §372.002, as amended by HB 2667.

#### *§290.260. Labeling.*

The commission adopts the amendment to §290.260 to remove the TCEQ's labeling requirements for plumbing fixtures. This repeal is required because THSC, §372.003(a) and (b), concerning labeling requirements, is repealed by HB 2667. As a result of these deletions, the remaining subsections are relettered accordingly.

#### *§290.267. Phase-In of Water Saving Performance Standards.*

The commission adopts new §290.267 to add a five-year schedule for phasing in fixtures that comply with the new standards. Procedures for reporting the percentage of models to the commission annually are prescribed. This adopted new section expires September 1, 2013. This new section is required by THSC, §372.0045, as amended by HB 2667.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking requires a regulatory impact analysis under Texas Government Code, §2001.0225. The adopted rulemaking may be a "major environmental rule" under Texas Government Code, §2001.0225. Although the specific intent of the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state, these rules do result in protecting the environment, or conserving water resources. The purpose of this rulemaking is to require certain standards for plumbing fixtures in order to conserve water. These new standards are being implemented because they are required by

state law. The adopted rules also repeal the commission's authority to charge fees for testing products to make sure that the products meet the standards. Because these plumbing fixtures that meet the new standards should not cost any more than they would under existing standards, there is no impact on the economy or jobs. Also, these rules do not exceed a standard of federal law that is not specifically required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or are proposed solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to describe plumbing fixtures standards in state law to conserve water and to repeal the agency's authority to test products to ensure that they meet the standards and to charge fees for this testing. The adopted rulemaking would substantially advance this stated purpose by placing the standards in the rule and repealing the testing and fee program in the rule. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the coastal management program.

#### PUBLIC COMMENT

The commission held a public hearing on November 17, 2009 in Austin, Texas. The comment period closed on November 23, 2009. The commission received one written comment from an individual but it was outside the scope of this rulemaking.

#### RESPONSE TO COMMENT

One individual commented on the one meter per residence requirements and the quality of their drinking water.

This rulemaking did not address revisions to the one meter per residence requirements nor did it address drinking water quality; therefore, these comments are outside the scope of this rulemaking. The commission made no changes in response to these comments.

### **30 TAC §§290.251 - 290.254, 290.256, 290.260, 290.267**

#### **STATUTORY AUTHORITY**

The amendments and new section are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments and new section are also adopted under Texas Health and Safety Code (THSC), Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The adopted amendments and new section implement THSC, §§372.001, 372.002, 372.0025, 372.0045, and 372.006; and TWC, §5.701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001520

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: April 25, 2010

Proposal publication date: October 23, 2009

For further information, please call: (512) 239-0177



### **30 TAC §290.255**

#### **STATUTORY AUTHORITY**

The repeal is adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the Texas Water Code. The repeal is also adopted under Texas Health and Safety Code, Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The adopted repeal implements Texas Health and Safety Code, §372.002.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0177



## **CHAPTER 291. UTILITY REGULATIONS SUBCHAPTER H. UTILITY SUBMETERING AND ALLOCATION**

### **30 TAC §291.127**

The Texas Commission on Environmental Quality (agency or commission) adopts an amendment to §291.127 *without changes* to the proposed rule as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7305) and will not be republished.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE**

In 2009, the 81st Legislature passed House Bill (HB) 2667, relating to performance standards for plumbing fixtures sold in this state. HB 2667 amends Texas Water Code (TWC), §13.506(b) to remove the specification for installation of toilets that meet the old standards (1.6 gallons) for apartments that are required to retrofit toilets due to submetering rules.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts revisions to 30 TAC Chapter 290, Public Drinking Water.

#### **SECTION DISCUSSION**

##### *§291.127, Submeters or Point-of-Use Submeters and Plumbing Fixture*

The commission adopts an amendment to §291.127 to remove the specification for installation of toilets that meet the old standards (1.6 gallons) for apartments that are required to retrofit toilets due to submetering rules. The amendment is required by TWC, §13.506(b), as amended by HB 2667.

#### **FINAL REGULATORY IMPACT ANALYSIS DETERMINATION**

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking requires a regulatory impact analysis under Texas Government Code, §2001.0225. The adopted rulemaking may be a "major environmental rule" under Texas Government Code, §2001.0225. Although the specific intent of the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state, this rule does result in protecting the environment, or conserving water resources. The purpose of this rulemaking is to implement HB 2667 to require owners of rental property or managers of condominiums, not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in Texas Health and Safety Code (THSC), §372.002. Because plumbing fixtures that meet the new standards should not cost any more than they would under existing standards, there is no impact on the economy or jobs. Also, the rulemaking does not exceed a standard set of federal

law that is not specifically required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and is not being adopted solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to implement HB 2667 to require owners of rental property or managers of condominiums, not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in THSC, §372.002. The adopted amendment would substantially advance this stated purpose by placing the revised standard in the rule. Promulgation and enforcement of the adopted amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the coastal management program.

#### PUBLIC COMMENT

The commission held a public hearing on November 17, 2009 in Austin, Texas. The comment period closed on November 23, 2009. The commission received one written comment from an individual but it was outside the scope of this rulemaking.

#### RESPONSE TO COMMENT

One individual commented on the one meter per residence requirements and the quality of their drinking water.

This rulemaking did not address revisions to the one meter per residence requirements nor did it address drinking water quality; therefore, these comments are outside the scope of this rule-

making. The commission made no changes in response to these comments.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also adopted under TWC, §13.506(b), concerning Plumbing Fixtures, which requires owners of rental property or managers of condominiums not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in Texas Health and Safety Code, §372.002.

The adopted amendment implements TWC, §13.506(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001522

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: April 25, 2010

Proposal publication date: October 23, 2009

For further information, please call: (512) 239-0177



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

#### CHAPTER 529. FLOOD CONTROL

The Texas State Soil and Water Conservation Board (State Board or agency) adopts amendments to §529.2 and §529.3, concerning the operation and maintenance grant program, and new §§529.50 - 529.62, creating a separate structural repair grant program related to flood control dams. Sections 529.3, 529.51, 529.55, 529.59, and 529.62 are adopted with changes to the proposed text as published in the January 1, 2010, issue of the *Texas Register* (35 TexReg 31). Sections 529.2, 529.50, 529.52 - 529.54, 529.56 - 529.58, 529.60, and 529.61 are adopted without changes and will not be republished.

Nearly 2,000 floodwater retarding structures, or dams, have been built over the last 60 years within the State of Texas. The primary purpose of the structures is to protect lives and property by reducing the velocity of floodwaters, and thereby releasing flows at a safer rate. These are earthen dams that exist on private property, and were designed and constructed by the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS). They were built with the understanding that the private property owner would provide the land, the federal government would provide the technical design expertise and the funding to construct them, and then



units of local government would be responsible for maintaining them into the future.

Local sponsors of the dams were required before a federal project was begun. Local sponsors signed a watershed agreement which outlined the duties and responsibilities of the federal and local sponsors. In general, local sponsors are required to obtain and enforce easements, conduct operation and maintenance (O&M) inspections, maintain the structures, and implement land treatment measures in the watershed. Soil and water conservation districts (SWCD) are one of the local sponsors in all watershed projects. Other local sponsors include counties, cities, and Water Control and Improvement Districts (WCIDs).

Due to the passage of time and difficulty in raising adequate funds locally, many SWCDs and other sponsors approached the State Board and expressed their concerns over the amount of needed O&M on flood control dams. In recognition that these dams will continue to serve as a critical protection for our state's infrastructure, private property, and lives, the State Board adopted Chapter 529, Subchapter A, §§529.1 - 529.8, creating a grant program to assist local SWCDs and other sponsors in carrying out their responsibilities regarding O&M with funding appropriated by the Texas Legislature for the 2010-2011 biennium. The State Board adopts amendments to existing §529.2 and §529.3 to increase clarity of intent and to create consistency with adopted new Chapter 529, Subchapter B, §§529.51 - 529.62, pertaining to the creation of a structural repair grant program.

The State Board adopts amended §529.2, Definitions, by replacing "chapter" with "subchapter" to acknowledge the existence of multiple subchapters to Chapter 529; no substantive change in meaning occurs.

The State Board adopts amended §529.2(9), the definition of operation and maintenance, to improve the readability of the definition; no substantive change in meaning occurs.

The State Board adopts amended §529.2(9)(P) by inserting an additional activity that would be defined as operation and maintenance; this insertion defines the maintenance of roads that provide access to flood control dams as operation and maintenance, however, the act of performing road maintenance is limited to an in-kind match contribution; the act does not qualify for reimbursement with state funds. Existing §529.2(9)(P), relating to another activity, is relettered as §529.2(9)(Q).

The State Board adopts amended §529.3(b) to replace the word "a" with "each" for improved readability; no substantive change in meaning occurs.

The State Board adopts amended §529.3(f) to require that in-kind match contributions must be reported to the State Board on an "in-kind match reporting form" rather than a reimbursement request form. Upon initial adoption of this rule, the State Board intended to administer the program with a single form that would serve both purposes, but has since chosen to use separate forms. This adopted amendment acknowledges that adjustment in administration; no substantive change in program functions occurs.

Adopted new §529.50, Statutory Authority and Policy Statement, explains the agency's intent and authority for administering a Structural Repair Grant Program for flood control dams.

Adopted new §529.51, Definitions, provides a list of terms and their definitions for the purposes of new Subchapter B.

Adopted new §529.52, Administration of Funds, establishes general fiscal provisions, identifies sources of program funding, stipulates that the program is on a reimbursement only basis, specifies the activities that are eligible for reimbursement, describes the non-state funded matching requirement for grants, allows for in-kind services to be utilized as required match, specifies limits for administrative costs and the conditions under which operation and maintenance activities may be conducted with repair grant funds.

Adopted new §529.53, Prioritization of Structural Repair Needs, establishes the State Board's intent that flood control dam sponsors would be responsible for prioritizing repair needs within their respective jurisdiction.

Adopted new §529.54, Request for Applications, establishes that the State Board may publish a request for applications for structural repair grant project activities.

Adopted new §529.55, Submitting an Application, requires that applications for structural repair grant funds be submitted on forms provided by the State Board, copies of applicable watershed agreements be submitted in conjunction with applications, that all applications must have certification signatures by authorized individuals from all dam sponsors, each application must identify one individual as an authorized point of contact for all communications regarding the application, each application must specify the anticipated length of time the project would require until completion, and that each application must characterize the amount, type, and source of match funding the sponsors intend to acquire for the application.

Adopted new §529.56, Review and Selection of Applications, specifies that the State Board will perform an administrative and technical review of all applications based on accuracy and completeness, risk of dam failure, potential loss of life due to failure, potential damage to infrastructure, the extent and type of repair needed, and the ability of sponsors to provide match funding.

Adopted new §529.57, Contracts Between the State Board and Sponsors, specifies that the State Board may obligate repair grant funds to any entity listed as a sponsor on a watershed agreement or the USDA-NRCS, and specifies that contracts between the State Board and sponsors shall not allow for the State Board to pay for more than 95-percent of the total project cost.

Adopted new §529.58, Solicitation of Bids by Contracted Sponsors, requires sponsors to solicit bids in accordance with the Local Government Code.

Adopted new §529.59, Subcontracting Requirements, establishes applicable requirements for contracts between sponsors and subcontractors.

Adopted new §529.60, Engineering Design and Inspection, establishes the conditions under which repair grant funds may be applied toward design and inspection activities.

Adopted new §529.61, Reimbursements, establishes the requirements for requesting reimbursement of an activity included in a contract scope of work.

Adopted new §529.62, Structural Repair Grants Used as Match for Federal Projects, establishes the conditions by which repair grant funds could be contributed toward a federal project.

Comments were received on proposed new §§529.51, 529.55, 529.59 and 529.62.

Section 529.51(8), the definition of operation and maintenance, was amended to correctly reference §529.51(14) rather than §529.51(13), due to the inclusion of an additional definition.

Section 529.51(9), the definition of O&M agreement, was included because the term was added in an amendment to §529.55(b).

Section 529.51(9) - (17) were renumbered as (10) - (18) due to the inclusion of new definition O&M agreement in §529.51(9).

Proposed §529.51(13), the definition of structural repair, adopted as §529.51(14), was amended to be less specific and simply make it the act of restoring a dam to meet current Texas Commission on Environmental Quality safety criteria. As proposed, the definition stated a design deficiency was needed in order for the act to be defined as a repair act eligible for grant funding. Comments received suggested repair needs may exist that did not result from a design deficiency.

Section 529.55(b) was amended to require that all applicable watershed agreements and O&M agreements must be submitted with an application for grant funds. As proposed, the term "all" was not included, and "O&M agreements" were not included. The amendment to §529.55(b) was required to allow the agency to verify an applicant's compliance with an amendment to §529.55(c). Section 529.55(c) was amended to include the phrase "with O&M responsibility for the flood control dam(s) on which repairs are proposed." Comments received stated the proposed rule required signatures from unaffected parties.

Proposed §529.59, Subcontracting Requirements, was amended to correct a typographical error in subsection (a). The word "contraction" was inadvertently proposed in place of "construction."

Proposed §529.62, Structural Repair Grants Used as Match for Federal Watershed Rehabilitation Projects, was amended to be titled Structural Repair Grants Used as Match for Federal Projects. Proposed rule language was relettered as subsection (a) and the phrase "approved by the NRCS" was added at the end of the phrase. New language intended to clarify the conditions under which grant funding could be used to match federal projects was added as new subsection (b) stating "The State Board may contract with a sponsor for the express purpose of providing all or a portion of the monetary non-federal match requirement for a federal watershed rehabilitation project or a repair project funded through the NRCS Emergency Watershed Protection Program. The scope of work for the overall federal project approved by the NRCS may serve as the scope of work associated with the contract between the State Board and a sponsor. If the federal funding provided for the overall project exceeds five-percent of the total project cost, it shall satisfy the non-state match required by §529.52(e) of this subchapter (relating to Administration of Funds)." Comments received suggested grant funds should be available to match federal projects funded through the USDA-NRCS Emergency Watershed Program in addition to the USDA-NRCS Rehabilitation Program.

## SUBCHAPTER A. OPERATION AND MAINTENANCE GRANT PROGRAM

### 31 TAC §529.2, §529.3

The amendments are adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

### §529.3. Administration of Funds.

(a) General Fiscal Provisions. Eligible SWCDs must comply with any applicable provisions within the Manual of Fiscal Operations for Soil and Water Conservation Districts at all times. The Manual of Fiscal Operations for Soil and Water Conservation Districts is approved and periodically amended by the State Board and is available on the State Board's website; hardcopies of this manual may be requested from the State Board.

(b) Sources of funding. Any funding available for O&M grants during a fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. The amount of funding available for O&M grants will be determined by the State Board for each fiscal year. Other sources of funding may be used for O&M grants by the State Board if applicable and when available. Funds will be allocated by the State Board to eligible SWCDs for use during the fiscal year for which the funds were appropriated, unless the State Board has executed a contract with an eligible SWCD that allows for liquidation of the obligated amount over a period of time that extends beyond the fiscal year.

(c) Allocation and reimbursement. Funds will be administered through an allocation and reimbursement process as specified in §529.5 of this subchapter (relating to Allocation of Funds) and §529.7 of this subchapter (relating to Reimbursements and Reporting Non-State Funded Match).

(d) Activities eligible for reimbursement. Funds may only be used to reimburse eligible SWCDs and subcontractors of their choosing for costs associated with the performance of O&M activities as defined by this subchapter on flood control dams. Eligible SWCDs desiring reimbursement of any activity not specifically listed as an O&M activity in §529.2(9) of this subchapter (relating to Definitions) must contact the State Board prior to initiating the activity for approval. Other activities for which the State Board may reimburse eligible SWCDs and subcontractors include the purchasing of pesticides by the eligible SWCD for use by the SWCD or a subcontractor during the course of carrying out an O&M activity, the purchasing of easements, the administrative costs of eligible SWCDs associated with O&M activities, and any other O&M-related activities that are approved by the State Board at their discretion.

(e) Non-state funded matching requirement. All O&M reimbursement requests will be paid by the State Board at 90-percent of the total reimbursement request amount. Ten (10) percent of the total reimbursement request amount must be paid through funds not originating from state appropriations. Reimbursement requests for O&M activities maybe paid by the State Board up to 100-percent if the flood control dam on which the activities were performed is a part of a watershed project where the original O&M agreement did not include at least one sponsor empowered by the State of Texas to levy taxes.

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be reported to the State Board on an in-kind match reporting form. In-kind match performed prior to the start of the current biennium is not eligible for use as non-state funded match. In-kind match reported in excess of the required amount for a single reimbursement request may be recorded by the State Board for use by eligible SWCDs on future reimbursement requests within the current biennium. In-kind match may not be carried forward into a new biennium. All aspects of reimbursement requests and the legitimacy of reported in-kind match are subject to review and approval by the State Board. In-kind match will be reported at rates approved by the State Board.

(g) Standardized rates for in-kind contributions of O&M activities. A standardized set of rates for certain O&M activities will be adopted by the State Board for use in determining the value of in-kind contributions. Standardized rates adopted by the State Board will be made available to eligible SWCDs upon notification of allocation.

(h) Administrative costs of eligible SWCDs. Eligible SWCDs may request a payment for compensation of their administrative costs in an amount not to exceed five (5) percent of the reimbursed amount. Payments for administrative costs must be reported on a reimbursement request at the time of its submission to the State Board.

(i) Utilizing O&M grant funds for structural repair on flood control dams. The State Board, at their discretion, may consider approving the use of O&M funds for structural repair. All requests to use O&M grant funds for structural repair must specify the type of structural repair intended to be performed and must be submitted in writing to the State Board. All requests to use O&M grant funds for structural repair are subject to review and approval by the State Board. Copies of quotations and bid documents must be provided to the State Board upon request. If concurrence from the NRCS and/or TCEQ must be obtained for the specific repair activity, such concurrence must be obtained and provided in writing to the State Board prior to submitting the request for the use of O&M grant funds for structural repair.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001555

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 25, 2010

Proposal publication date: January 1, 2010

For further information, please call: (254) 773-2250 x252



## SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM

### 31 TAC §§529.50 - 529.62

The new sections are adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

#### §529.51. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

(1) Authorized representative--An individual representing all sponsors identified on an application for structural repair grant funds. The authorized representative shall be the single point of contact for all communications regarding an application.

(2) Eligible applicant--A partnership of all entities listed as a sponsor on a watershed agreement for a watershed project.

(3) Fiscal year--The 12-month period of time beginning September 1 of a year and ending on August 31 of the following year.

(4) Flood control dam--Floodwater retarding structures, also commonly referred to as flood control structures, watershed structures, flood prevention or "FP" sites, and certain grade stabi-

lization structures included in the National Inventory of Dams built by the federal government under one of the four following federal authorizations:

(A) Public Law 78-534, Section 13 of the Flood Control Act of 1944;

(B) Public Law 156-67, the pilot watershed program authorized under the heading Flood Prevention of the Department of Agriculture Appropriation Act of 1954;

(C) Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; and

(D) Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program.

(5) In-kind match--Non-monetary contributions of services, equipment, or other items of value included in a contract scope of work between the State Board and a sponsor for the purpose of satisfying all or a portion of a non-state funded matching requirement for structural repair activities. In-kind match is not eligible if the source is contributing the in-kind match because it was enabled to do so directly through state appropriations.

(6) National Inventory of Dams--The U.S. Army Corps of Engineers' list of dams first authorized by the National Dam Inspection Act (Public Law 92-367) of 1972.

(7) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which was formerly known as the Soil Conservation Service.

(8) Operation and maintenance (O&M)--The activities associated with maintaining optimal physical conditions and functioning of a flood control dam specified in §529.2(9) of this chapter (relating to Definitions); O&M is not structural repair as defined in paragraph (14) of this section.

(9) O&M agreement--A written agreement pertaining to a specific flood control dam or dams within a watershed project, taking into consideration the powers and jurisdictional boundaries of sponsors, that specifies each sponsors' responsibilities for financing and performing O&M inspections and activities.

(10) Reimbursement request--A request for reimbursement of an activity included in a contract scope of work executed between the State Board and a sponsor.

(11) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(12) Sponsor--An entity or individual that is a signatory to a watershed project plan, watershed agreement, or O&M agreement.

(13) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(14) Structural repair--The act of performing an activity or activities for the purpose of restoring a flood control dam to original design specifications or restoring a flood control dam to meet current TCEQ safety criteria. Structural repair is not an activity defined as operation and maintenance in §529.2(9) of this chapter. Structural repair activities include:

(A) Lime treatment, removal and replacement, and/or slope flattening of dam embankment to repair slope slides;

(B) Repair of sinkholes in dam embankment;

- (C) Repair of cracks in dam embankment;
- (D) The installation of armored plating on dam embankments to repair and mitigate wave erosion;
- (E) Performing earthwork and establishing vegetation on dam embankments to repair and mitigate wave erosion;
- (F) Drain system installation or repair;
- (G) Repair of excessive settlement on dam embankment;
- (H) Replacement or stabilization of vertical inlet on principal spillway;
- (I) Installation of a liner to repair or mitigate pipe separation or cracking on principal spillway;
- (J) Replacement of a principal spillway pipe due to separation or cracking;
- (K) Installation of impact basin or armored plating on plunge pool due to erosion;
- (L) Repair of major auxiliary spillway erosion from storm damage;
- (M) Any activity defined as O&M in §529.2(9) of this chapter if the performance of the activity is determined to be necessary by the State Board in conjunction with a structural repair activity defined in this subchapter; O&M activities determined to be necessary by the State Board will be included in a contract scope of work executed between the State Board and a sponsor;
- (N) Any other activity related to flood control dam structural repair at the discretion of the State Board and included in a contract scope of work executed between the State Board and a sponsor.

(15) Texas Commission on Environmental Quality (TCEQ)--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(16) Watershed agreement--A legal document that records the responsibilities of the sponsors and NRCS for implementing a watershed project plan relating to contributions of funding, the acquisition of land rights, construction, O&M, project administration, management of affected lands, as well as responsibilities regarding permitting and water and mineral rights.

(17) Watershed project--A geographic area delineated by the boundaries of a watershed within which a series of flood control dams have been constructed or are planned to be constructed by NRCS to prevent and/or minimize floodwater damage to lives and property.

(18) Watershed project plan (or Work Plan)--A plan developed by local sponsors with the assistance of NRCS for a watershed project that includes descriptions of the watershed, problems to be addressed, works of improvement to be installed, costs of installed works, project benefits, cost-benefit analyses, financing information, and general requirements for O&M.

§529.55. *Submitting an Application.*

- (a) Applications must be submitted on forms provided by the State Board.
- (b) Copies of all applicable watershed agreements and O&M agreements for the flood control dams identified in an application must be submitted with the application.

(c) All applications must have certification signatures by authorized individuals from all sponsors identified in the applicable watershed agreement with O&M responsibility for the flood control dam(s) on which repairs are proposed acknowledging and approving the application prior to it being submitted to the State Board for consideration. Certification by signature means the sponsor agrees to cooperate on the project with the other sponsors, may consider entering into a contract with the State Board relating to the project's completion, and is aware that the State Board may not pay more than 95-percent of the total project cost. Where one or more of the sponsors listed on the watershed agreement is no longer formally in existence, the remaining sponsors should contact the State Board prior to submitting an application for additional guidance.

(d) Each application must identify one individual as the person that will represent all sponsors identified on the application. The authorized representative shall be the single point of contact for all communications regarding an application.

(e) Each application must include cost estimates for the entire project. Cost estimates must be categorized by construction, engineering design, and easement purchasing.

(f) Each application must specify the length of time in which the project is anticipated to be completed.

(g) Each application must include a characterization of the amount, type, and source of match funding the sponsors intend to acquire if the application is selected by the State Board for contracting.

(h) Submittal of an application does not constitute a contractual agreement or a promise of a contractual agreement between the State Board and any entity.

§529.59. *Subcontracting Requirements.*

(a) Contracted sponsors may let subcontracts for engineering design, construction, and easement purchasing. Subcontracts must be in written form and be made available to the State Board upon request.

(b) If a subcontract is for the construction of public works and is required by §271.024 of the Local Government Code to be submitted to competitive bidding, the successful bidder must comply with §271.059 of the Local Government Code relating to payment and performance bonding.

§529.62. *Structural Repair Grants Used as Match for Federal Projects.*

(a) Grant funds included in a contract between the State Board and a sponsor for a structural repair activity may be used as match funding for a federal watershed rehabilitation project if the repair need is included in the rehabilitation project scope of work approved by the NRCS.

(b) The State Board may contract with a sponsor for the express purpose of providing all or a portion of the monetary non-federal match requirement for a federal watershed rehabilitation project or a repair project funded through the NRCS Emergency Watershed Protection Program. The scope of work for the overall federal project approved by the NRCS may serve as the scope of work associated with the contract between the State Board and a sponsor. If the federal funding provided for the overall project exceeds five-percent of the total project cost, it shall satisfy the non-state match required by §529.52(e) of this subchapter (relating to Administration of Funds).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2010.

TRD-201001572

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 25, 2010

Proposal publication date: January 1, 2010

For further information, please call: (254) 773-2250 x252



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001-2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005; and Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 74, Subchapters A-F, in the February 5, 2010, issue of the *Texas Register* (35 TexReg 899).

Relating to the review of 19 TAC Chapter 74, Subchapters A and B, the SBOE finds that the reasons for adopting Subchapters A and B continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapters A and B. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 74, Subchapter C, the SBOE finds that the reasons for adopting Subchapter C continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter C. At a future SBOE meeting, proposed changes relating to Subchapter C will be presented to the SBOE for consideration.

Relating to the review of 19 TAC Chapter 74, Subchapters D-F, the SBOE finds that the reasons for adopting Subchapters D-F continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapters D-F. No changes are necessary as a result of the review.

TRD-201001595

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 7, 2010



The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter A, Gifted/Talented Education; Subchapter B, Adult Basic and Secondary Education; Subchapter C, General Educational Development; and Subchapter D, Special Education Services and Settings, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 89, Subchapters A-D, in the February 5, 2010, issue of the *Texas Register* (35 TexReg 899).

Relating to the review of 19 TAC Chapter 89, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The SBOE received a comment related to the review of 19 TAC Chapter 89, Subchapter A. Following is a summary of the public comment received and the corresponding response.

Comment. An educator from Sundown Independent School District commented in support of the continuation of rules related to gifted and talented education.

Response. The SBOE agreed.

No changes to 19 TAC Chapter 89, Subchapter A, are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 89, Subchapter B, the SBOE finds that the reasons for adopting Subchapter B continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter B. The SBOE is proposing revisions to Subchapter B that would incorporate recent statutory changes. Senate Bill 1, General Appropriations Act, 81st Texas Legislature, 2009, requires that a new funding formula be allocated based on need for persons beyond the age of compulsory attendance who have not received a high school diploma and paid based on student performance and contact hours. In addition, changes would be made to ensure that adult education providers are in compliance with new procedural and reporting requirements. The proposed revisions to 19 TAC Chapter 89, Subchapter B, may be found in the Proposed Rules section of the April 2, 2010, issue of the *Texas Register*.

Relating to the review of 19 TAC Chapter 89, Subchapter C, the SBOE finds that the reasons for adopting Subchapter C continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter C. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 89, Subchapter D, the SBOE finds that the reasons for adopting Subchapter D continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter D. At a future SBOE meeting, proposed changes to align with federal regulations associated with the reauthorization of the Individuals with Disabilities Education Act (IDEA 2004) and to make technical edits will be presented to the SBOE for consideration.

TRD-201001596

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 7, 2010



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.193(c)

$\frac{[\sum_{i=1}^N (NWTR_i * NL_i) - \sum_{i=1}^N (BWTR_i * NL_i) + (\sum_{i=1}^N ADJ_i * 2)] * ALLOC}{BD}$	
Where:	NWTR <sub>i</sub> is the new wholesale transmission rate of a TSP, approved by the commission by order or pursuant to commission rules, since the DSP's last rate case;
	Σ BWTR <sub>i</sub> is the base wholesale transmission rate of the TSP represented in the NWTR <sub>i</sub> , used to develop the retail transmission charges of the DSP, in the DSP's last rate case;
	NL <sub>i</sub> is the DSP's individual 4CP load component of the total ERCOT 4CP load information used to develop the NWTR <sub>i</sub> ;
	ADJ is the amount calculated under subsection (b)(2) of this section;
	ALLOC is the class allocator approved by the commission to allocate the transmission revenue requirement among classes in the distribution service provider's last rate case, unless otherwise ordered by the commission; and,
	BD is each class' annual billing determinant (kWh, or kW, or kVa) for the previous calendar year.

Figure: 25 TAC §217.1(68)(A)

Temperature	Time
<b>Batch Pasteurization</b>	
63°C (145°F)*	30 minutes
<b>Continuous Flow Pasteurization (HTST, HHST)</b>	
72°C (161°F)*	15 seconds
89°C (191°F)	1.0 second
90°C (194°F)	0.5 seconds
94°C (201°F)	0.1 seconds
96°C (204°F)	0.05 seconds
100°C (212°F)	0.01 seconds

\*If the fat content of the milk product is ten percent (10%) or greater, or contains a total solids of 18% or greater, or contains added sweeteners, or is concentrated (condensed), the specified temperature shall be increased by 3°C (5°F).

Figure: 25 TAC §217.1(68)(B)

Temperature	Time
<b>Batch Pasteurization</b>	
69°C (155°F)	30 minutes
<b>Continuous Flow Pasteurization (HTST)</b>	
80°C (175°F)	25 seconds
83°C (180°F)	15 seconds

Figure: 25 TAC §217.45(g)(1)

	Bacteria	Coliform	Temperature
<b>Mix</b>	50,000/ml	40/ml	45°F
<b>Frozen Dessert</b>	50,000/ml	40/ml	45°F

Figure: 25 TAC §217.45(g)(2)

	Bacteria	Coliform	Temperature
<b>Nondairy Frozen Desserts</b>	50,000/ml	40/ml	45°F
<b>Nondairy Frozen Desserts Mix (Dry)</b>	1,000/ml	10/ml	-----



Figure: 37 TAC §15.89(b)

<b>Arrest Title</b>	<b>Driver Responsibility Points</b>
Aggravated assault with motor vehicle	Yes
Allow passenger to stand/sit improperly on a school bus	Yes
Bus driver failed to activate warning signal/equipment	Yes
Bus failed to stop at RR crossing	Yes
Bus shifting gears while crossing RR tracks	Yes
Carry motorcycle passenger under 5; except in side car	Yes
Changed lane when unsafe	Yes
Child passenger safety seat offense	Yes
Coasting	Yes
Coasting (truck, truck tractor or bus, specify) with clutch disengaged	Yes
Consume alcohol while driving	Yes
Criminal negligent homicide with motor vehicle--1st or 2nd degree	Yes
Crossed RR with heavy equipment without notice	Yes
Crossed RR with heavy equipment without stop (or safety)	Yes
Crossing fire hose without permission	Yes
Crossing physical barrier	Yes
Cut across driveway to make turn	Yes
Cut corner left turn	Yes
Cut in after passing	Yes
Did not use designated lane or direction	Yes
Disregard solid green turn signal arrow	Yes
Disregard warning signs or barricades	Yes
Disregarded flashing red signal (at stop sign, etc.)	Yes
Disregarded flashing yellow signal	Yes
Disregarded lane control signal	Yes
Disregarded no lane change sign	Yes
Disregarded no passing zone	Yes
Disregarded police officer	Yes
Disregarded RR crossing gate or flagman	Yes
Disregarded signal at RR crossing	Yes
Disregarded traffic control device	Yes
Disregarded turn marks at intersection	Yes
Disregarded warning sign at construction	Yes

Drive into block where fire engine stopped	Yes
Driving around barricades	Yes
Driving under influence	No
Driving under influence (DUI)--minor	Yes
Driving under influence of drugs	No
Driving while impaired	No
Driving while intoxicated > 0.16	No
Driving while intoxicated with child younger than 15 yoa	No
Driving while intoxicated--felony	No
Driving while intoxicated--juvenile	No
Driving while intoxicated--misdemeanor	No
Driving while intoxicated--on beach	No
Driving while intoxicated--probated	No
Driving while intoxicated--under 21	No
Driving while license disqualified--CMV	No
Driving while license suspended under provisions of DL laws	No
Driving while license suspended--SR	No
Drove center lane (not passing, not turning left)	Yes
Drove on (or across) streetcar tracks where prohibited	Yes
Drove on sidewalk	Yes
Drove on wrong side--RR crossing	Yes
Drove on wrong side of approaching bridge	Yes
Drove on wrong side of divided highway	Yes
Drove on wrong side of road	Yes
Drove on wrong side road approaching intersection	Yes
Drove on wrong side road approaching RR grade crossing	Yes
Drove on wrong side road awaiting access to ferry	Yes
Drove onto (or from) controlled access highway where prohibited	Yes
Drove through safety zone	Yes
Drove to left of rotary traffic island	Yes
Drove without lights--when required	Yes
Drove wrong way in designated lane	Yes
Drove wrong way on one-way roadway	Yes
Endorsement violation CDL	No
Fail stop proper place-flash red signal	Yes
Fail to control speed	Yes
Fail to dim headlights--following	Yes

Fail to dim headlights--meeting	Yes
Fail to drive in single lane	Yes
Fail to give hand signals when required	Yes
Fail to give info/render aid	No
Fail to give one-half of roadway	Yes
Fail to keep to right on mountain road	Yes
Fail to pass left safely	Yes
Fail to pass met vehicle to right	Yes
Fail to pass to right safely	Yes
Fail to signal for stop	Yes
Fail to signal required distance before turning	Yes
Fail to signal turn	Yes
Fail to signal with turn indicator	Yes
Fail to sound horn--mountain road	Yes
Fail to stop--designated point--at stop sign	Yes
Fail to stop--designated point--at yield sign	Yes
Fail to stop and render aid--felony	No
Fail to stop and render aid--misdemeanor	No
Fail to stop at marked RR crossing	Yes
Fail to stop at proper place (at traffic light)	Yes
Fail to stop at proper place (flashing red signal)	Yes
Fail to stop at proper place (not at intersection)	Yes
Fail to stop for approaching train	Yes
Fail to stop for school bus (or remain stopped, specify)	Yes
Fail to stop for streetcar--or stop at wrong location	Yes
Fail to stop--emerging from alley, driveway or bldg.	Yes
Fail to use due care for pedestrian	Yes
Fail to use proper headlight beam	Yes
Fail to yield at stop intersection	Yes
Fail to yield at yield intersection	Yes
Fail to yield for blind or incapacitated person	Yes
Fail to yield right of way	Yes
Fail to yield right of way from private road	Yes
Fail to yield row at open intersection (specify type)	Yes
Fail to yield row leaving (private drive, alley, building)	Yes
Fail to yield row on green arrow signal	Yes
Fail to yield row on green signal	Yes

Fail to yield row on left at obstruction	Yes
Fail to yield row to emergency vehicle	Yes
Fail to yield row to pedestrian at signal intersection	Yes
Fail to yield row to pedestrian in crosswalk	Yes
Fail to yield row to pedestrian in crosswalk--no signal	Yes
Fail to yield row to pedestrian on sidewalk	Yes
Fail to yield row to pedestrian turning right or left at intersection	Yes
Fail to yield row--changing lanes	Yes
Fail to yield row--turning left (at intersection, alley, private road or driveway)	Yes
Fail to yield row--turning right on red signal	Yes
Fail to yield to vehicle in intersection	Yes
Fail to yield to vehicle leaving highway	Yes
Failed to give way when overtaken	Yes
Failed to signal lane change	Yes
Fleeing from police officer	Yes
Following ambulance	Yes
Following fire apparatus	Yes
Following too closely	Yes
Following too closely--caravan	Yes
Following too closely--truck	Yes
Head lamps glaring not adjusted	Yes
Heavy equipment disregarded signal of train	Yes
Illegal backing	Yes
Illegal pass on right	Yes
Illegally passed streetcar	Yes
Impeding traffic	Yes
Improper passing	Yes
Improper turn	Yes
Improper turn or stop hand signal	Yes
Improper use of auxiliary driving lamps	Yes
Improper use of auxiliary passing lamps	Yes
Improper use of lighting--hwy. equip.	Yes
Improper use of spot lamps	Yes
Improper use of turn indicator	Yes
Increased speed while being overtaken	Yes
Interfere with streetcar	Yes
Intoxication assault	No

Intoxication assault motor vehicle	No
Intoxication manslaughter	No
Intoxication manslaughter motor vehicle	No
Involuntary manslaughter with motor vehicle	Yes
Lack of caution on green arrow signal	Yes
Leaving scene of accident	Yes
Made U-turn on curve or hill	Yes
Negligent collision	Yes
No commercial driver license (CDL)	No
No double trailer endorsement (CDL)	No
No driver license	No
No hazmat endorsement (CDL)	No
No motorcycle endorsement	No
No passenger vehicle endorsement (CDL)	No
No tank vehicle endorsement (CDL)	No
No school bus endorsement (CDL)	No
Obstructed view through windshield	Yes
Obstructing traffic	Yes
Open Container DRIVER	Yes
Operate school bus over passenger design capacity	Yes
Operate school bus with door open	Yes
Operate vehicle more than one passenger-minor	Yes
Operate vehicle where prohibited	Yes
Operate vehicle with child in open bed	Yes
Passed streetcar on left without reducing speed or without caution	Yes
Passed vehicle stopped for pedestrian	Yes
Passed--insufficient clearance	Yes
Passengers/load obstruct driver's view or control	Yes
Passing authorized emergency vehicle	Yes
Permitted/operated unsafe vehicle	Yes
Person(s) riding in trailer or semi-trailer	Yes
Prohibited motor vehicle on controlled-access highway	Yes
Racing--drag racing--acceleration contest, etc.	Yes
Ran red light	Yes
Ran stop sign	Yes
Reckless driving	Yes
Restriction violation--CDL	Yes

Slower vehicle failed to keep to right	Yes
Speed under minimum	Yes
Speeding	No
Speeding > 10% above posted speed limit	Yes
Speeding--15 miles or over (CDL)	Yes
Speeding--school zone	Yes
Too many riders on motorcycle	Yes
Turned across dividing section	Yes
Turned left from wrong lane	Yes
Turned right from wrong lane	Yes
Turned right too wide	Yes
Turned so as to impede or interfere with streetcar	Yes
Turned when unsafe	Yes
Unauthorized use of siren, bell or whistle	Yes
Unsafe speed (too fast for conditions)	Yes
Unsafe start	Yes
Unsafe start from parked, stopped or standing position	Yes
Use of school bus signal for wrong purpose	Yes
Use wireless device while driving bus	Yes
Use wireless device while driving--minor	Yes
Use wireless device in school zone	Yes
Veh. hauling explosives (or flammable materials) failed to stop at RR crossing	Yes
Veh. hauling explosives failed to reduce speed at RR crossing	Yes
Vehicle without required equipment or in unsafe condition	Yes
Violate DL restriction	Yes
Violate DL restriction on occupational license	Yes
Violate operating hours-minor	Yes
Violated out of service order	Yes
Violated out-of-service order hazmat and/or passenger	Yes
Wrong side road--not passing	Yes
Wrong side, 4 or more lane, two-way roadway	Yes

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. Halliburton Energy Services, Inc., et al.*, CA No. 4:07-cv-03795; In the United States District Court for the Southern District of Texas.

Background: During 2001-2003 the United States Environmental Protection Agency ("EPA") conducted cleanups of contaminated sites in Houston, Webster and Odessa, Texas, owned by The GNI Group, Inc., or related entities, known as the "Gulf Nuclear Sites." Pursuant to an agreement with EPA, the Texas Commission on Environmental Quality ("TCEQ") contributed funds for those cleanups. Subsequently the United States and the State of Texas brought actions against various parties, including QSA Global, Inc. (f/k/a AEA Technology QSA, Inc.), to recover their costs, and other matters.

Nature of the Settlement: The action by the State of Texas against QSA Global, Inc. (f/k/a AEA Technology QSA, Inc.) will be settled by a consent decree in the district court.

Proposed Settlement: The proposed judgment provides for the recovery of response costs and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201001582  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 6, 2010

## Central Texas Workforce Development Board

### Request for Proposals

The Central Texas Workforce Development Board is soliciting proposals for Regional Economic Revitalization and Utilization Planning.

A proposal package will be available for download at <http://www.workforcelink.com/newworkforce/vendors.html>. Prospective bidders may contact Horace Dicks at (254) 939-3771 or [horaced@workforcelink.com](mailto:horaced@workforcelink.com) or visit the web site to request a proposal package.

Central Texas Workforce Development Board will hold a bidders' conference for this Request for Proposals on April 9. Potential bidders may e-mail questions to Horace Dicks at [horaced@workforcelink.com](mailto:horaced@workforcelink.com) until 5:00 p.m. Central Standard Time on Wednesday, April 14, 2010. We will distribute answers to those questions after Friday, April 16, 2010. Proposals are due at Central Texas Workforce Development Board offices on or before 5:00 p.m. Central Daylight Time on Friday, April 30, 2010. Mailed proposals must be postmarked no later than Wednesday, April 28, 2010. Central Texas Workforce Development Board will not accept late proposals; we will make no exceptions.

TRD-201001574  
Susan Kamas  
Executive Director  
Central Texas Workforce Development Board  
Filed: April 5, 2010

## Comptroller of Public Accounts

### Notice of Intent to Amend Contract

Pursuant to Chapters 403 and Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the following notice of intent to amend and renew a major consulting services contract with Ennis Knupp & Associates, Inc., as follows:

The contract with Ennis Knupp & Associates, Inc., will be amended, extended and renewed for not-to-exceed \$300,000.00 per year. The new term of the contract is from August 27, 2008, through August 31, 2011. There currently is one (1) remaining option to renew for one (1) additional one (1) year term.

The notice of request for proposals was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3670) (RFP #185a).

The contractor provides consulting and technical advice and assistance to the Comptroller and the Texas Prepaid Higher Education Tuition Board in the ongoing administration of the Texas Prepaid Tuition Program (TTF I), the Texas Tuition Promise Fund (formerly known as the Texas Tomorrow Fund II), and the Texas College Savings and Lonestar 529 Plans.

TRD-201001597  
William Clay Harris  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: April 7, 2010

## 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 04/12/10 - 04/18/10 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/12/10 - 04/18/10 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 04/01/10 - 04/30/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/10 - 04/30/10 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-201001575

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 6, 2010



## Texas Education Agency

### Public Notice Announcing the Availability of the Individuals with Disabilities Education Act, Part B, Federal Fiscal Year 2010 State Application

Purpose and Scope of the Individuals with Disabilities Education Act (IDEA), Part B, Federal Fiscal Year (FFY) 2010 State Application and its Relation to Part B of the 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 June 30, 2011; 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), 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](mailto: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 16, 2010.

Further Information. 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](mailto:sped@tea.state.tx.us).

TRD-201001593

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 7, 2010



### Request for Applications Concerning Texas Title I Priority Schools

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-10-112 from local educational agencies (LEAs) on behalf of eligible campuses that qualify as either Tier I, Tier II, or Tier III schools. An LEA with multiple eligible campuses must submit an application for each eligible campus. Eligible campuses in each tier are divided into two categories: persistently lowest achieving (PLA) and newly eligible.

A Tier I PLA school is any school that receives funds under the No Child Left Behind Act of 2001 (NCLB), Title I, Part A, that is either among the lowest-achieving 5 percent of such schools in improvement, corrective action, or restructuring or, if the school is a high school, has had a graduation rate below 60 percent for the two consecutive school years 2006-2007 and 2007-2008 or an average graduation rate of less than 60 percent over the same period. A Tier II PLA school is any school that is eligible for but does not receive Title I, Part A, funds and meets the other two criteria defined for Tier I PLA schools. A Tier III PLA school is any school that receives funds under NCLB, Title I, Part A, but is not a Tier I PLA school.

All schools newly eligible for Texas Title I Priority Schools funding must meet the following general requirements. The school must be eligible for NCLB, Title I, Part A, funding (regardless of whether the school received such funding) and must also meet either of the following requirements: the school must be in the bottom 20 percent of all schools in the state based on proficiency rates, or the school must not have made adequate yearly progress (AYP) for the two consecutive school years 2007-2008 and 2008-2009. In addition, each tier of newly eligible schools must meet the following specific requirements. (1) A newly eligible Tier I school is an elementary school that is no higher achieving than the highest-achieving Tier I PLA school. (2) A newly



eligible Tier II school is a secondary school that is no higher achieving than the highest-achieving Tier II PLA school or, if the school is a high school, has had a graduation rate below 60 percent for the two consecutive school years 2006-2007 and 2007-2008 or an average graduation rate of less than 60 percent over the same period. (3) A newly eligible Tier III school is any school that meets the general requirements for all newly eligible schools but does not meet the requirements defined for Tier I and Tier II newly approved schools.

**Description.** The purpose of the Texas Title I Priority Schools grant program is to provide funding to LEAs for use in Title I schools identified for improvement, corrective action, or restructuring and other eligible schools that demonstrate the greatest need for the funds and the strongest commitment to use the funds to provide adequate resources to substantially raise the achievement of their students so as to enable the schools to make AYP and exit improvement status. School improvement funds are to be focused on Tier I and Tier II schools. An LEA may also use school improvement funds in Tier III schools.

**Dates of Project.** The Texas Title I Priority Schools grant program will be implemented during the 2010-2011, 2011-2012, and 2012-2013 school years. Tier I and Tier II applicants should plan for a starting date of no earlier than August 1, 2010, and an ending date of no later than June 30, 2013. Tier III applicants should plan for a starting date of October 1, 2010, and an ending date of no later than June 30, 2013. For all tiers, pre-award costs are allowable back to the date grant awards are announced.

**Project Amount.** The number of projects funded will depend on the number of eligible applicants that apply in each tier. Each project will receive a maximum of \$6 million for the 2010-2011, 2011-2012, and 2012-2013 project period. This project is 84.6 percent funded by federal American Recovery and Reinvestment Act (ARRA) 2009 funds and 15.4 percent funded from regular 2009 Title I School Improvement Grant funds. Applicants will be funded either exclusively from ARRA funds or from regular 2009 Title I School Improvement Grant funds. Applicants funded by ARRA should note that these funds must be tracked and reported separately from all other funds.

Eligible applicants should view ARRA funding as a unique opportunity to improve teaching and learning and should focus these funds on short-term investments with the potential for long-term benefits rather than make ongoing commitments they might not be able to sustain once ARRA funds are expended.

Congress and the U.S. Secretary of Education have directed that ARRA funds be distributed "swiftly and impeccably." Funds will only be available through September 30, 2013, so expenditure will require timely action on the part of each school district and open-enrollment charter school if funded. Numerous significant transparency and accountability provisions with regard to the expenditure of funds and other reporting requirements pertaining to the number of teachers retained or hired as a result of the funding accompany ARRA grant awards.

The federal Office of Inspector General has significant authority to review, audit, and investigate the use of funds to prevent fraud, waste, and abuse. ARRA establishes the Recovery Accountability and Transparency Board to coordinate and conduct oversight of funds and to develop and maintain a public website that will house detailed information about the use of funds. These additional funds provided in ARRA must be accounted for separately from the regular federal funds and other funds provided to LEAs. LEAs will be required to report the use of funds to TEA, and TEA, in turn, must report to the U.S. Department of Education.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and

validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

**Applicants' Technical Assistance.** Five overview sessions concerning the Texas Title I Priority Schools grant program will be held, one each in Midland, Fort Worth, Houston, Edinburg, and Austin. The overview sessions will cover topics such as grant program requirements, the four school intervention models, technical assistance available to applicants and grantees, and application submission procedures.

The five overview sessions will be digitally recorded. In addition, a pre-recorded webinar covering the same topics as the overview sessions will be available for applicants. A digital recording of the overview sessions and the webinar will be available on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Further Information.** For clarifying information about the RFA, contact Dorothy White or Erica Coppic, Division of NCLB Program Coordination, Texas Education Agency, (512) 463-9374. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, June 3, 2010, to be eligible to be considered for funding.

TRD-201001594

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 7, 2010

◆ ◆ ◆  
**Employees Retirement System of Texas**

**Contract Award Announcement**

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award to provide money market fund for the TexaSaver 401(k) and 457 Plans (collectively, known as the "TexaSaver Program"). The contractor

is BlackRock Institutional Management Corporation ("BlackRock"), 100 Bellevue Parkway, Wilmington, DE 19809. The investment management fees applicable to investments by the participant in the TexaSaver Program in the BlackRock fund is based on a percentage of average daily net assets and such fees shall be retained by BlackRock as full compensation for services rendered. The contract was executed on March 17, 2010 and the term of the contract begins March 17, 2010 with no termination date.

TRD-201001573

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: April 5, 2010



### Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS") in relation to a contract award for pharmacy benefit manager auditing services. The contractor is Health Management Systems, Inc. ("HMS"), 401 Park Avenue South, New York, NY 10016. HMS will provide a 100% contract and claims audit of ERS' HealthSelect prescription drug program for Fiscal Year 2009. The cost of the contract is a fixed fee of \$162,647.29. The contract was executed on April 5, 2010, and the term of the contract is from September 1, 2010 through August 31, 2013.

TRD-201001583

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: April 6, 2010



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. 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 proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 17, 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 C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 17, 2010**.

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Alto; DOCKET NUMBER: 2010-0062-MWD-E; IDENTIFIER: RN101721363; LOCATION: Cherokee County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010546001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total suspended solids (TSS); PENALTY: \$4,760; Supplemental Environmental Project (SEP) offset amount of \$3,808 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Canton; DOCKET NUMBER: 2010-0109-MWD-E; IDENTIFIER: RN101610574; LOCATION: Van Zandt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010399002, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limitations for TSS, dissolved oxygen, ammonia nitrogen (NH<sub>3</sub>N), and five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>); PENALTY: \$6,850; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Chambers County Improvement District Number 1; DOCKET NUMBER: 2010-0128-MWD-E; IDENTIFIER: RN104788914; LOCATION: Chambers County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014661001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Cleveland; DOCKET NUMBER: 2010-0103-MWD-E; IDENTIFIER: RN102179892; LOCATION: Liberty County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010766001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for NH<sub>3</sub>N; PENALTY: \$5,460; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Isabel Diaz; DOCKET NUMBER: 2010-0459-WOC-E; IDENTIFIER: RN105796452; LOCATION: Haskell County; TYPE OF FACILITY: water licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: ENDEAVOR WALL HOMES, LLC; DOCKET NUMBER: 2010-0082-WQ-E; IDENTIFIER: RN105835243; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40

Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activity; PENALTY: \$750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2010-0010-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F), and 122.143(4), Federal Operating Permit (FOP) Number O-01486, Special Condition (SC) Number 2.I., Air Permit Number 4682B and PSD-TX-761M1, General Conditions, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,850; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2009-1593-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical company; RULE VIOLATED: 30 TAC §116.115(c), Permit Numbers 2128, 2933, 6387, SC Numbers 1 and 3, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to submit an administratively complete and accurate final report for Incident Number 125702; 30 TAC §115.722(c)(2) and §116.115(c), Permit Number 1768, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions and by exceeding the 1,200 pounds per hour (lbs/hr) emission limit for highly reactive volatile organic compounds (HRVOCs); 30 TAC §116.115(c) and §122.143(4), FOP Number O-02184, SC Number 18, Permit Number 2128, SC Number 1, and THSC, §382.085(b), by failing to comply with the hourly emission limit of 1.65 lbs/hr of VOCs and 0.14 lbs/hr for 1,3 butadiene; and 30 TAC §122.143(4), FOP Number O-02182, SC Number 1A, 40 CFR §63.119(b)(6), and THSC, §382.085(b), by failing to equip the gauge float wells with bolts or fasteners on the covers of the roof openings; PENALTY: \$111,855; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Feron Corporation dba Zebra Show Bar; DOCKET NUMBER: 2009-1943-PWS-E; IDENTIFIER: RN105449151; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.121(a) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.b.ii., by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(3)(G) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.i., by failing to conduct a physical and chemical analysis of water produced from a new well; 30 TAC §290.41(c)(3)(K) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.iv., by failing to seal the wellhead with a gasket or sealing compound; 30 TAC §290.41(c)(3)(Q) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.v., by failing to properly install an air release device on the discharge piping of the well; 30 TAC §290.46(f)(3)(B)(iii) and (D)(i) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.vii., by failing to provide water system records to commission personnel at the time of the investigation; 30 TAC §290.46(n) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.viii., by failing to maintain plans, specifications, maps, and other pertinent information on file; 30 TAC §290.46(m)(1)(A) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.ix., by failing to conduct an annual inspection of the

ground storage tank; 30 TAC §290.46(m)(1)(B) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.c.ix., by failing to conduct annual inspections of the three pressure tanks; 30 TAC §290.42(b)(7) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.e.ii., by failing to properly cover the air release device in the middle of the discharge line with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.44(a)(4) and TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.e.iii., by failing to locate the water line a minimum of 24 inches below the ground surface; 30 TAC §290.40(a) and §290.46(a), TCEQ Agreed Order Docket Number 2008-0546-PWS-E, Ordering Provision 2.e.iv., and THSC, §382.085(b), by failing to obtain approval by the executive director for the construction of a PWS; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistance fence or lockable ventilated well house; and 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 150 feet away from a septic tank perforated drainfield; PENALTY: \$16,448; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(10) COMPANY: Five Nine Seven Limited Partnership dba Ramblewood Mobile Home Park; DOCKET NUMBER: 2009-1904-PWS-E; IDENTIFIER: RN101275378; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: mobile home park with a PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a minimum ground storage capacity of 200 gallons per connection; 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 §290.43(c)(3), by failing to provide the ground storage tanks with overflows that are designed in strict accordance with current American Water Works Association design standards; and 30 TAC §290.41(c)(1)(B), by failing to ensure that well number two is greater than 500 feet from a sewage treatment plant; PENALTY: \$2,099; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2009-1676-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-01317, SC Number 16, Flexible Air Permit Number 16989/PSD-TX-794, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Number O-01317, SC Number 2F, Flexible Air Permit Number 16989/PSD-TX-794, General Terms and Conditions, and THSC, §382.085(b), by failing to submit initial notification for an emissions event within 24 hours of discovery; PENALTY: \$52,054; SEP offset amount of \$20,822 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Audra Benoit, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Gary Wilkinson Iron & Metal, Inc.; DOCKET NUMBER: 2010-0051-AIR-E; IDENTIFIER: RN103173308; LOCATION: Laredo, Webb County; TYPE OF FACILITY: scrap metal recycling plant; RULE VIOLATED: 30 TAC §101.201(e) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours of the discovery of an excess opacity event; and 30 TAC §106.4(c) and §106.261(a)(5) and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to ensure that all emission control equipment is maintained in good condition and operating properly

during operation of the plant; PENALTY: \$990; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Houston Refining, LP; DOCKET NUMBER: 2009-0779-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), New Source Review (NSR) Flexible Air Permit Number 2167/PSD-TX-985, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit an emissions event report to the State of Texas Environmental Electronic Reporting System within 24 hours of a reportable emissions event; and 30 TAC §§101.20(3), 115.722(c)(1), and §116.715(a), NSR Flexible Air Permit Numbers 2167/PSD-TX-985, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits and the allowable site-wide hourly emissions cap for HRVOCs; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Houston Refining, LP; DOCKET NUMBER: 2008-1454-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 2167 and PSD-TX-985, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$0; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Rodney Hughes; DOCKET NUMBER: 2010-0460-WOC-E; IDENTIFIER: RN103687240; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: water licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(16) COMPANY: JSWC, Limited; DOCKET NUMBER: 2009-1993-EAQ-E; IDENTIFIER: RN102807989; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: pizza restaurant; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan (WPAP) prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$13,000; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Melton Keller dba Llano Travel Center; DOCKET NUMBER: 2009-1864-PST-E; IDENTIFIER: RN101473767; LOCATION: Junction, Kimble County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with 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 underground storage tank (UST); 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overflow prevention devices are maintained in good operating condition; 30 TAC §334.72(3), by failing to report a suspected release within 24

hours of discovery; and 30 TAC §334.74, by failing to immediately investigate a suspected release of a regulated substance; PENALTY: \$23,696; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: City of McCamey; DOCKET NUMBER: 2010-0200-MWD-E; IDENTIFIER: RN102178910; LOCATION: Upton County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TCEQ Permit Number 10218001, Effluent Limitations and Monitoring Requirements Number A., and the Code, §26.121(c), by failing to comply with permitted effluent limitations for five-day biochemical oxygen demand and TSS; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(19) COMPANY: Mission Vacuum & Pump Truck Service, Inc.; DOCKET NUMBER: 2009-1813-MLM-E; IDENTIFIER: RN105791420; LOCATION: Hidalgo County; TYPE OF FACILITY: sludge transporter business; RULE VIOLATED: 30 TAC §312.142(a), by failing to apply for and receive a registration to transport water treatment sludge prior to commencing operations; and 30 TAC §312.143 and §330.15(a) and the Code, §26.121(a)(1), by failing to deposit wastes at a facility with written authorization by permit or registration issued by the executive director to receive wastes; PENALTY: \$3,317; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: MD Sultan Abu Nasser; DOCKET NUMBER: 2009-1724-PST-E; IDENTIFIER: RN102345741; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(B), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.42(i) and the Code, §26.3475(c)(1), by failing to inspect at least once every 60 days, any sumps, manways, overflow containers, or catchment basins to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.51(b)(2)(B)(i) and the Code, §26.3475(c)(2), by failing to equip the UST system with a spill containment device designed to prevent the release of regulated substances to the environment; and 30 TAC §334.10(b) and §334.46(i)(1), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$15,458; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Parker Pearson, L.P.; DOCKET NUMBER: 2009-2031-WQ-E; IDENTIFIER: RN104687215; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §205.5(c) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and the Code, §26.121, by failing to prevent the unauthorized discharge from a concrete washout area; PENALTY: \$20,000; SEP offset amount of \$8,000 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Patton Lake, Inc.; DOCKET NUMBER: 2009-1946-PWS-E; IDENTIFIER: RN101455848; LOCATION:

Splendora, Montgomery County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 150 feet from a septic tank perforated drainfield; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.39(j)(1)(A), by failing to notify the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gpm per connection; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system; PENALTY: \$1,497; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: City of Premont; DOCKET NUMBER: 2010-0043-MWD-E; IDENTIFIER: RN101916278; LOCATION: Jim Wells County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0010253001, Special Provisions Number 11, by failing to obtain soil samples from the land application area; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010253001, Special Provisions Number 11, by failing to timely submit the annual soil sample analysis; the Code, §26.121(a)(1) and TCEQ Permit Number WQ0010253001, Permit Conditions 2.g, by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(9) and TCEQ Permit Number WQ0010253001, Monitoring Requirements Number 7, by failing to report an unauthorized discharge orally or by facsimile transmission; and 30 TAC §305.125(5) and TCEQ Permit Number WQ0010253001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; PENALTY: \$2,955; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(24) COMPANY: R & D Distributing, Limited dba Center Card Lock; DOCKET NUMBER: 2009-1920-PST-E; IDENTIFIER: RN101383461; LOCATION: Shelby County; TYPE OF FACILITY: facility with retail sales of gasoline; RULE 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; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.54(c)(3)(A), by failing to ensure the integrity of a UST system by the performance of tank tightness and piping tightness tests before returning the system to service; and 30 TAC §334.6(b)(2) and §334.54(c)(3)(C), by failing to submit a construction notification 30 days prior to returning the temporarily out of service UST system to service; PENALTY: \$14,495; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: City of Ranger; DOCKET NUMBER: 2009-1843-MWD-E; IDENTIFIER: RN103118923; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011557003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for CBOD<sub>5</sub>, total residual chlorine, NH<sub>3</sub>N, and TSS; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011557003, Monitoring and Reporting Requirements Number 1, by failing to submit the discharge monitoring report; PENALTY: \$39,600; ENFORCEMENT COORDINATOR: Jordan Jones, (512)

239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(26) COMPANY: Mike Oda dba Riverbend RV Park and Resort; DOCKET NUMBER: 2009-1742-MWD-E; IDENTIFIER: RN103016234; LOCATION: Fort Bend County; TYPE OF FACILITY: RV park and campsite with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014319001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for NH<sub>3</sub>N and TSS; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Aunie C. Sellers; DOCKET NUMBER: 2010-0458-WOC-E; IDENTIFIER: RN105228100; LOCATION: Ralls, Crosby County; TYPE OF FACILITY: wastewater licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(28) COMPANY: STAR FUELS, INC. dba Spencer Citgo; DOCKET NUMBER: 2009-1826-PST-E; IDENTIFIER: RN101867356; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; and 30 TAC §115.246(1), (3) - (7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; PENALTY: \$8,802; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-1869-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), 40 CFR §60.18(c)(2), Air Permit Number 3908B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ regional office within the required 24 hours of a reportable emissions event; PENALTY: \$30,578; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: V-N-R ENTERPRISES, INC. dba Mini Mart 5; DOCKET NUMBER: 2010-0077-PST-E; IDENTIFIER: RN101432011; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS, and each current employee received in-house Stage II VRS training regarding the purpose and correct operating procedure of the VRS; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II VRS; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: \$5,519; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201001579  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 6, 2010



#### Enforcement Orders

An order was entered regarding Julius L. Brooks, Docket No. 2007-1885-PST-E on April 5, 2010 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201001603  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 7, 2010



#### Issuance of General Permit Number TXG670000

No public comments were received by the executive director during the public comment period that ended on February 8, 2010.

#### BACKGROUND

##### Introduction

The Texas Commission on Environmental Quality (TCEQ or commission) reissues and amends TCEQ General Permit Number TXG670000 for the discharge of hydrostatic test water to replace the existing general permit that expires on April 5, 2010. Consistent with 30 TAC §205.2, issuance of this permit is allowable, since qualifying hydrostatic tests engage in substantially similar operations and would discharge the same type of waste. The general permit establishes the same operating conditions and similar monitoring requirements for these facilities. These types of discharges are more appropriately regulated under a general permit based upon the requirements of 30 TAC §205.2(a)(5), because the TCEQ can readily enforce the general permit and can monitor compliance with the terms of the permit. The permit establishes monitoring, recordkeeping, and reporting requirements for authorized dischargers of hydrostatic test waters.

##### Procedural Background

The Office of the Chief Clerk received the permit file on December 21, 2009. In accordance with 30 TAC §205.3(a)(2), the Notice of Proposed Amendment of a General Permit Authorizing the Discharge of Hydrostatic Test Water was published in the January 8, 2010, issue of the *Texas Register* (35 TexReg 277); *Dallas Morning News*, January 5, 2010; *Houston Chronicle*, January 5, 2010; and *Corpus Christi Caller-Times*, January 5, 2010. Mailed notice was also provided in accordance with 30 TAC §205.3(b). The comment period ended on February 8, 2010. No comments were received.

TRD-201001578  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 6, 2010



#### Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 116 and 330 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions and additions to 30 Texas Administrative Code (TAC) Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, and to the state implementation plan (SIP). The commission will also take testimony on the correction of a rule citation in Chapter 330, Municipal Solid Waste. These revisions and additions are proposed under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and Texas Health and Safety Code, §361.024.

The proposed rulemaking would address deficiencies in the definition of best available control technology and deficiencies in the qualified facility air permitting program as identified by the United States Environmental Protection Agency in the September 23, 2009 edition of the Federal Register (74 *Federal Register* 48450).

A public hearing on this proposal will be held in Austin on May 10, 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. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing. The commission is soliciting comments on the proposed revisions to Chapter 116. However, for Chapter 330, the commission is only soliciting comment on the proposed cross reference change in paragraph §330.983(8), and is not soliciting comment on the remainder of the paragraphs in §330.983.

Persons planning to attend the hearing, who have special communication or other accommodation needs, 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 Devon Ryan, 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 2010-006-116-PR. The comment period closes May 17, 2010. To view rules, please visit [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

TRD-201001535  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 5, 2010



#### Notice of Issuance of a New Air Quality Standard Permit for Anhydrous Ammonia Storage and Distribution Operations

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for anhydrous ammonia storage and distribution operations under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title

30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for anhydrous ammonia storage and distribution operations was effective April 7, 2010.

Copies of the standard permit for anhydrous ammonia storage and distribution operations may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

#### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for anhydrous ammonia storage and distribution operations can be used to authorize anhydrous ammonia storage and distribution operations on or after the effective date of the standard permit. An anhydrous ammonia storage and distribution operation is a facility, or group of facilities that receives, stores, or handles anhydrous ammonia. This standard permit only covers ammonia that will be used for agricultural purposes. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

#### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

#### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

#### ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA) and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control

methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review. Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the permit must contain an enforceable annual ammonia limit to ensure compliance with all emissions including startup, shutdown, and maintenance emissions. EPA commented that a permit condition must also state that any excess emissions exceeding the short term hourly rate are in violation of the permit to ensure operations do not result in high emission peaks.

Subsection (1)(F) of the standard permit already stipulates that site-wide emissions must meet the applicable emission rate requirement. However, the commission has added a permit condition that states that emissions that exceed the permit limits are violations of the permit. Any facility with emissions exceeding the applicable hourly emission rate and not meeting an associated setback distance would not be authorized under the standard permit. With regard to an annual ammonia limit, it is not clear from this comment what purpose establishing an annual emission limit for ammonia would achieve. As proposed, the standard permit contains short-term hourly emission limits that are protective of human health and are sufficiently low in magnitude that Federal New Source Review (FNSR) major source concerns would not appear to be an issue. Ammonia emissions from planned startup, shutdown, and maintenance activities are covered by and are subject to these emission limits.

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the ammonia emission limitations.

The commission has not changed the standard permit in response to this comment. The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. The owner or operator is also required to maintain records of the periodic ammonia leak inspection program.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association with non-major forms of authorization such as Permit by Rules (PBRs) and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for non-compliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit and has added such a statement to the standard permit. With respect to reporting requirements for non-compliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Addi-

tional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limitations in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

TRD-201001586  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 6, 2010



## Notice of Issuance of a New Air Quality Standard Permit for Cotton Gin Facilities and Cotton Burr Tub Grinders

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for cotton gin facilities and cotton burr tub grinders under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for cotton gin facilities and cotton burr tub grinders was effective April 7, 2010.

Copies of the standard permit for cotton gin facilities and cotton burr tub grinders may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for cotton gin facilities and cotton burr tub grinders can be used to authorize cotton gin facilities and cotton burr tub grinders on or after the effective date of the standard permit. A cotton gin is a facility, or group of facilities, that receives seed cotton; removes moisture from and separates plant matter and seed from the cotton; and conducts subsequent processes, which include grinding of plant matter and baling and/or packaging of lint or lint waste. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

### ANALYSIS OF COMMENTS



During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Biodiesel Coalition of Texas (BCOT), and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore, would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

BCOT commented that the proposed standard permit should allow for the use of biodiesel fuel. BCOT stated that agricultural and biodiesel development go hand-in-hand. BCOT noted that the 2005 amendments to the Electric Generating Unit Standard Permit provided for the use of renewable fuels such as biodiesel.

The commission has added language to allow for the use of biodiesel and biodiesel-diesel blends as an authorized fuel under this standard permit. However, all biodiesel used as a fuel (or in a fuel blend) must meet American Society for Testing and Materials (ASTM) D6751 specifications. In addition, many areas of Texas are subject to the Low Emission Diesel requirements of 30 TAC Chapter 114, Subchapter H, Division 2, and owners or operators seeking to use biodiesel in affected areas must ensure that the fuel complies with those requirements.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major mod-

ification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review. Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the draft permit must provide a rationale to support the use of particulate matter (PM<sub>10</sub>) as a surrogate for PM<sub>2.5</sub>. EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from the EPA Administrator Lisa P. Jackson, dated August 12, 2009.

The modeling and protectiveness review for this standard permit determined that the combined PM<sub>2.5</sub> impacts from all sources would not exceed the short term PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) standards of 35 micrograms per cubic meter averaged over a 24-hour period or the annual PM<sub>2.5</sub> standards of 15 micrograms per cubic meter. A relatively small fraction of the PM<sub>10</sub> emissions from this industry consists of PM<sub>2.5</sub>.

EPA stated that the proposed standard permit must contain either an enforceable annual PM emission limitation or a maximum hourly limitation to keep the emissions below major source New Source Review (NSR) or Title V applicability thresholds. Although the permit does state that facilities are not eligible if they constitute a new major stationary source or major modification, EPA stated that this condition is not enforceable. EPA recommended the permit include annual limits to ensure that the facility cannot become a major source and require that the facility document annual PM emissions along with production and/or operational limits. EPA stated that the permit must specify a representative monitoring frequency which will ensure that compliance is demonstrated with a PM limit.

The commission has not changed the standard permit in response to this comment. Although the standard permit PM emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits for PM. The standard permit contains a graph that represents the relationship between the allowable short-term PM emission rate and the available setback distance to the nearest property line. For example, Figure 1 of this standard permit indicates that a site that has no effective setback distance to the property line is limited to a site-wide maximum emission rate of 52.94 pounds per hour (lb/hr) of PM<sub>10</sub>. Also from Figure 1, a site with a setback distance of 500 feet is limited to a site-wide maximum short-term emission rate of 70.1 lb/hr. Regardless of the allowable short-term emission rate indicated by the applicable figure, other conditions of the standard permit concerning the non-applicability of the standard permit to major sources also remain in effect independently. The owner or operator of the standard permit facility is required by the standard permit to maintain records to show compliance with the applicable emission rate determined by the applicable graph. Under 30 TAC §116.615(8), the owner or operator is also required to maintain records sufficient to demonstrate compliance with the standard permit, which includes records to demonstrate that the site

is not a major source. TCEQ will enforce these conditions by inspection of these records.

As a point of clarification, although EPA's comment references Title V applicability thresholds in addition to Federal New Source Review (FNSR) thresholds, TCEQ is not aware of any restriction or prohibition on the use of standard permits issued under 30 TAC Chapter 116, Subchapter F at a facility or site that is subject to Title V permitting. Although TCEQ does not allow a standard permit to be used to authorize a project that would constitute a major source or major modification under FNSR, TCEQ does not globally prohibit the use of a standard permit to authorize a project at a site that is potentially subject to Title V.

The commission has not included a monitoring frequency to demonstrate compliance with a PM limit. Because of the low level of emissions expected at these sites, the commission determined that monitoring frequencies associated with PM emission rate limitations are not necessary. The recordkeeping requirements in the standard permit are sufficient to demonstrate compliance with the specified emission rate limitations.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit and a recordkeeping requirement to ensure enforceability of the opacity limit.

The commission agrees with the EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that all air pollution abatement equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore, the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association with non-major forms of authorization such as permit by rules (PBRs) and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for non-compliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit and has added such a statement to the standard permit. With respect to reporting requirements for non-compliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limitations in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

TRD-201001587  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 6, 2010



## Notice of Issuance of a New Air Quality Standard Permit for Dry Bulk Fertilizer Handling Operations

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for dry bulk fertilizer handling operations under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for dry bulk fertilizer handling operations was effective April 7, 2010.

Copies of the standard permit for dry bulk fertilizer handling operations may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for dry bulk fertilizer handling operations can be used to authorize dry bulk fertilizer handling operations on or after the effective date of the standard permit. A dry bulk fertilizer handling operation is a facility, or group of facilities, that receives, handles, mixes, stores, or loads dry bulk fertilizer. Dry bulk fertilizer includes, but is not limited to, urea, potash, monoammonium phosphate, diammonium phosphate, triple superphosphate, nitric phosphate, trisodium phosphate, ammonium nitrate, ammonium sulphate, and zinc. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

### ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Justin Seed Company, and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact, and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features, and use standard control methods. TCGA also commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications, and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

Justin Seed expressed concern that the proposed standard permits covering dry bulk fertilizer handling operations; grain elevators/grain handling operations and portable grain augers; and feedmills, portable augers, and hay grinders are being forwarded with little input from the industries that they affect, and with little knowledge of the impact. Justin Seed suggested that the impact on agriculture could be much larger than stated in the technical summary documents.

The commission has not changed the standard permit in response to this comment. Before these agricultural standard permits were proposed, the commission formed an advisory group comprised of stakeholders from the agricultural industry, and held two stakeholder meetings on draft versions of the standard permits to solicit input from interested parties. A variety of trade associations, organizations, and companies had representatives attending these stakeholder meetings including, but not limited, to the Texas Cotton Ginners' Association, United States Department of Agriculture, Texas Ag Industries Association, Texas Cattle Feeders' Association, and companies involved in the production or sale of grain, peanuts, and fertilizer. Following these stakeholder meetings, TCEQ revised the draft permits partially based on input from these groups, and formally proposed the agricultural standard permits on November 6, 2009. Notices of the proposals were published in the *Texas Register* and in six major newspapers in Texas. An announcement of the proposals was also posted on the commission's Web site, and a press release on the proposed standard permits was issued for distribution to the media. Notice of the proposed standard permits was also sent to a representative of the Texas Department of Agriculture. In addition, notice of the proposed standard permits was provided electronically to persons subscribed to a mailing list for air permitting issues. The commission believes that in combination, these stakeholder meetings and notices provided sufficient opportunity for the relevant industries to offer input on the proposed standard permits.

As to the impact of the standard permits on these industries, in many cases the impact will be minimal, with some exceptions noted further below. Generally, any facility that produces air contaminants is required to obtain some type of authorization for those emissions. That authorization is typically a Permit by Rule (PBR) under 30 TAC Chapter 106, a standard permit, or a case-by-case permit under 30 TAC Chapter 116. The proposed standard permits would offer a new, streamlined method of authorization for those facilities that do not wish

to use a PBR or case-by-case permit. Existing facilities that are already authorized could continue to operate under those authorizations and would not be affected by the proposed standard permits. Facilities that are most likely to be directly affected by the proposed standard permits are portable pipe reactors (polyphosphate blenders), and commercial grain handling facilities. The commission is considering the repeal of 30 TAC §106.302 for portable pipe reactors, and considering revisions to 30 TAC §106.283 for grain handling, storage, and drying facilities. If the portable pipe reactor PBR is repealed, portable pipe reactors will be required to comply with the standard permit for polyphosphate blending operations, or meet another authorization mechanism such as another applicable PBR or a case-by-case permit. Similarly, if the planned changes to the PBR for grain handling, storage and drying are adopted, new or modified commercial grain handling operations will be required to comply with the standard permit for grain handling operations, or meet another authorization mechanism such as another applicable PBR or a case-by-case permit.

Justin Seed stated that it contacted two state trade associations and one federal trade association, and none of those associations understood the purpose or impact of the proposed standard permit.

The commission has not changed the proposed standard permit in response to this comment. The commission cannot speak for other associations or entities, and has no information as to why those associations may not have understood the purpose or impact of the proposed standard permit. The purpose of the proposed standard permit is to provide a new method of authorization for common agricultural operations, that is relatively simple to obtain, and that is protective of human health and the environment if the conditions of the standard permit are met. The standard permit tends to allow more operational flexibility and larger facility sizes than the corresponding PBR, while minimizing registration and notification requirements. The standard permit is also a more streamlined and less resource-intensive method of authorization than a case-by-case permit. In combination, these features of the standard permit will allow the commission to more efficiently allocate resources towards the protection of air quality.

Justin Seed expressed concern that it: a) doesn't fully understand the purpose for the new standards, b) is not able to identify what is being changed relative to current requirements, and c) is unable to support or disagree to references made on the impact to industry stakeholders.

The commission has not changed the standard permit in response to this comment. The purpose of the agricultural standard permits is to provide a new, streamlined method of authorization for these types of facilities and operations, as an alternative to the use of a PBR or case-by-case permit. Except as noted below, owners or operators of agricultural facilities would still be able to use an applicable PBR, case-by-case permit, or other applicable authorization mechanism if they elect to do so, but the commission expects that in many cases the new standard permits will be a more attractive option for a variety of reasons. The issuance of the new standard permits does not directly affect or change existing requirements. Facilities that are already authorized would continue to hold that authorization and are not required to comply with a standard permit. However, as previously noted, the commission is considering the repeal of the PBR for portable pipe reactors (polyphosphate blenders) and considering revisions to the PBR for grain handling, storage, and drying facilities. If those changes are adopted, then new or relocated portable pipe reactor (polyphosphate blending) facilities will need to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. Similarly, new or modified commercial grain handling facilities would be required to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism.

The repeal of 30 TAC §106.302 and the revisions to 30 TAC §106.283 are being proposed in a separate action.

Justin Seed stated it was uncertain of the impact of the standard permits on existing permitted facilities, when modifications or upgrades are performed. Justin Seed asked if older facilities would become subject to higher standards that would become burdensome.

The commission has not changed the standard permit in response to this comment. Modifications or changes at existing facilities that are already authorized by a case-by-case permit would typically be handled by an amendment or alteration to that permit, or, the use of an applicable PBR to authorize the change. Similarly, existing agricultural facilities that are already authorized by a PBR that requires registration would need to update their PBR registration to reflect the modification. In most situations, the availability of the new standard permits would not affect that process.

However, as previously noted, the commission is considering an amendment to 30 TAC §106.283 that would prohibit its use to authorize commercial grain handling facilities. If that amendment is adopted, then an existing commercial grain handling facility that is currently authorized by 30 TAC §106.283 would not be able to use 30 TAC §106.283 to authorize any future modifications. The modified grain handling facility would have to comply with the applicable standard permit, meet another applicable PBR, obtain a case-by-case permit, or use another applicable authorization mechanism.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review (NSR). Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the draft permit must provide a rationale to support the use of particulate matter (PM<sub>10</sub>) as a surrogate for PM<sub>2.5</sub>. EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from the EPA Administrator Lisa P. Jackson, dated August 12, 2009.

The modeling and protectiveness review for this standard permit determined that the combined PM<sub>2.5</sub> impacts from all sources would not exceed the short-term PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) standards of 35 micrograms per cubic meter averaged over a 24-hour period, or the annual PM<sub>2.5</sub> standards of 15 micrograms per cubic meter. A relatively small fraction of the PM<sub>10</sub> emissions from this industry consist of PM<sub>2.5</sub>.

EPA stated that the proposed standard permit must contain either an enforceable annual PM emission limitation or a maximum hourly limitation to keep the emissions below major source NSR or Title V applicability thresholds. Although the permit does state that facilities are not eligible if they constitute a new major stationary source or major modification, EPA stated that this condition is not enforceable. EPA recommended the permit include annual limits to ensure that the facility cannot become a major source and require that the facility document annual PM emissions, along with production and/or operational limits. EPA stated that the permit must specify a representative monitoring frequency which will ensure that compliance is demonstrated with a PM limit.

The commission has not changed the standard permit in response to this comment. Although the standard permit PM emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits for PM. The standard permit contains a graph that represents the relationship between the allowable short-term PM emission rate and the available setback distance to the nearest property line. For example, for the dry bulk fertilizer handling standard permit, Figure 1 of the standard permit indicates that a site that has no effective setback distance to the property line is limited to a site-wide maximum emission rate of 13.63 pounds per hour (lb/hr) of PM<sub>10</sub>. Also from Figure 1, a site with a setback distance of 500 feet is limited to a site-wide maximum short-term emission rate of 17.1 lb/hr. Regardless of the allowable short-term emission rate indicated by the applicable figure, other conditions of the standard permit concerning the non-applicability of the standard permit to major sources also remain in effect independently. The owner or operator of the standard permit facility is required by the standard permit to maintain records to show compliance with the applicable emission rate determined by the applicable graph. Under 30 TAC §116.615(8), the owner or operator is also required to maintain records sufficient to demonstrate compliance with the standard permit, which includes records to demonstrate that the site is not a major source. TCEQ will enforce these conditions by inspection of these records.

As a point of clarification, although EPA's comment references Title V applicability thresholds in addition to Federal New Source Review (FNSR) thresholds, TCEQ is not aware of any restriction or prohibition on the use of standard permits issued under Subchapter F of 30 TAC Chapter 116 at a facility or site that is subject to Title V permitting. Although TCEQ does not allow a standard permit to be used to authorize a project that would constitute a major source or major modification under FNSR, TCEQ does not globally prohibit the use of a standard permit to authorize a project at a site that is potentially subject to Title V.

The commission has not included a monitoring frequency to demonstrate compliance with a PM limit. Because of the low level of emissions expected at these sites, the commission determined that monitoring frequencies associated with PM emission rate limitations are not necessary. The recordkeeping requirements in the standard permit are sufficient to demonstrate compliance with the specified emission rate limitations.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit, and a recordkeeping requirement to ensure enforceability of the opacity limit.

The commission agrees with EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that all air pollution abatement

equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore, the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association for non-major forms of authorization such as PBRs and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action, for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for noncompliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit, and has added such a statement to the standard permit. With respect to reporting requirements for non-compliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

TRD-201001588

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 6, 2010



### Notice of Issuance of a New Air Quality Standard Permit for Feedmills, Portable Augers, and Hay Grinders

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for feedmills, portable augers, and hay grinders under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for feedmills, portable augers, and hay grinders was effective April 7, 2010.

Copies of the standard permit for feedmills, portable augers, and hay grinders may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for feedmills, portable augers, and hay grinders can be used to authorize feedmills, portable augers, and hay grinders on or after the effective date of the standard permit. A feedmill is a facility, or group of facilities, that uses grain as one of the primary raw materials to produce either final products for human or animal consumption or intermediate products that are subjected to further processing. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons

attended the meeting, no one submitted formal comments at the public meeting.

### ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Biodiesel Coalition of Texas (BCOT), Texas Grain and Feed Association (TGFA), Justin Seed Company (Justin Seed), and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff spends reviewing individual permit applications and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

BCOT commented that the proposed standard permit should allow for the use of biodiesel fuel. BCOT stated that agricultural and biodiesel development go hand-in-hand. BCOT noted that the 2005 amendments to the Electric Generating Unit Standard Permit provided for the use of renewable fuels such as biodiesel.

The commission has added language to allow for the use of biodiesel and biodiesel-diesel blends as an authorized fuel under this standard permit. However, all biodiesel used as a fuel (or in a fuel blend) must meet American Society for Testing and Materials (ASTM) D6751 specifications. In addition, many areas of Texas are subject to the Low Emission Diesel requirements of 30 TAC Chapter 114, Subchapter H, Division 2, and owners or operators seeking to use biodiesel in affected areas must ensure that the fuel complies with those requirements.

TGFA generally supports the development of the proposed standard permit.

The commission appreciates the support.

TGFA expressed concern that most feedmills use some type of "rendered byproduct" in their operation, which would trigger increased odor control requirements and recordkeeping requirements under the standard permit. TGFA commented that many substances that could be considered rendering byproducts do not create any risk of nuisance odors and other rendering byproducts do not create a risk of nuisance odors when used in certain types of processes (such as the pelleting of cattle cubes). TGFA recommended that the terms "process" and "rendering byproducts" be defined more explicitly to include only those processes and rendering byproducts that actually create a risk of nuisance odors.

The commission agrees with the concern expressed by TGFA and has determined that the headings for the two sections covering the specific requirements for feedmills should be changed from "Requirements Specific to Feedmills Processing Rendering By-Products (New, Modified, or Existing)" and "Requirements Specific to Feedmills Not Processing Rendering By-Products (New, Modified, or Existing)" be changed to "Requirements Specific to Feedmills Producing Certain Feeds (New, Modified, or Existing)" and "Requirements Specific to All Other Feedmills (New, Modified, or Existing)," respectively. Subsection (5)(A) will continue to list the types of feed that are of concern and provide clarification as to which feedmills the requirements of this section are applicable.

TGFA commented that TCEQ should expand the allowed fuel types to include renewable fuels such as biogas, biofuel, and biomass-derived fuels, such as manure and wood chips. TGFA also recommended that biodiesel, renewable diesel, and ethanol be allowed as fuels. TGFA stated that many of their members already produce these fuels and that their use should be encouraged due to benefits such as being domestically available, reducing waste, and generating carbon dioxide offset credits.

The commission has added language to allow for the use of biodiesel and biodiesel-diesel blends as an authorized fuel under this standard permit. However, all biodiesel used as a fuel (or in a fuel blend) must meet ASTM D6751 specifications. In addition, many areas of Texas are subject to the Low Emission Diesel requirements of 30 TAC Chapter 114, Subchapter H, Division 2, and owners or operators seeking to use biodiesel in affected areas must ensure that the fuel complies with those requirements. With respect to the other fuels suggested by TGFA, the commission has determined that these alternative fuel formulations would require greater case-by-case study and compliance verification than would be practical to accommodate under this standard permit.

Justin Seed expressed concern that the proposed standard permits covering dry bulk fertilizer handling operations; grain elevators/grain handling operations and portable grain augers; and feedmills, portable augers, and hay grinders are being forwarded with little input from the industries that they affect and with little knowledge of the impact. Justin Seed suggested that the impact on agriculture could be much larger than stated in the technical summary documents.

The commission has not changed the standard permit in response to this comment. Before these agricultural standard permits were proposed, the commission formed an advisory group comprised of stakeholders from the agricultural industry and held two stakeholder meetings on draft versions of the standard permits to solicit input from interested parties. A variety of trade associations, organizations, and companies had representatives attending these stakeholder meetings, including but not limited to the Texas Cotton Ginners' Association, United States Department of Agriculture, Texas Ag Industries Association, Texas Cattle Feeders' Association, and companies involved in the production or sale of grain, peanuts, and fertilizer. Following these stakeholder

meetings, TCEQ revised the draft permits partially based on input from these groups and formally proposed the agricultural standard permits on November 6, 2009. Notices of the proposals were published in the *Texas Register* and in six major newspapers in Texas. An announcement of the proposals was also posted on the commission's Web site and a press release on the proposed standard permits was issued for distribution to the media. Notice of the proposed standard permits was also sent to a representative of the Texas Department of Agriculture. In addition, notice of the proposed standard permits was provided electronically to persons subscribed to a mailing list for air permitting issues. The commission believes that in combination, these stakeholder meetings and notices provided sufficient opportunity for the relevant industries to offer input on the proposed standard permits.

As to the impact of the standard permits on these industries, in many cases the impact will be minimal, with some exceptions noted further. Generally, any facility that produces air contaminants is required to obtain some type of authorization for those emissions. That authorization is typically a permit by rule (PBR) under 30 TAC Chapter 106, a standard permit, or a case-by-case permit under 30 TAC Chapter 116. The proposed standard permits would offer a new, streamlined method of authorization for those facilities that do not wish to use a PBR or case-by-case permit. Existing facilities that are already authorized could continue to operate under those authorizations and would not be affected by the proposed standard permits. Facilities that are most likely to be directly affected by the proposed standard permits are portable pipe reactors (polyphosphate blenders) and commercial grain handling facilities. The commission is considering the repeal of PBR 30 TAC §106.302 for portable pipe reactors and considering revisions to PBR 30 TAC §106.283 for grain handling, storage, and drying facilities. If the portable pipe reactor PBR is repealed, portable pipe reactors will be required to comply with the standard permit for polyphosphate blending operations or meet another authorization mechanism such as another applicable PBR or a case-by-case permit. Similarly, if the planned changes to the PBR for grain handling, storage and drying are adopted, new or modified commercial grain handling operations will be required to comply with the standard permit for grain handling operations or meet another authorization mechanism such as another applicable PBR or a case-by-case permit.

Justin Seed stated that they contacted two state trade associations and one federal trade association and none of those associations understood the purpose or impact of the proposed standard permit.

The commission has not changed the proposed standard permit in response to this comment. The commission cannot speak for other associations or entities and has no information as to why those associations may not have understood the purpose or impact of the proposed standard permit. The purpose of the proposed standard permit is to provide a new method of authorization for common agricultural operations, that is relatively simple to obtain, and that is protective of human health and the environment if the conditions of the standard permit are met. The standard permit tends to allow more operational flexibility and larger facility sizes than the corresponding PBR, while minimizing registration and notification requirements. The standard permit is also a more streamlined and less resource-intensive method of authorization than a case-by-case permit. In combination, these features of the standard permit will allow the commission to more efficiently allocate resources towards the protection of air quality.

Justin Seed expressed concern that it: a) doesn't fully understand the purpose for the new standards, b) is not able to identify what is being changed relative to current requirements, and c) is unable to support or disagree to references made on the impact to industry stakeholders.

The commission has not changed the standard permit in response to this comment. The purpose of the agricultural standard permits is to pro-

vide a new, streamlined method of authorization for these types of facilities and operations as an alternative to the use of a PBR or case-by-case permit. Except as noted, owners or operators of agricultural facilities would still be able to use an applicable PBR, case-by-case permit, or other applicable authorization mechanism if they elect to do so, but the commission expects that in many cases the new standard permits will be a more attractive option for a variety of reasons. The issuance of the new standard permits does not directly affect or change existing requirements. Facilities that are already authorized would continue to hold that authorization and are not required to comply with a standard permit. However, as noted previously, the commission is considering the repeal of the PBR for portable pipe reactors (polyphosphate blenders) and considering revisions to the PBR for grain handling, storage, and drying facilities. If those changes are adopted, then new or relocated portable pipe reactor (polyphosphate blending) facilities will need to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. Similarly, new or modified commercial grain handling facilities would be required to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. The repeal of 30 TAC §106.302 and the revisions to 30 TAC §106.283 are being proposed in a separate action.

Justin Seed mentioned that a statement in the feedmill standard permit technical summary refers to less than five permits in the vicinities of Abilene and Fort Worth and stated that more permits need to be issued because Justin Seed Company holds four permits in these vicinities. Justin Seed stated that they serve more than five businesses that use augers to supply Texas agricultural operations with seed and these operations are located close to other structures but are used for less than 45 days a year.

The commission would like to clarify that the statement in the feedmill standard permit technical summary did not state there were only five permits in the vicinities of Abilene and Fort Worth. The technical summary stated that most (feedmill) operations will be located in North Texas, in the general vicinities of Abilene and Fort Worth. The technical summary also included a statement that the state permits database showed less than five feedmill operations located in the nonattainment area counties of Ellis and Tarrant. Denton County, which is where the four facilities owned by Justin Seed Company are located, is also nonattainment but was not considered when conducting this database review. The purpose of these statements in the technical summary was to emphasize that minimal numbers of these types of operations are/will be located in nonattainment counties thereby, addressing any concerns the EPA may have regarding the authorization of additional sources in nonattainment areas. Portable grain augers that meet the requirements of the feedmill or grain elevator standard permits are authorized.

Justin Seed said they were uncertain of the impact of the standard permits on existing permitted facilities when modifications or upgrades are performed. Justin Seed asked if older facilities would become subject to higher standards that would become burdensome.

The commission has not changed the standard permit in response to this comment. Modifications or changes at existing facilities that are already authorized by a case-by-case permit would typically be handled by an amendment or alteration to that permit or the use of an applicable PBR to authorize the change. Similarly, existing agricultural facilities that are already authorized by a PBR that requires registration would need to update their PBR registration to reflect the modification. In most situations, the availability of the new standard permits would not affect that process.

However, as noted previously, the commission is considering an amendment to PBR 30 TAC §106.283 that would prohibit its use to authorize commercial grain handling facilities. If that amendment is

adopted, then an existing commercial grain handling facility that is currently authorized by PBR 30 TAC §106.283 would not be able to use 30 TAC §106.283 to authorize any future modifications. The modified grain handling facility would have to comply with the applicable standard permit, meet another applicable PBR, obtain a case-by-case permit, or use another applicable authorization mechanism.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review. Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the draft permit must provide a rationale to support the use of particulate matter ( $PM_{10}$ ) as a surrogate for  $PM_{2.5}$ . EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from EPA Administrator Lisa P. Jackson, dated August 12, 2009.

The modeling and protectiveness review for this standard permit determined that the combined  $PM_{2.5}$  impacts from all sources would not exceed the short term  $PM_{2.5}$  National Ambient Air Quality Standard (NAAQS) standards of 35 micrograms per cubic meter averaged over a 24-hour period or the annual  $PM_{2.5}$  standards of 15 micrograms per cubic meter. A relatively small fraction of the  $PM_{10}$  emissions from this industry consist of  $PM_{2.5}$ .

EPA stated that the proposed standard permit must contain either an enforceable annual PM emission limitation or a maximum hourly limitation to keep the emissions below major source New Source Review (NSR) or Title V applicability thresholds. Although the permit does state that facilities are not eligible if they constitute a new major stationary source or major modification, EPA stated that this condition is not enforceable. EPA recommended the permit include annual limits to ensure that the facility cannot become a major source and require that the facility document annual PM emissions along with production and/or operational limits. EPA stated that the permit must specify a representative monitoring frequency which will ensure that compliance is demonstrated with a PM limit.

The commission has not changed the standard permit in response to this comment. Although the standard permit PM emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits for PM. The standard permit contains a graph that represents the relationship between the allowable short-term PM emission rate and the available setback distance to the nearest property line. For example, for this



standard permit, Figure 1 of the standard permit indicates that a site that has no effective setback distance to the property line is limited to a site-wide maximum emission rate of 9.24 pounds per hour (lb/hr) of PM<sub>10</sub>. Also from Figure 1, a site with a setback distance of 500 feet is limited to a site-wide maximum short-term emission rate of 19.5 lb/hr. Regardless of the allowable short-term emission rate indicated by the applicable figure, other conditions of the standard permit concerning the non-applicability of the standard permit to major sources also remain in effect independently. The owner or operator of the standard permit facility is required by the standard permit to maintain records to show compliance with the applicable emission rate determined by the applicable graph. Under 30 TAC §116.615(8), the owner or operator is also required to maintain records sufficient to demonstrate compliance with the standard permit, which includes records to demonstrate that the site is not a major source. TCEQ will enforce these conditions by inspection of these records.

As a point of clarification, although EPA's comment references Title V applicability thresholds in addition to Federal New Source Review (FNSR) thresholds, TCEQ is not aware of any restriction or prohibition on the use of standard permits issued under 30 TAC Chapter 116, Subchapter F at a facility or site that is subject to Title V permitting. Although TCEQ does not allow a standard permit to be used to authorize a project that would constitute a major source or major modification under FNSR, TCEQ does not globally prohibit the use of a standard permit to authorize a project at a site that is potentially subject to Title V.

The commission has not included a monitoring frequency to demonstrate compliance with a PM limit. Because of the low level of emissions expected at these sites, the commission determined that monitoring frequencies associated with PM emission rate limitations are not necessary. The recordkeeping requirements in the standard permit are sufficient to demonstrate compliance with the specified emission rate limitations.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit and a recordkeeping requirement to ensure enforceability of the opacity limit.

The commission agrees with the EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that all air pollution abatement equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of

the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore, the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association with non-major forms of authorization such as PBRs and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for non-compliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit and has added such a statement to the standard permit. With respect to reporting requirements for non-compliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limita-

tions in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

TRD-201001589

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 6, 2010



## Notice of Issuance of a New Air Quality Standard Permit for Grain Elevators/Grain Handling Operations and Portable Grain Augers

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for grain elevators/grain handling operations and portable grain augers under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for grain elevators/grain handling operations and portable grain augers was effective April 7, 2010.

Copies of the standard permit for grain elevators/grain handling operations and portable grain augers may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for grain elevators/grain handling operations and portable grain augers can be used to authorize grain elevators/grain handling operations and portable grain augers on or after the effective date of the standard permit. A grain elevator/grain handling operation is a facility, or group of facilities, that receives, handles, cleans, dries, stores, or loads out grain. Grain includes corn, wheat, sorghum, rice, rye, oats, barley, and soybeans. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

### ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Texas Seed Trade Association (TSTA), Justin

Seed Company, and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact, and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features, and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

TSTA stated that the seed industry contains both "seed conditioners," meaning facilities that grow, clean, package, and distribute seed, and "seed treaters," meaning facilities that apply a topical coating of chemicals and colorants to seed in order to provide protection from fungi and insects. TSTA explained that seed treatment is done in a closed system such that the escape of particulate emissions is not possible. TSTA also stated that seed conditioners generally produce less dust than grain handling facilities because seed must be handled as gently as possible to preserve its quality and value and this produces significantly less dust than other types of grain manipulation where the end use is processing or feeding. TSTA also stated that due to the relatively high value of "seed" versus "grain," periodic maintenance and cleaning of seed moving equipment is performed on a relatively more frequent basis than in conventional grain handling facilities. TSTA also stated that seed conditioning is usually seasonal and not a frequent, daily, ongoing event with most conditioning and "handling" of seed done shortly after harvest primarily in the fall of the year. The majority of seed movement is subsequent to the seed being bagged or otherwise contained in a fashion appropriate for distribution and sale negating any possibility of fugitive dust.

TSTA requested that TCEQ consider an exemption to the proposed standard permit for seed conditioning facilities that manipulate or "han-

dle" unpackaged grain intended for use as crop seed 75 days per year, or less, and in total annual quantities less than 250,000 bushels.

The commission has not changed the standard permit in response to this comment. These operations can use the grain elevator/grain handling standard permit to handle the seed provided all requirements of the standard permit are met. The grain elevator/grain handling standard permit cannot be used to treat the seed. Any seed treatment must be authorized through an applicable PBR, a case-by-case air quality permit, or another applicable authorization mechanism.

All standard permits must contain requirements that implement BACT, which is required under THSC, §382.0518(b), Preconstruction Permit and §382.05195(a), Standard Permit. Any facilities seeking authorization under this standard permit, regardless of any capacity or operating schedule limitations that are included, are still subject to BACT. The TSTA's request for an exemption more closely parallels requirements in 30 TAC Chapter 106, Permits By Rule (PBR), and the association should petition separately under Chapter 106 if they seek the creation of a PBR for seed conditioning or treating.

Justin Seed expressed concern that the proposed standard permits covering dry bulk fertilizer handling operations; grain elevators/grain handling operations and portable grain augers; and feedmills, portable augers, and hay grinders are being forwarded with little input from the industries that they affect and with little knowledge of the impact. Justin Seed suggested that the impact on agriculture could be much larger than stated in the technical summary documents.

The commission has not changed the standard permit in response to this comment. Before these agricultural standard permits were proposed, the commission formed an advisory group comprised of stakeholders from the agricultural industry and held two stakeholder meetings on draft versions of the standard permits to solicit input from interested parties. A variety of trade associations, organizations, and companies had representatives attending these stakeholder meetings, including but not limited to the Texas Cotton Ginners' Association, United States Department of Agriculture, Texas Ag Industries Association, Texas Cattle Feeders' Association, and companies involved in the production or sale of grain, peanuts, and fertilizer. Following these stakeholder meetings, TCEQ revised the draft permits partially based on input from these groups and formally proposed the agricultural standard permits on November 6, 2009. Notices of the proposals were published in the *Texas Register* and in six major newspapers in Texas. An announcement of the proposals was also posted on the commission's Web site and a press release on the proposed standard permits was issued for distribution to the media. Notice of the proposed standard permits was also sent to a representative of the Texas Department of Agriculture. In addition, notice of the proposed standard permits was provided electronically to persons subscribed to a mailing list for air permitting issues. The commission believes that in combination, these stakeholder meetings and notices provided sufficient opportunity for the relevant industries to offer input on the proposed standard permits.

As to the impact of the standard permits on these industries, in many cases the impact will be minimal, with some exceptions noted further. Generally, any facility that produces air contaminants is required to obtain some type of authorization for those emissions. That authorization is typically a PBR under 30 TAC Chapter 106, a standard permit, or a case-by-case permit under 30 TAC Chapter 116. The proposed standard permits would offer a new, streamlined method of authorization for those facilities that do not wish to use a PBR or case-by-case permit. Existing facilities that are already authorized could continue to operate under those authorizations and would not be affected by the proposed standard permits. Facilities that are most likely to be directly affected by the proposed standard permits are portable pipe reactors (polyphosphate blenders) and commercial grain handling facilities. The commis-

sion is considering the repeal of PBR 30 TAC §106.302 for portable pipe reactors and considering revisions to PBR 30 TAC §106.283 for grain handling, storage, and drying facilities. If the portable pipe reactor PBR is repealed, portable pipe reactors will be required to comply with the standard permit for polyphosphate blending operations or meet another authorization mechanism such as another applicable PBR or a case-by-case permit. Similarly, if the planned changes to the PBR for grain handling, storage, and drying are adopted, new or modified commercial grain handling operations will be required to comply with the standard permit for grain handling operations or meet another authorization mechanism such as another applicable PBR or a case-by-case permit.

Justin Seed stated that they contacted two state trade associations and one federal trade association and none of those associations understood the purpose or impact of the proposed standard permit.

The commission has not changed the proposed standard permit in response to this comment. The commission cannot speak for other associations or entities and has no information as to why those associations may not have understood the purpose or impact of the proposed standard permit. The purpose of the proposed standard permit is to provide a new method of authorization for common agricultural operations that is relatively simple to obtain and that is protective of human health and the environment if the conditions of the standard permit are met. The standard permit tends to allow more operational flexibility and larger facility sizes than the corresponding PBR, while minimizing registration and notification requirements. The standard permit is also a more streamlined and less resource-intensive method of authorization than a case-by-case permit. In combination, these features of the standard permit will allow the commission to more efficiently allocate resources towards the protection of air quality.

Justin Seed expressed concern that it: a) doesn't fully understand the purpose for the new standards, b) is not able to identify what is being changed relative to current requirements, and c) is unable to support or disagree to references made on the impact to industry stakeholders.

The commission has not changed the standard permit in response to this comment. The purpose of the agricultural standard permits is to provide a new, streamlined method of authorization for these types of facilities and operations as an alternative to the use of a PBR or case-by-case permit. Except as noted, owners or operators of agricultural facilities would still be able to use an applicable PBR, case-by-case permit, or other applicable authorization mechanism if they elect to do so but the commission expects that in many cases the new standard permits will be a more attractive option for a variety of reasons. The issuance of the new standard permits does not directly affect or change existing requirements. Facilities that are already authorized would continue to hold that authorization and are not required to comply with a standard permit. However, as noted previously, the commission is considering the repeal of the PBR for portable pipe reactors (polyphosphate blenders) and considering revisions to the PBR for grain handling, storage, and drying facilities. If those changes are adopted, then new or relocated portable pipe reactor (polyphosphate blending) facilities will need to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. Similarly, new or modified commercial grain handling facilities would be required to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. The repeal of 30 TAC §106.302 and the revisions to 30 TAC §106.283 are being proposed in a separate action.

Justin Seed said they were uncertain of the impact of the standard permits on existing permitted facilities when modifications or upgrades are performed. Justin Seed asked if older facilities would become subject to higher standards that would become burdensome.

The commission has not changed the standard permit in response to this comment. Modifications or changes at existing facilities that are already authorized by a case-by-case permit would typically be handled by an amendment or alteration to that permit or the use of an applicable PBR to authorize the change. Similarly, existing agricultural facilities that are already authorized by a PBR that requires registration would need to update their PBR registration to reflect the modification. In most situations, the availability of the new standard permits would not affect that process.

However, as noted previously, the commission is considering an amendment to PBR 30 TAC §106.283 that would prohibit its use to authorize commercial grain handling facilities. If that amendment is adopted, then an existing commercial grain handling facility that is currently authorized by PBR 30 TAC §106.283 would not be able to use 30 TAC §106.283 to authorize any future modifications. The modified grain handling facility would have to comply with the applicable standard permit, meet another applicable PBR, obtain a case-by-case permit, or use another applicable authorization mechanism.

Justin Seed expressed concern that less visible seed industry producers (such as wildflowers, native grasses, and minor crops such as oats) have limited production with variable revenue streams, and if they were to go out of business, it would severely impact the supply of native echo types used to control erosion and environmental projects that are of high concern to TCEQ.

The commission has not changed the standard permit in response to this comment. The commission understands that the seed and grain industry has a variety of small and large producers and operators with a wide range of economic characteristics. The proposed standard permit is intended to provide additional options and greater flexibility for the industry to the extent possible while protecting human health and the environment. The proposed standard permit is not intended to be the exclusive method of authorization for the subject industries. Owners or operators of facilities that cannot meet the conditions of a standard permit, or that do not wish to use a standard permit for other reasons still have the option to use an applicable PBR, obtain a case-by-case permit, or use another applicable authorization mechanism.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability but it is not an express requirement of the SIP or federal regulations concerning federal new source review. Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the draft permit must provide a rationale to support the use of particulate matter (PM<sub>10</sub>) as a surrogate for PM<sub>2.5</sub>. EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from EPA Administrator Lisa P. Jackson, dated August 12, 2009.

The modeling and protectiveness review for this standard permit determined that the combined PM<sub>2.5</sub> impacts from all sources would not exceed the short term PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) standards of 35 micrograms per cubic meter averaged over a 24-hour period or the annual PM<sub>2.5</sub> standards of 15 micrograms per cubic meter. A relatively small fraction of the PM<sub>10</sub> emissions from this industry consist of PM<sub>2.5</sub>.

EPA stated that the proposed standard permit must contain either an enforceable annual PM emission limitation or a maximum hourly limitation to keep the emissions below major source New Source Review (NSR) or Title V applicability thresholds. Although the permit does state that facilities are not eligible if they constitute a new major stationary source or major modification, EPA stated that this condition is not enforceable. EPA recommended the permit include annual limits to ensure that the facility cannot become a major source and require that the facility document annual PM emissions along with production and/or operational limits. EPA stated that the permit must specify a representative monitoring frequency which will ensure that compliance is demonstrated with a PM limit.

The commission has not changed the standard permit in response to this comment. Although the standard permit PM emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits for PM. The standard permit contains a graph that represents the relationship between the allowable short-term PM emission rate and the available setback distance to the nearest property line. For example, Figure 1 of the standard permit indicates that a site that has no effective setback distance to the property line is limited to a site-wide maximum emission rate of 16.3 pounds per hour (lb/hr) of PM<sub>10</sub>. Also from Figure 1, a site with a setback distance of 500 feet is limited to a site-wide maximum short-term emission rate of 22.0 lb/hr. Regardless of the allowable short-term emission rate indicated by the applicable figure, other conditions of the standard permit concerning the non-applicability of the standard permit to major sources also remain in effect independently. The owner or operator of the standard permit facility is required by the standard permit to maintain records to show compliance with the applicable emission rate determined by the applicable graph. Under 30 TAC §116.615(8), the owner or operator is also required to maintain records sufficient to demonstrate compliance with the standard permit, which includes records to demonstrate that the site is not a major source. TCEQ will enforce these conditions by inspection of these records.

As a point of clarification, although EPA's comment references Title V applicability thresholds in addition to Federal New Source Review (FNSR) thresholds, TCEQ is not aware of any restriction or prohibition on the use of standard permits issued under 30 TAC Chapter 116, Subchapter F at a facility or site that is subject to Title V permitting. Although TCEQ does not allow a standard permit to be used to authorize a project that would constitute a major source or major modification under FNSR, TCEQ does not globally prohibit the use of a standard permit to authorize a project at a site that is potentially subject to Title V.

The commission has not included a monitoring frequency to demonstrate compliance with a PM limit. Because of the low level of emissions expected at these sites, the commission determined that monitoring frequencies associated with PM emission rate limitations are not necessary. The recordkeeping requirements in the standard permit are

sufficient to demonstrate compliance with the specified emission rate limitations.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit and a record-keeping requirement to ensure enforceability of the opacity limit.

The commission agrees with the EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that all air pollution abatement equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability the permit must contain record-keeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore, the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) record-keeping time frame in association with non-major forms of authorization such as PBRs and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements

EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for non-compliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit and has added such a statement to the standard permit. With respect to reporting requirements for non-compliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limitations in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

TRD-201001590

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 6, 2010



#### Notice of Issuance of a New Air Quality Standard Permit for Peanut Handling Operations

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for peanut handling operations under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for peanut handling operations was effective April 7, 2010.

Copies of the standard permit for peanut handling operations may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

#### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for peanut handling operations can be used to authorize peanut handling operations on or after the effective date of the standard permit. A peanut handling operation is a facility, or group of facilities, that receives, handles, cleans, dries, stores, or

loads peanuts. Peanut handling operations include facilities such as peanut dryers, screens, aspirators, cleaners, shellers, stoners, milling equipment, and pelletizing equipment. The standard permit contains administrative requirements, control and operating requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

#### PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published on November 6, 2009 (34 TexReg 7845), and the public comment period ended on December 15, 2009.

#### PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

#### ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Texas Seed Trade Association (TSTA), and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact, and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features, and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.

TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications, and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community

and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

TSTA stated that it is unclear if peanut seed conditioners are included in the proposed Air Quality Standard Permit. TSTA stated that peanut seed conditioners generally produce less dust than conventional peanut handling operations where the intended use of the peanut is other than for seed. TSTA explained that peanut seed is handled as gently as possible to preserve its quality and value, and this produces significantly less dust than other types of manipulation where the end use is processing or feeding. TSTA also stated that, due to the relatively high value of "seed" peanuts versus "regular" peanuts, periodic cleaning and maintenance of seed moving equipment is performed on a relatively more frequent basis than in conventional peanut handling facilities. TSTA also stated that the majority of seed conditioning performed by seed producers in Texas is seasonal and hence not a frequent, daily or ongoing event, and most seed conditioners are located in rural areas of Texas in close proximity to the actual seed production sites. Most locations are relatively large properties and the chances of fugitive dust or emissions escaping the property are unlikely.

TSTA requested that TCEQ consider an exemption to this proposed standard permit for peanut seed conditioning facilities that manipulate or "handle" unpackaged peanuts intended for use as crop seed 75 days per year, or less, and in total annual quantities less than 25,000 bushels.

The commission has not changed the standard permit in response to this comment. These operations can use the peanut handling standard permit to handle the peanuts provided all requirements of the standard permit are met. The peanut handling standard permit cannot be used to treat the peanuts. Any peanut treatment must be authorized through an applicable permit by rule or a case-by-case air quality permit.

All standard permits must contain requirements that implement BACT, which is required under THSC, §382.0518(b), Preconstruction Permit and §382.05195(a), Standard Permit. Any facilities seeking authorization under this standard permit, regardless of any capacity or operating schedule limitations that are included, are still subject to BACT. The TSTA's request for an exemption more closely parallels requirements in 30 TAC Chapter 106, Permits By Rule, and the association should petition separately under Chapter 106 if they seek the creation of a permit by rule (PBR) for peanut conditioning or treating.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 FR 64543). The second part of this provision, which prohibits the standard permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review (NSR). Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC

§116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the draft permit must provide a rationale to support the use of particulate matter (PM<sub>10</sub>) as a surrogate for PM<sub>2.5</sub>. EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from the EPA Administrator Lisa P. Jackson, dated August 12, 2009.

The modeling and protectiveness review for this standard permit determined that the combined PM<sub>2.5</sub> impacts from all sources would not exceed the short term PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) standards of 35 micrograms per cubic meter averaged over a 24-hour period, or the annual PM<sub>2.5</sub> standards of 15 micrograms per cubic meter. A relatively small fraction of the PM<sub>10</sub> emissions from this industry consist of PM<sub>2.5</sub>.

EPA stated that the proposed standard permit must contain either an enforceable annual PM emission limitation or a maximum hourly limitation to keep the emissions below major source NSR or Title V applicability thresholds. Although the permit does state that facilities are not eligible if they constitute a new major stationary source or major modification, EPA stated that this condition is not enforceable. EPA recommended the permit include annual limits to ensure that the facility cannot become a major source and require that the facility document annual PM emissions, along with production and/or operational limits. EPA stated that the permit must specify a representative monitoring frequency which will ensure that compliance is demonstrated with a PM limit.

The commission has not changed the standard permit in response to this comment. Although the standard permit PM emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits for PM. The standard permit contains a graph that represents the relationship between the allowable short-term PM emission rate and the available setback distance to the nearest property line. For example, Figure 1 of this standard permit indicates that a site that has no effective setback distance to the property line is limited to a site-wide maximum emission rate of 9.60 pounds per hour (lb/hr) of PM<sub>10</sub>. Also from Figure 1, a site with a setback distance of 300 feet is limited to a site-wide maximum short-term emission rate of 20.9 lb/hr. Regardless of the allowable short-term emission rate indicated by the applicable figure, other conditions of the standard permit concerning the non-applicability of the standard permit to major sources also remain in effect independently. The owner or operator of the standard permit facility is required by the standard permit to maintain records to show compliance with the applicable emission rate determined by the applicable graph. Under 30 TAC §116.615(8), the owner or operator is also required to maintain records sufficient to demonstrate compliance with the standard permit, which includes records to demonstrate that the site is not a major source. TCEQ will enforce these conditions by inspection of these records.

As a point of clarification, although EPA's comment references Title V applicability thresholds in addition to Federal New Source Review (FNSR) thresholds, TCEQ is not aware of any restriction or prohibition on the use of standard permits issued under Subchapter F of 30 TAC Chapter 116 at a facility or site that is subject to Title V permitting. Although TCEQ does not allow a standard permit to be used to authorize a project that would constitute a major source or major modification under FNSR, TCEQ does not globally prohibit the use of a standard permit to authorize a project at a site that is potentially subject to Title V.

The commission has not included a monitoring frequency to demonstrate compliance with a PM limit. Because of the low level of emis-

sions expected at these sites, the commission determined that monitoring frequencies associated with PM emission rate limitations are not necessary. The recordkeeping requirements in the standard permit are sufficient to demonstrate compliance with the specified emission rate limitations.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit, and a recordkeeping requirement to ensure enforceability of the opacity limit.

The commission agrees with the EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that all air pollution abatement equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association for non-major forms of authorization

such as PBRs and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action, for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for noncompliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit, and has added such a statement to the standard permit. With respect to reporting requirements for noncompliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system). Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limitations in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 6, 2010



## Notice of Issuance of a New Air Quality Standard Permit for Temporary and Permanent Polyphosphate Blenders

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing a new standard permit for temporary and permanent polyphosphate blenders under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for temporary and permanent polyphosphate blenders was effective April 7, 2010.

Copies of the standard permit for temporary and permanent polyphosphate blenders may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html> or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Michael Wilhoit at (512) 239-1222.

## OVERVIEW OF AIR QUALITY STANDARD PERMIT

The new air quality standard permit for temporary and permanent polyphosphate blenders can be used to authorize polyphosphate blenders on or after the effective date of the standard permit. A temporary polyphosphate blender is one that operates at a site for no more than 180 calendar days during any 12-month period. A polyphosphate blender is a facility, or group of facilities, that receives, mixes, reacts, and blends ammonia, superphosphoric acid, and water to manufacture liquid fertilizer. A permanent polyphosphate blender is any polyphosphate blender that is not a temporary polyphosphate blender. The standard permit contains administrative requirements, control and operating requirements, compliance demonstration requirements, and recordkeeping requirements to ensure the protection of air quality standards and public health.

In a separate action, the commission has proposed the repeal of the permit by rule for portable pipe reactors (also known as polyphosphate blenders) at 30 TAC Chapter §106.302, Portable Pipe Reactor. For more information about this action, please refer to the March 26, 2010, issue of the *Texas Register* (35 TexReg 2507).

## PUBLIC NOTICE AND COMMENT PERIOD

As required by 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, Houston, Corpus Christi, Lubbock, and Midland. The notice was published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7845), and the public comment period ended on December 15, 2009.

## PUBLIC MEETING

The TCEQ held a public meeting on the proposed standard permit on December 10, 2009, in Austin, Texas. Although a number of persons attended the meeting, no one submitted formal comments at the public meeting.

## ANALYSIS OF COMMENTS

During the public comment period that closed on December 15, 2009, the commission received comments from the Texas Cotton Ginners' Association (TCGA), Biodiesel Coalition of Texas (BCOT), Texas Liquid Fertilizer (TLF), Equalizer, Poole Chemical Co. (Poole), Justin Seed Company, and the United States Environmental Protection Agency (EPA).

TCGA indicated support for the proposed standard permit.

The commission appreciates the support.

TCGA commented that the facilities covered by the proposed standard permit have a minor impact, and supported the concept of using a sliding scale for distance limitations based on emission rate.

The standard permit was designed with conditions and requirements that are intended to ensure that the facilities and operations covered by the standard permit will not have a detrimental effect on human health or the environment. The variable distance requirements in the standard permit will allow operational flexibility for owners and operators of authorized facilities while still establishing enforceable emission rates and ensuring that the standard permit is protective.

TCGA commented that the operations covered by the standard permit have many common features, and use standard control methods. TCGA commented that the proposed standard permit has requirements that are similar to case-by-case permits issued for these facilities, and therefore would be protective.



TCGA is correct that many of the facilities and operations covered by the standard permit have similar features and use common control methods. The terms and conditions of the standard permit are intentionally similar to the terms and conditions in case-by-case permits, as standard permits are required by statute to implement Best Available Control Technology (BACT) and must be protective of human health and the environment.

TCGA commented that the proposed standard permit would substantially reduce the amount of time that TCEQ staff expends reviewing individual permit applications, and streamline the process for the applicants.

The commission agrees that the standard permit will reduce the time and resources that are currently expended to perform case-by-case permit reviews for these types of facilities. The standard permit will provide a streamlined authorization method for the regulated community and will allow the commission to focus resources on reviews of projects that are more environmentally significant.

BCOT commented that the proposed standard permit should allow for the use of biodiesel fuel. BCOT stated that agricultural and biodiesel development go hand-in-hand. BCOT noted that the 2005 amendments to the Electric Generating Unit Standard Permit provided for the use of renewable fuels such as biodiesel.

The commission has added language to allow for the use of biodiesel and biodiesel-diesel blends as an authorized fuel under this standard permit. However, all biodiesel used as a fuel (or in a fuel blend) must meet American Society for Testing and Materials (ASTM) D6751 specifications. In addition, many areas of Texas are subject to the Low Emission Diesel requirements of 30 TAC Chapter 114, Subchapter H, Division 2, and owners or operators seeking to use biodiesel in affected areas must ensure that the fuel complies with those requirements.

TLF, TAIA, and Poole commented that TCEQ should allow individual engines, or combinations of engines, rated greater than the 345 horsepower (hp) limit in the proposed standard permit. TLF noted that some of the other proposed standard permits allowed a combined power rating of 525 hp, and stated that some operators have a combination of engines that exceed the proposed 345 hp limit. TLF stated that larger engines (525 hp) would still comply with nitrogen oxide (NO<sub>x</sub>) emission limits and the National Ambient Air Quality Standard.

The commission has revised the standard permit to increase the engine hp limitation from the proposed 345 hp to 525 hp. All emission rate increases from the larger engine have been evaluated through modeling, and it has been determined that the increase in site-wide emissions from products of combustion will not result in an exceedance of applicable NAAQS. The additional hp will also result in a change in site-wide allowable particulate matter (PM<sub>10</sub>) emissions specified in the standard permit from 1.06 pounds per hour (lb/hr) to 1.46 lb/hr.

TLF, Equalizer, TAIA, and Poole recommended that TCEQ provide additional guidance regarding the acceptable protocols for compliance testing. TLF also requested that TCEQ provide a list of companies considered capable to perform the required testing.

The commission has not changed the standard permit in response to this comment. The commission has considered specifying definitive test methods in the standard permit, but this could unnecessarily limit flexibility, as different source characteristics and advances in sampling technology may influence the selection of the most appropriate method. There are multiple possible methods for the required testing, so the acceptable protocols can vary. Because of this, it is critical that the owner or operator comply with the standard permit requirements concerning advance notice of sampling and scheduling of a pretest meeting, so that appropriate methods can be identified and agreed upon in advance.

Certain sampling methods may require the testing firm to be accredited under the National Environmental Laboratory Accreditation Conference program. A list of most of the environmental testing firms in the United States that conduct emission testing can be found at the Source Evaluation Society (SES) Web site, <http://www.sesnews.org/>. The list of "Stack Testing Companies" is under the "Primary links" heading on the left side of the SES Web site. The inclusion of this link does not imply official TCEQ endorsement of these testing firms, but is meant to serve as an initial tool for owners or operators that are having difficulty finding testing contacts. It should be noted that in order for a polyphosphate blender to be approved for the standard permit, the testing must occur in Texas.

Equalizer commented that the TCEQ should allow the minimum setback distance to be measured to the nearest property line of an "off site receptor" as defined in section (2)(C) of the standard permit, instead of being measured to the nearest property line of the polyphosphate blending facility. Equalizer explained that in many cases the nearest property line is defined by the railroad siding where railcars with raw materials are placed, and this would effectively result in a setback distance of zero at those locations.

The commission has not changed the standard permit in response to this comment. Zero distance to the property line is acceptable if a polyphosphate blender can meet the designated emission rates specified in the standard permit figures. A standard permit does not allow for detailed site-specific considerations, so the impacts evaluation must be conservative. Distance to the property line is the more conservative consideration, especially since the general public has access to the ambient air/atmosphere just beyond the property line.

Justin Seed expressed concern that the proposed standard permits covering dry bulk fertilizer handling operations; grain elevators/grain handling operations and portable grain augers; and feedmills, portable augers, and hay grinders are being forwarded with little input from the industries that they affect, and with little knowledge of the impact. Justin Seed suggested that the impact on agriculture could be much larger than stated in the technical summary documents.

The commission has not changed the standard permit in response to this comment. Before these agricultural standard permits were proposed, the commission formed an advisory group comprised of stakeholders from the agricultural industry, and held two stakeholder meetings on draft versions of the standard permits to solicit input from interested parties. A variety of trade associations, organizations, and companies had representatives attending these stakeholder meetings including, but not limited to, the Texas Cotton Ginners' Association, United States Department of Agriculture, Texas Ag Industries Association, Texas Cattle Feeders' Association, and companies involved in the production or sale of grain, peanuts, and fertilizer. Following these stakeholder meetings, TCEQ revised the draft permits partially based on input from these groups, and formally proposed the agricultural standard permits on November 6, 2009. Notices of the proposals were published in the *Texas Register* and in six major newspapers in Texas. An announcement of the proposals was also posted on the commission's Web site, and a press release on the proposed standard permits was issued for distribution to the media. Notice of the proposed standard permits was also sent to a representative of the Texas Department of Agriculture. In addition, notice of the proposed standard permits was provided electronically to persons subscribed to a mailing list for air permitting issues. The commission believes that in combination, these stakeholder meetings and notices provided sufficient opportunity for the relevant industries to offer input on the proposed standard permits.

As to the impact of the standard permits on these industries, in many cases the impact will be minimal, with some exceptions as further noted. Generally, any facility that produces air contaminants is re-

quired to obtain some type of authorization for those emissions. That authorization is typically a permit by rule under 30 TAC Chapter 106, a standard permit, or a case-by-case permit under 30 TAC Chapter 116. The proposed standard permits would offer a new, streamlined method of authorization for those facilities that do not wish to use a PBR or case-by-case permit. Existing facilities that are already authorized could continue to operate under those authorizations and would not be affected by the proposed standard permits. Facilities that are most likely to be directly affected by the proposed standard permits are portable pipe reactors (polyphosphate blenders), and commercial grain handling facilities. The commission is considering the repeal of 30 TAC §106.302 for portable pipe reactors, and considering revisions to 30 TAC §106.283 for grain handling, storage, and drying facilities. If the portable pipe reactor PBR is repealed, portable pipe reactors will be required to comply with the standard permit for polyphosphate blending operations, or meet another authorization mechanism such as another applicable PBR or a case-by-case permit. Similarly, if the planned changes to the PBR for grain handling, storage and drying are adopted, new or modified commercial grain handling operations will be required to comply with the standard permit for grain handling operations, or meet another authorization mechanism such as another applicable PBR or a case-by-case permit.

Justin Seed expressed concern that it: a) doesn't fully understand the purpose for the new standards, b) is not able to identify what is being changed relative to current requirements, and c) is unable to support or disagree to references made on the impact to industry stakeholders.

The commission has not changed the standard permit in response to this comment. The purpose of the agricultural standard permits is to provide a new, streamlined method of authorization for these types of facilities and operations, as an alternative to the use of a PBR or case-by-case permit. Except as noted below, owners or operators of agricultural facilities would still be able to use an applicable PBR, case-by-case permit, or other applicable authorization mechanism if they elect to do so, but the commission expects that in many cases the new standard permits will be a more attractive option for a variety of reasons. The issuance of the new standard permits does not directly affect or change existing requirements. Facilities that are already authorized would continue to hold that authorization and are not required to comply with a standard permit. However, as noted above, the commission is considering the repeal of the PBR for portable pipe reactors (polyphosphate blenders) and considering revisions to the PBR for grain handling, storage, and drying facilities. If those changes are adopted, then new or relocated portable pipe reactor (polyphosphate blending) facilities will need to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. Similarly, new or modified commercial grain handling facilities would be required to comply with the applicable standard permit, a case-by-case permit, or other applicable authorization mechanism. The repeal of 30 TAC §106.302 and the revisions to 30 TAC §106.283 are being proposed in a separate action.

EPA stated that the standard permit must contain additional language compelling the facility to ensure that the entire site's emissions do not exceed major source threshold levels.

The commission has not changed the standard permit in response to this comment. The standard permit contains a provision that specifies that the standard permit cannot be used to authorize any facility or project that would constitute a new major stationary source or a major modification. The provision further states that the standard permit cannot be used at a major source. This provision is similar to the language in 30 TAC §116.610(b), which EPA approved as a State Implementation Plan (SIP) revision on November 14, 2003 (68 *Federal Register* 64543). The second part of this provision, which prohibits the standard

permit from being used at a major source, is more conservative than is typical of TCEQ practice for standard permits. This provision was added to ensure protectiveness and further minimize concerns about federal applicability, but it is not an express requirement of the SIP or federal regulations concerning federal new source review. Finally, under 30 TAC §116.615(8), owners or operators are required to maintain records sufficient to demonstrate compliance with the applicable standard permit, which includes records to demonstrate that the site is not a major source. The commission believes the restrictions as written in the standard permit combined with the general conditions of 30 TAC §116.615 will be sufficient to allow TCEQ to enforce the condition relating to major source threshold levels.

EPA stated that the permit must contain short term emission limits (pounds per hour) or an annual emission limit to ensure compliance with all emissions including startup, shutdown, and maintenance emissions. EPA commented that a permit condition must also state that any excess emissions exceeding the short term hourly rate are in violation of the permit to ensure operations do not result in high emission peaks. EPA requested that the permit contain annual limits to ensure the facility does not become a major source.

Although the standard permit emission limits are presented in a manner that is different from most other TCEQ permits, the standard permit does contain enforceable hourly emission limits. The standard permit contains several graphs that represent the relationship between the allowable hourly ammonia emission rate and the available setback distance to the nearest property line. In addition, the standard permit specifies hourly emission limits for PM<sub>10</sub> and fluorides in table form. Emissions from planned startup, shutdown, and maintenance activities are covered by and are subject to these emission limits.

Although subsection (1)(H) of the standard permit already stipulates that site-wide emissions must meet the applicable emission rate requirements, the commission has added a provision to emphasize that emissions exceeding permitted levels are a violation of the standard permit. Any facility with emissions exceeding the applicable hourly emission rate and not meeting an associated setback distance would not be authorized under the standard permit. The commission believes that the standard permit conditions and emission limitations as proposed are sufficient to deny the use of the standard permit for a major source, without stating specific annual emission limitations in the permit.

EPA stated that the permit must specify a representative monitoring frequency to ensure compliance with the opacity limit, and a record-keeping requirement to ensure enforceability of the opacity limit.

The commission agrees with the EPA's comment and a monitoring frequency has been added to the standard permit to aid in the demonstration of compliance with specified opacity limitations. However, as it is not feasible for these operations to keep a certified opacity reader on site, the TCEQ has addressed this through a regular control device inspection program instead of direct measurements of opacity. The standard permit now includes a requirement that the polyphosphate blender and all air pollution abatement equipment must be checked for proper operation every 30 days (unless more frequent checks/inspections are otherwise specified in the standard permit). The recordkeeping requirements of the standard permit have also been changed to clarify that records are required to demonstrate compliance with this monitoring frequency. In addition to the monitoring now included in the standard permit, the commission will also continue to rely on periodic inspections to enforce opacity limits and control nuisances. The TCEQ investigators will use EPA Test Method 9 to determine compliance with the opacity limitation(s).

EPA stated that the permit must specify that all equipment within the stationary source should be considered in the emissions determination.

The commission has not changed the standard permit in response to this comment. The Applicability section of the standard permit includes a condition that states that the standard permit cannot be used if the total site-wide emissions do not meet the applicable emission rate requirements. Although this condition does not explicitly refer to "all equipment," it would not be possible to determine total site-wide emissions unless all sources of air pollution were included. Section IV of the permit technical summary, Permit Condition Analysis and Justification, notes that the determination of site-wide emissions includes emissions from all facilities at the site, including facilities that are not associated with the operation being authorized under the standard permit. The terminology used may be slightly different than suggested in EPA's comment, but the language used in the standard permit and technical summary will accomplish the same goal. Note that the term "site" is potentially even broader than the term "stationary source" as a site can include multiple stationary sources.

EPA stated that to ensure enforceability, the permit must contain recordkeeping requirements for the PM and opacity emission limitations.

The standard permit as proposed requires that the owner or operator maintain records to demonstrate that the operation meets the applicable emission rate and setback distance requirements. With respect to opacity, it is not feasible for these small operations to keep a certified opacity reader on site, therefore the commission will enforce the opacity requirements through periodic monitoring of equipment performance and periodic TCEQ inspections. The owner or operator is required to maintain records of the periodic equipment/control device monitoring.

EPA requested that TCEQ consider a five-year records retention period (instead of the proposed two-year period) to facilitate enforcement of other SIP requirements.

The commission has not changed the standard permit in response to this comment. TCEQ typically uses a two-year (24-month rolling) recordkeeping time frame in association for non-major forms of authorization such as PBRs and standard permits, unless some other factor justifies a longer retention period. A five-year recordkeeping requirement would be more typical for records associated with federal regulations or a Title V permit. TCEQ is uncertain what other SIP requirements EPA is referring to in this comment. In the absence of more specific rationale to justify a five-year record retention period, TCEQ is electing to maintain the proposed 24-month retention period. However, standard permit holders should be aware that a five-year record retention period would apply if the standard permit operation is located at a site that is subject to Title V.

EPA requested that TCEQ include a provision stating any noncompliance with the permit constitutes a violation of the SIP and state law and is grounds for an enforcement action, for permit suspension, revocation, or revision, or for denial of a permit renewal application. In addition, EPA stated that the permit must contain reporting requirements for noncompliance with permit terms.

Although the commission's authority to enforce, revoke, revise, or deny a permit is already expressed in other commission rules and Texas statutes, the commission concurs that the permit should contain a provision to clearly state that emissions that exceed the limitations of the permit are a violation of the permit, and has added such a statement to the standard permit. With respect to reporting requirements for noncompliance with permit terms, TCEQ does not typically include such a condition in standard permits except in particular cases (for example, boilers equipped with a continuous emission monitoring system).

Operations authorized under this standard permit are subject to all the rules of the commission including the recordkeeping and reporting requirements of 30 TAC Chapter 101, Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. Additional reporting requirements may apply if the standard permit facility is covered by a Title V permit.

EPA stated that the draft permit must provide a rationale to support the use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub>. EPA cited the recent Louisville Gas and Electric Petition Response, Number IV-2002-3, from the EPA Administrator Lisa P. Jackson, dated August 12, 2009.

Because little to no information is available on the amount of PM<sub>2.5</sub> emitted from pipe reactors (polyphosphate blenders), the TCEQ will continue to use PM<sub>10</sub> standards as a surrogate for PM<sub>2.5</sub>. As more information becomes available, the TCEQ may amend the polyphosphate blending standard permit if it appears that compliance with the PM<sub>2.5</sub> NAAQS is in question.

EPA stated that they did not have access to the modeling used to make the determination for the lack of emission limits or operational limitations in the permit. EPA asked if TCEQ made the modeling data readily available, and if so, how was it made available.

The modeling data was made readily available; as stated in each standard permit proposal technical summary document, the modeling data for each standard permit was and is available upon request.

TRD-201001592

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 6, 2010



## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 328

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Chapter (TAC) Chapter 328, Waste Minimization and Recycling, §§328.52, 328.55, 328.60, 328.63, 328.66, 328.69, 328.70 and 328.71; and the repeal of §328.67 and §328.68.

The proposed rulemaking would require applicants to provide additional information and to request input from local government authorities as a part of an application for a land reclamation project using tires (LRPUT) or for a scrap tire facility. Groundwater districts would be added to the list of entities to be notified of LRPUT applications. Applicants would be required to provide proof of notice to local government officials and the executive director would be prohibited from authorizing a facility if a local government provides timely notice that a proposed facility does not comply with local requirements. Other proposed changes include: requiring a demonstration of the seasonal high groundwater level in the area, and authorizing the executive director to request additional information about groundwater levels at the site, prior to approval of a LRPUT; authorizing the executive director to request additional information or withhold authorization for a LRPUT based on protecting public health and the environment; specifying that LRPUTs are subject to annulment, suspension, revocation, denial and motions to overturn; clarifying the requirement to split, quarter or shred off-the-road tires before disposal; and, administrative changes including updating references to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission, allowing submittal of electronic application documents, updating address information, and updating references to the Chapter 50 rules.

The commission will hold a public hearing on this proposal in Austin on May 11, 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.

Written comments may be submitted to Michael Parrish, 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 2008-034-328-CE. The comment period closes May 17, 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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Brooke Jackson, Field Operations Support Division, (512) 239-0400.

TRD-201001541

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 5, 2010



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 331

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Chapter (TAC) Chapter 331, Underground Injection Control, §§331.2, 331.17, and 331.18; and new §§331.241 and §331.243.

The proposed rulemaking would implement certain requirements of Senate Bill (SB) 1387, 81st Legislature, 2009, relating to the implementation of projects involving the capture, injection, sequestration, or geologic storage of carbon dioxide. Specifically, the proposed rulemaking implements new Texas Water Code (TWC), §27.046, "Letter from Executive Director," and incorporates into Chapter 331 new definitions added to TWC, §27.002. In addition to implementing SB 1387, §331.17(d)(3) and §331.18(b)(6) are being revised to specify updated citations of technical requirements for pre-injection units consistent with the Commission's repeal of Chapter 317 and replacement with Chapter 217 effective August 30, 2008.

The commission will hold a public hearing on this proposal in Austin on May 12, 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.

Written comments may be submitted to Michael Parrish, 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 2009-044-331-PR. The comment period closes May 17, 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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Kathryn Flegal, Underground Injection Control Permits Team, phone (512) 239-6890.

TRD-201001538

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 5, 2010



#### Notice of Water Quality Applications

The following notices were issued on March 19, 2010 through March 26, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

MARTIN REALTY & LAND INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 18165 William Lane, approximately two miles southeast of the intersection of Farm-to-Market-Road 1485 and Farm-to-Market-Road 2090 in the Country West Subdivision in Montgomery County, Texas 77302.

TEMPE WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0014957001, to authorize the discharge of filter backwash water from a water treatment plant at a daily average flow not to exceed 7,500 gallons per day. This facility was previously permitted under TPDES Permit No. 14474-001 which expired February 1, 2007. The facility is located approximately 1.5 miles west of Highway 190 on Farm-to-Market Road 2457 in Polk County, Texas 77351.

LAKEVIEW METHODIST ASSEMBLY has applied for a renewal of TPDES Permit No. WQ0010578001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately one mile north of State Highway 294 and approximately three miles east of the intersection of State Highway 294 and U.S. Highway 79 in Anderson County, Texas 75801.

COMAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0014533001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via public access subsurface drip irriga-

tion system with a minimum area of 400,752 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 8555 Farm-to-Market Road 32, Fischer, approximately 1,650 feet west of the intersection of Farm-to-Market Road 32 and Farm-to-Market Road 3424 in Comal County, Texas 78623.

U S DEPARTMENT OF THE NAVY which operates Corpus Christi Naval Air Station, has applied for a renewal of TPDES Permit No. WQ0002317000, which authorizes the discharge of domestic wastewater, utility wastewater, wash water, storm water, and previously monitored effluents (process wastewater, treated groundwater, utility wastewater, and domestic wastewater) at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001. The facility is located at 8851 Ocean Drive, at the Corpus Christi Naval Air Station, on the south side of Corpus Christi Bay between Oso Bay and Laguna Madre, on the north end of the Encinal Peninsula, and east of the City of Corpus Christi, Nueces County, Texas 78419.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 432 has applied for a renewal of TPDES Permit No. WQ0014589001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 3414 1/2 Porter Road, approximately 2,200 feet north of Morton Road and approximately 300 feet east of Porter Road in Harris County, Texas 77493.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014633001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located 500 feet northeast of the intersection of North Lake Houston Parkway and Greens Bayou in Harris County, Texas 77344.

TRS ENVIROGANICS INC has applied for a minor modification to the Permit No. WQ0004460000 to authorize changes that include re-naming the maps for "Field A" to "Field C" and "Field C" to "Field A". These changes are reflected in Attachments A-1, A-3, B-1 and B-3 of the draft permit. The existing permit authorizes the land application of sewage sludge for beneficial use on 2,000 acres. The sewage sludge land application site is located approximately 4 miles east of the intersection of Farm-to-Market Road 1410 and Farm-to-Market Road 61 at the intersection of Devers Road and Farm-to-Market Road 1410, in Liberty County, Texas 77538.

CALPINE CONSTRUCTION FINANCE COMPANY L.P. AND CALPINE OPERATING SERVICES COMPANY INC which operates Magic Valley Generating Station, an electric power generation plant, has applied for the renewal and a major amendment to the TPDES Permit No. WQ0004040000 authorizing: (a) the use of "0" for compliance reporting and calculation of mass-based effluent limitations for free available chlorine concentration values below 0.1 mg/L and (b) allowing calculation of mass-based effluent limitations for free available chlorine based on continuous discharge. The existing permit authorizes the discharge of cooling tower blowdown, previously monitored effluents (low volume waste sources via Outfalls 101 and 201), and storm water at a daily average flow not to exceed 1,110,000 gallons per day via Outfall 001. The facility is located at 3333 North McColl Road at the southwest corner of the intersection of McColl Road and State Highway 1925 (Monte Cristo Road), approximately 3.0 miles northwest of the City of Edinburg, Hidalgo County, Texas 78541.

BEXAR METROPOLITAN DEVELOPMENT CORPORATION which operates Bexar Metropolitan Ultrafiltration Water Treatment Plant, a potable water treatment facility has applied for a renewal of TPDES Permit No. WQ0004437000, which authorizes the discharge

of clarifier water on an intermittent and flow variable basis via Outfall 001. The facility is located at 6725 Moreno Street, approximately 1.6 miles northwest of the intersection of Interstate Highway 35 and Loop 410, southwest of the City of San Antonio, Bexar County, Texas 78073.

HOLMES FOODS INC which operates Holmes Foods Hatchery, has applied for a renewal of TPDES Permit No. WQ0004797000, which authorizes the discharge of treated hatchery washdown at a daily average flow not to exceed 7,000 gallons per day, and a daily maximum flow not to exceed 14,000 gallons per day. The facility and irrigation site are located on the western side of Farm-to-Market Road 1116, 5.8 miles south of the intersection of State Highway 97 and Farm-to-Market Road 1116, Gonzales County, Texas. This application was submitted to the TCEQ on August 17, 2009.

CITY OF HICO has applied for a renewal of TPDES Permit No. WQ0010188001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 450 Utility Street approximately 0.25 mile south of State Highway 6 and approximately 0.75 mile east of U.S. Highway 281, southeast of the City of Hico in Hamilton County, Texas 76457.

CITY OF ALICE has applied for a renewal of TPDES Permit No. WQ0010536002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,600,000 gallons per day. The facility is located approximately 4,800 feet southeast of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 1931 on the south bank of Lattas Creek in Jim Wells County, Texas 78333.

CITY OF ALICE has applied for a renewal of TPDES Permit No. WQ0010536004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,020,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 164 acres of public access land. The facility is located at 3433 East State Highway 44, on the north side of State Highway 44, approximately 1.1 miles west of the intersection of State Highway 359 and State Highway 44 and approximately 1.4 miles south of Farm-to-Market Road 3241 in Jim Wells County, Texas 78333. The disposal sites for land application of treated domestic wastewater are approximately 1.6 miles east of the treatment plant site at the Municipal Golf Course and 1.9 miles east of the treatment plant site at Anderson Park.

SENNA HILLS MUNICIPAL UTILITY DISTRICT AND SENNA HILLS LTD has applied for a renewal of TCEQ Permit No. WQ0013238001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 157,000 gallons per day via surface irrigation of 70.3 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 10500 Farm-to-Market Road 2244, approximately 700 feet north of Farm-to-Market Road 2244 and approximately two miles east of the intersection of Farm-to-Market Road 2244 and State Highway 71 in Travis County, Texas 78733.

WOODRIDGE LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0013474001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located approximately 1600 feet southeast of the intersection of Farm-to-Market Road 134 and State Highway 43 in Harrison County, Texas 75692.

MAXEY ROAD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013503001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to

exceed 15,000 gallons per day. The facility is located on the east side of Gregdale Road approximately 300 feet south of the intersection of Gregdale Road and U.S. Highway 90 in Harris County, Texas 77049. The treated effluent is discharged to Spring Gully; thence to the Greens Bayou portion of the Houston Ship Channel Tidal in Segment No. 1006 of the San Jacinto River Basin.

MEADOWLAND UTILITY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013632001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,400 gallons per day. The facility is located approximately 7,600 feet west of the intersection of State Highway 35 and American Canal, approximately 1.9 miles north of the intersection of State Highway 6 and McCormick Street in Brazoria County, Texas 77511.

CITY OF BRAZORIA has applied for a renewal of TPDES Permit No. WQ0014581001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2.25 miles southwest of the City of Brazoria and one mile west of the intersection of Farm-to-Market Road 521 and County Road 797 in Brazoria County, Texas 77422.

THE SIGNORELLI COMPANY has applied for a renewal of TPDES Permit No. WQ0014597001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,400 feet west of the crossing of U.S. Highway 59 over White Oak Creek in Montgomery County, Texas 77365.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201001604

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 7, 2010

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**Office of the Governor**

**Request for Applications for Defense Economic Adjustment Assistance Grant Solicitation to Retrain Defense Workers**

The Texas Military Preparedness Commission (TMPC) is the recipient of \$5 million in American Recovery and Reinvestment Act (ARRA) funds appropriated by the Texas Legislature in Senate Bill 1, General Appropriations Act, Article XII, §25 for the 2010-2011 biennium, to be used as part of its Texas Defense Economic Adjustment Assistance Grant Program (DEAAG).

**Use of Grant Proceeds:**

The retraining of defense workers defined as veterans, disabled veterans, Department of Defense (DoD) uniformed and civilian personnel as well as non-(DoD) displaced civilian defense workers.

For the purchase or lease of capital equipment to be used to retrain defense workers.

**Qualifying Entities:**

A public junior college district all or part of which is located in a defense community in Texas.

A campus or extension center for education purposes of the Texas State Technical College System located in a defense community in Texas.

**Targeted Population:**

A veteran or disabled veteran.

Uniformed or civilian employee of the United States Department of Defense (DoD).

An employee of a government agency or private business, or entity providing a DoD related function, who is employed on a defense facility.

An employee of a business that provides contracted direct services or products to the DoD and whose job is directly dependent on defense expenditures.

Award amount: The minimum award is \$50,000. The maximum award is \$2 million. A maximum of \$4 million will be awarded for this posting.

Program Coverage: ARRA funds provided under the Defense Economic Adjustment Assistance Grant Program must be expended in full no later than February 28, 2011. Leased capital equipment will not be funded through ARRA after February 28, 2011.

**Documentation and Verification:**

Applicants will be required to provide adequate documentation that ARRA grant awards are used in the retraining of defense workers through the purchase or leasing of related training equipment as defined above.

Awards are subject to all relevant federal and state monthly, quarterly and annual reporting requirements concerning the use of ARRA funds.

Application Process: Applicants will need to access TMPC's application at the Office of the Governor's eGrants website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Closing Date for Receipt of Applications: All applications must be certified by the Authorized Official via eGrants website on or before 5:00 p.m., May 10, 2010.

Contact the Texas Military Preparedness Commission at [tmpe@governor.state.tx.us](mailto:tmpe@governor.state.tx.us) with any questions concerning this application. Questions must be received no later than April 20, 2010. Answers will be posted no later than May 3, 2010.

The scoring of the Competitive Grant Solicitation will consider the following factors.

**Basis of Eligibility**

**Adversely Affected Defense Community:** The defense community in which the qualifying entity is located meets the requirements of an Adversely Affected Community, as defined in Texas Government Code §486.003(b), with consideration given to the size, scope and significance of any downturn in military mission or defense related economic business, OR

**Positively Affected Defense Community:** The defense community in which the qualifying entity is located meets the requirements of a Positively Affected Community, as defined in Texas Government Code §486.003(c), with consideration given to the size, scope and significance of any increase in military mission or defense related economic business

**Area Impact -** the impact of the United States DoD base realignment on the community as measured by the applicant's employment/unemployment information, considering community population and statewide unemployment figures

**Target Population -** the applicant's projected enrollment of targeted students in classes where DEAAG funds are to be used, with consideration

given to the likelihood of achieving the projection as demonstrated by community demographics and applicant's recruitment strategy

#### Definition of Targeted Students

- i. A veteran or disabled veteran;
- ii. Uniformed member of the Armed Services;
- iii. A United States Department of Defense (DoD) civilian employee; and
- iv. An employee of a business that provides contracted direct services or products to the DoD and whose job is directly dependent on defense expenditures.

Alignment with DEAAG Program Goals - the likelihood of achieving DEAAG Program Goals with favorable consideration for projects with the greatest impact toward achieving those goals

#### DEAAG Program Goals

The purpose of the Texas program is to assist Public Junior Colleges or a campus or extension of the Texas State Technical College System in the retraining of defense workers, including veterans, disabled veterans, DoD uniformed and civilian personnel and non-DoD displaced workers through the purchase or leasing of capital equipment for instructional purposes. Funding can be used to purchase or lease capital equipment for the purpose of (re)training displaced defense workers.

Project Funding Sources - the applicant's efforts to secure additional state or federal funding sources or efforts to secure financial partners, such as a local defense contractor, favoring schools that have acquired additional financial backing or secured a local partnership to support the class/project.

Project Milestones - Dates for the purchase occurring before February 28, 2011 and the corresponding dates classes will start, with preference given to grants with earlier expenditures and those supporting classes already in progress or earlier start date.

TRD-201001580

Martin Fox

Director, Texas Military Preparedness Commission

Office of the Governor

Filed: April 6, 2010



## **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	Amendment #	Date of Action
Addison	Flower Mound Hospital Partners L.L.C. dba Texas Health Presbyterian Hospital Flower Mound	L06310	Addison	00	03/19/10
Alvin	Ascend Performance Materials L.L.C.	L06271	Alvin	00	03/25/10
Houston	Southampton Medical Imaging L.L.C.	L06319	Houston	00	03/22/10
Richardson	MHSR Medical Center dba Methodist Richardson Medical Center	L06283	Richardson	00	03/17/10
Throughout TX	Ranger Excavating L.P.	L06314	Austin	00	03/22/10
Throughout TX	Precision Pressure Data Inc.	L06324	Midland	00	03/17/10
Throughout TX	O'Connor & Kezar, L.L.C.	L06318	San Antonio	00	03/15/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	The University of Texas at Austin	L00485	Austin	81	02/05/10
Austin	Austin Texas Radiation Oncology Group P.A. dba Austin Cancer Centers	L01761	Austin	60	03/22/10
Bastrop	Bastrop Blackhawk L.L.C. dba Lakeside Hospital at Bastrop	L06311	Bastrop	01	03/26/10
Beaumont	Christus Health Southeast Texas dba Christus Hospital St. Elizabeth	L00269	Beaumont	110	03/03/10
Brownsville	Columbia Valley Healthcare System L.P. dba Valley Regional Medical Center	L02274	Brownsville	41	03/19/10
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	106	03/15/10
Dallas	Valley View Surgery Center	L05686	Dallas	04	03/19/10
Dallas	Baylor College of Dentistry	L00323	Dallas	39	03/17/10
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	182	03/22/10
Dallas	Texas Health Presbyterian Hospital - Dallas	L01586	Dallas	96	03/26/10
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	183	03/26/10
Dallas	Rosa of North Dallas L.L.C.	L06186	Dallas	01	03/26/10
Deer Park	Shell Oil Products U.S. dba Deer Park Refining Limited Partnership	L04554	Deer Park	30	03/22/10
Deer Park	Total Petrochemicals USA Inc.	L00302	Deer Park	55	03/25/10
Edinburg	Doctors Hospital at Renaissance Ltd. dba Doctors Hospital at Renaissance	L05761	Edinburg	23	03/24/10
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	54	03/29/10
El Paso	Desert Imaging L.P.	L05626	El Paso	12	03/25/10
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	83	03/24/10
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	89	03/17/10
Houston	Texas Childrens Hospital	L04612	Houston	47	03/17/10
Houston	Medical Clinic of Houston L.L.P.	L01315	Houston	36	03/17/10
Houston	Kelsey Seybold Clinic P.A.	L00391	Houston	67	03/22/10



AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	90	03/22/10
Houston	CCNWHI L.P. dba Cy-Fair Cancer Center	L06050	Houston	05	03/30/10
Houston	University General Hospital L.P.	L06018	Houston	05	03/26/10
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	56	03/26/10
La Porte	Ineos USA L.L.C.	L00088	La Porte	57	03/15/10
Lubbock	Texas Tech University	L01536	Lubbock	90	03/17/10
Lubbock	Radiation Oncology of the South Plains P.A. dba Lubbock Imaging Center	L05418	Lubbock	12	03/12/10
Midland	Diabetes Center of the Southwest	L03238	Midland	16	03/23/10
New Braunfels	Cancer Care Network of South Texas P.A.	L05717	New Braunfels	16	03/18/10
Odessa	Cemex Inc. dba Cemex Construction Materials South L.L.C.	L00118	Odessa	29	03/18/10
Orange	Tin Inc. dba Temple Inland	L01029	Orange	56	03/24/10
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	12	03/23/10
San Antonio	Methodist Healthcare System of San Antonio Ltd. dba The Gamma Knife Center	L05076	San Antonio	25	03/15/10
San Antonio	Heart Hospital of San Antonio L.P. dba Texsan Heart Hospital	L05722	San Antonio	13	03/17/10
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	195	03/24/10
San Antonio	Methodist Healthcare System of San Antonio Ltd. L.L.P.	L00594	San Antonio	269	03/29/10
Sugar Land	US Imaging Inc. dba Fort Bend Imaging	L04459	Sugar Land	33	03/23/10
Temple	Texas A&M University System Health Science Center	L05494	Temple	13	03/22/10
Victoria	Texas Internal Medicine and Diagnostic Center P.A.	L06304	Victoria	01	03/24/10
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital - The Woodlands	L03772	The Woodlands	76	03/17/10
Throughout TX	Southwestern Public Service Company dba Xcel Energy	L05238	Amarillo	11	03/15/10
Throughout TX	MLA Labs Inc.	L01820	Austin	34	03/17/10
Throughout TX	Weld Spec. Inc.	L05426	Beaumont	90	03/30/10
Throughout TX	All Tech Inspection	L04974	Corpus Christi	13	03/24/10
Throughout TX	Alliance Imaging Inc.	L05336	Dallas	13	03/17/10
Throughout TX	Irisndt Inc.	L04769	Deer Park	87	03/17/10
Throughout TX	Aviles Engineering Corporation	L03016	Houston	26	03/18/10
Throughout TX	Nuclear Scanning Services Inc.	L04339	Houston	23	03/11/10
Throughout TX	Professional Service Industries Inc.	L00203	Houston	128	03/24/10
Throughout TX	Applied Technical Services Inc.	L06282	Kemah	01	03/29/10
Throughout TX	RNLS L.L.C. dba Renegade Services	L06307	Levelland	02	03/23/10
Throughout TX	Hi-Tech Testing Service Inc.	L05021	Longview	86	03/17/10
Throughout TX	Big State X-Ray	L02693	Odessa	79	03/23/10
Throughout TX	Link Field Services Inc.	L05383	Olden	24	03/25/10
Throughout TX	T. C. Inspection Inc.	L05833	Oyster Creek	43	03/29/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Techcorr USA L.L.C. dba Aut Specialists L.L.C.	L05972	Palestine	73	03/22/10
Throughout Tx	Techcorr USA L.L.C. dba Aut Specialists L.L.C.	L05972	Palestine	74	03/25/10
Throughout TX	City of Pampa	L06041	Pampa	02	03/17/10
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	182	03/22/10
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	183	03/24/10
Throughout TX	Petrochem Inspection Services Inc.	L04460	Pasadena	103	03/24/10
Throughout TX	Midwest Inspection Services	L03120	Perryton	119	03/17/10
Throughout TX	All American Inspection Inc.	L01336	San Antonio	69	03/11/10
Throughout TX	Schlumberger Technology Corporation	L01833	Sugarland	159	03/18/10
Throughout TX	Thermo Process Instruments L.P.	L03524	Sugarland	81	03/23/10
Throughout TX	Ludlum Measurements Inc.	L01963	Sweetwater	87	03/12/10
Throughout TX	B.J. Services Company U.S.A.	L02684	Tomball	64	03/25/10
Throughout TX	B.J. Services Company U.S.A.	L02684	Tomball	65	03/30/10
Tomball	Northwest Houston Heart Center	L05958	Tomball	06	03/15/10
Vernon	American Electric Power - Public Service Company of Oklahoma	L03481	Vernon	20	03/23/10
Waco	Baylor University	L00343	Waco	29	03/17/10
Weslaco	Knapp Medical Center	L03290	Weslaco	46	03/24/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Denton	Denton Heart Group P.A.	L05381	Denton	05	03/26/10
Throughout TX	Troxler Electronic Laboratories	L01296	Arlington	44	03/17/10
Throughout TX	USA Environment L.P.	L05616	Houston	04	03/18/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Richardson	Richardson Hospital Authority dba Richardson Regional Medical Center	L02336	Richardson	49	03/17/10
San Antonio	Medlab dba Clinical Laboratory	L04824	San Antonio	13	03/23/10
Seguin	American Biological Technologies Inc.	L04265	Seguin	10	03/24/10
Throughout TX	Shared Pet Imaging Inc.	L06124	San Antonio	03	03/07/10

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-201001525  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 5, 2010

◆ ◆ ◆  
**Texas Health and Human Services Commission**

**Public Notice**

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2010.

The amendments will modify the reimbursement methodology in the Texas Medicaid State Plan as a result of the General Appropriations Act (Article II, Senate Bill 1, Special Provisions Relating to Health and Human Services Agency, Section 69, 81st Texas Legislature, Regular Session, 2009) for the following services:

**Reimbursement Methodology for the Pharmacy Dispensing Fee**

The proposed amendment is estimated to result in additional spending for the remainder of federal fiscal year (FFY) 2010 of \$147,700, with approximately \$104,380 in federal funds and \$43,320, is state general revenue (GR) expenditures. For FFY 2011, the estimated additional aggregate expenditure is \$1,776,235, with approximately \$1,116,897 in federal funds and \$659,338 in GR. For FFY 2012, the estimated additional aggregate expenditure is \$1,822,417, with approximately \$1,103,656 in federal funds and \$718,761 in GR.

To obtain copies of the proposed amendment, interested parties may contact Dan Huggins, Director, Rate Analysis for Acute Care Services, Rate Analysis Department, by mail at the Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201001514  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 1, 2010

◆ ◆ ◆  
**Public Notice**

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective June 1, 2010.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

**Physicians and Certain Other Practitioners**

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$52,669 for the remainder of federal fiscal year (FFY) 2010, with approximately \$37,221 in federal funds and \$15,448 in State General Revenue (GR). For FFY 2011, the estimated additional aggregate expenditure is \$161,892, with approximately \$101,798 in federal funds and \$60,094 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201001526  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 5, 2010

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**Public Notice**

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2010.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

**Physicians and Certain Other Practitioners**

**Environmental Lead Investigations**

**Durable Medical Equipment**

**Vision Services**

**Hearing Services**

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$1,963,555 for the remainder of federal fiscal year (FFY) 2010, with approximately \$1,371,543 in federal funds and \$592,012 in State General Revenue (GR). For FFY 2011, the estimated additional aggregate expenditure is \$7,482,241, with approximately \$4,577,635 in federal funds and \$2,904,606 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201001527  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 5, 2010

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of ALTA HEALTH & LIFE INSURANCE COMPANY to CIGNA HEALTH & LIFE INSURANCE COMPANY, a foreign life company. The home office is in Indianapolis, Indiana.

Application for incorporation in the State of Texas by FOREMOST SIGNATURE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Caledonia, Michigan.

Application for incorporation in the State of Texas by FOREMOST PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Caledonia, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201001605

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 7, 2010



## Texas Lottery Commission

### Notice of Participation in the Texas Lottery Powerball On-Line Game Power Play 10X Promotion

The Texas Lottery Commission announces participation in the following limited extension of the Powerball game to be conducted in accordance with the MUSL Powerball game group rules.

The Powerball Power Play is a limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game. Power Play will offer to the owners of a qualifying play a chance to multiply the amount of any of the eight lump sum Set Prizes (the lump sum prizes normally paying \$3 to \$200,000) won in a drawing held during Power Play. A qualifying play is any single Powerball play for which the player pays an extra dollar for the Power Play option play and which is recorded at the Party Lottery's central computer as a qualifying play. The Grand Prize jackpot is not a Set Prize and will not be multiplied. Match 5 Bonus Prizes are awarded independent of the Power Play option and are not multiplied by the Power Play Multiplier.

Prizes to be Multiplied. A qualifying play which wins one of seven lowest lump sum Set Prizes (excluding the Match 5+0 prize) will be multiplied by the number selected, either two, three, four, or five (2, 3, 4, or 5), in a separate random Power Play drawing announced during the official Powerball drawing show. The announced Match 5+0 prize, for players selecting the Power Play option, shall be multiplied by five (5) unless a higher limited promotional multiplier is announced by the Powerball Group.

Power Play Draws. MUSL will conduct a separate random "Power Play" drawing and announce results during each of the regular Powerball drawings held during the Power Play offering. During each Powerball drawing a single number (2, 3, 4, or 5) shall be drawn. The Powerball Group may change one or more of these multiplier numbers for special promotions from time to time. **Official MUSL Powerball Power Play promotion description is set out below and takes precedence over anything stated to the contrary in this announcement.**

### POWERBALL POWER PLAY 10X

#### PROMOTION DESCRIPTION

Released February 22, 2010

Promotion in Play: May, 2010

Pursuant to Powerball Power Play Rule D, the Powerball Group has formally adopted a special Power Play promotion named "Power Play 10x" to first take place for the month of May 2010.

The Powerball Power Play option allows a player to increase the lower tier (non-jackpot) prize levels. The option costs an extra \$1 per play. When a player purchases this option, they can multiply any prize won (except the jackpot) by the Power Play multiplier number that is randomly drawn just before the Powerball drawing.

For a normal Power Play drawing, there is an equal chance of drawing a 2X, 3X, 4X, or 5X. There are actually four chances for each number - creating 16 possible outcomes (four being a 2X; four being a 3x, etc.).

The first eligible draw for the Power Play 10X Promotion will be Saturday, May 1, 2010. The last eligible draw will be Saturday, May 29, 2010 - as long as at least one 10X is drawn during the month of May. **If a 10X is NOT drawn during the month of May, then the 10X promotion will continue until a 10X is drawn.** A 10X could be drawn nine times during the month of May, but the promotion guarantees that it will be drawn at least once before the promotion is ended.

Future plays that are valid for drawing dates during the promotional period are eligible for the 10X promotion.

During the month of May 2010, one of the 5X slots will be removed and replaced with a 10X slot. Thus, there is a 1:16 chance that a 10X will be drawn during any draw. The chance of drawing a 5X during the promotion changes from 1:4 to 1:5.3333. The odds for the numbers of the Power Play Wheel during the 10x promotion will be:

**Power Play "10X" Odds**  
Multi-State Lottery Association

<b>Multiplier</b>	<b>Prize Slots</b>	<b>Odds</b>
10x	1	1:16
5x	3	1:5.33
4x	4	1:4
3x	4	1:4
2x	4	1:4
<b>Total:</b>	<b>16</b>	

**FIRST IMPORTANT NOTE**

The normal Powerball Power Play option sets the multiplier at 5X for the Match 5+0 prize category - even if a lower multiplier is drawn. One possible player view could be that the Match 5+0 prize of \$1 million is multiplied by ten. This is NOT correct. The \$200,000 prize will always pay \$1million in cash to winners who have purchased the Power Play option. During the 10X promotion, if the 10X is drawn, a Match 5+0 winner will be paid \$2 million (assuming no pari-mutuel event). The minimum 5X multiplier for the Match 5+0 prize category continues to be in play during the 10X promotion but, during the 10X promotion, the Match 5+0 prize (normally \$200,000) can be multiplied by either 5X or 10X.

**SECOND IMPORTANT NOTICE**

The normal Powerball Power Play option sets the multiplier at 5X for the Match 5+0 prize category - even if a lower multiplier is drawn. One possible player view could be that the Match 5+0 prize is always set to the highest possible Power Play number offered, even if it is not drawn. This is NOT correct. Even during the 10X promotion, the Match 5+0 prize will be \$200,000 times 5X (\$1 million) - unless a 10X is drawn; then the Match 5 prize will be \$200,000 times 10X (\$2 million) - assuming no pari-mutuel event.

TRD-201001584  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 6, 2010



**North Central Texas Council of Governments**

**Consultant Contract Award**

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of consultant contract award. The consultant qualification request appeared in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8419). The selected consultants will perform technical and professional work to serve as Qualified Environmental Professionals (QEP) for the NCTCOG Brownfields Revolving Loan Fund (RLF) Program. As selected projects are ready to begin, the Consultant Selection Committee will review and evaluate proposals submitted by the following short listed firms to serve as the QEP for specific Brownfield projects.

The consultants approved to serve as the QEP for specific Brownfield projects are Dunaway Associates, 550 Bailey Avenue, Suite 400, Fort Worth, Texas 76107; Ecology & Environment, Inc., 1412 Main Street, Suite 1500, Dallas, Texas 75202; Rone Engineering, 8908 Ambassador Row, Dallas, Texas 75247; Terracon, 8901 John W. Carpenter Freeway, Suite 100, Dallas, Texas 75247; and W&M Environmental Associates, 906 E. 18th Street, Plano, Texas 75074. The maximum amount for this initiative is \$162,000.

TRD-201001523  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 5, 2010



**Vendor Contract Award**

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of vendor contract award. The vendor proposal request appeared in the January 1, 2010, issue of the *Texas Register* (35 TexReg 137). The selected vendor will perform technical and professional work to design, manufacture, and deliver quality transit vehicles to support transportation services related to the American Recovery and Reinvestment Act of 2009, Transit Capital Assistance federal grant program.

The vendor selected for this project is Lasseter Bus and Mobility, 820 Office Park Circle, Lewisville, Texas 75057. The amount of the contract is not to exceed \$1,950,000.

TRD-201001512  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 1, 2010



**Public Utility Commission of Texas**

**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On April 5, 2010, American Dial Tone, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SP-

COA Certificate Number 60473. Applicant intends to reflect a change in ownership/control; and include provision of facilities-based/UNE telecommunications services.

The Application: Application of American Dial Tone, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 38127.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 30, 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 38127.

TRD-201001601  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2010



### Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 31, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one (1) thousand-block of numbers on behalf of its customer, Galveston Independent School District, in the 409 NPA, in the Galveston rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 38116.

The Application: AT&T Texas submitted an application to the PA for the requested block in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than April 23, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38116.

TRD-201001571  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 5, 2010



### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 29, 2010, for an amendment to certificated service area boundaries within Atascosa County, Texas.

Docket Style and Number: Joint Application of Karnes Electric Cooperative, Inc. and AEP Texas Central Company to amend a Certificate of

Convenience and Necessity for Service Area Boundaries within Atascosa County. Docket Number 38106.

The Application: The proposed boundary change is for release of territory from Karnes Electric Cooperative, Inc. to AEP Texas Central Company so that AEP Texas Central Company can provide service in the most economical manner upon request of two landowners. AEP Texas Central Company's facilities are positioned to provide a shorter and more desirable route.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 23, 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 38106.

TRD-201001570  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 5, 2010



## Texas Department of Transportation

Amended Notice of Intent - State Highway Loop 1604 (Loop 1604) Transportation Improvements, Bexar County, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA) and the Alamo Regional Mobility Authority (RMA), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project.

The department issued a Notice of Intent on July 31, 2009 advising the public that FHWA, the department, and Alamo RMA would be preparing an EIS for transportation improvements to Loop 1604 from FM 1957 to I-35, a distance of approximately 32.35 miles. Based on public input and studies conducted to date, FHWA, the department, and Alamo RMA now propose to include an additional segment from FM 1957 to US 90 in the EIS so that the total limits of the proposed improvements would be from US 90 to I-35, a distance of approximately 37 miles. (A description of the original 32.35 mile portion of the project is in the Notice of Intent issued on July 31, 2009.) The additional segment between FM 1957 and US 90 is described in the San Antonio-Bexar County Metropolitan Planning Organization's Mobility 2035 Plan (adopted December 7, 2009) as added capacity improvements consisting of expanding the existing facility to a four lane expressway with four toll main lanes and four non-toll outer lanes. The need for improvements within the additional segment relate to compromised safety, decreased mobility, and operational deficiencies attributed to substantial growth in traffic. The purpose of adding the proposed segment is to address these needs. The project would upgrade the roadway to current design standards, improve safety, enhance mobility, and improve operational efficiency.

The EIS (for the full 37 mile project) will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment, and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English profi-

ciency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources.

The department will consider several alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may range from a two-lane road to a six-lane road, may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes.

The project may require the following approvals by the federal government: Section 401/404 (Clean Water Act), and Section 7 (Endangered Species Act). The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

The Alamo RMA will complete the procedures for public participation, and the department will complete coordination with other agencies, as described in one or both the National Environmental Policy Act and state law. In addition to any scoping meetings, the Alamo RMA will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. The Alamo RMA will also send correspondence to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The Alamo RMA invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the Alamo RMA at the address set forth below.

Following the department's issuance of the Notice of Intent on July 31, 2009, FHWA, the department, and the Alamo RMA have approved the draft project coordination plan, the draft need and purpose statement, have convened two meetings with a community advisory group, have held a meeting with participating and cooperating agencies, and have held a series of public scoping meetings.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. A second series of public scoping meetings, conducted in an open house format, is planned for April 2010. The Alamo RMA will publish a notice indicating when and where scoping meetings will be held. The notice will be published in newspapers of general circulation in the project area at least 30 days prior to the meetings, and again approximately 10 days prior to the meetings.

The draft project coordination plan will be updated in accordance with federal law (23 U.S.C. Section 139) to reflect the change in project limits. The plan will continue to promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule, level of detail for alternatives analysis, methodologies to be used in the environmental analysis, and the proposed process for coordination and communication. The plan will be available for public review, input, and comment at public meetings, scoping meetings, and public hearings. It will also be available for public review, input, and comment upon request at the Alamo RMA's office.

The department currently anticipates that the draft EIS will be completed in December 2010, and the EIS approved in January 2012.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Terry M. Brechtel, Alamo RMA Executive Director, 1222 North Main Avenue, 10th Floor, San Antonio, Texas 78212, (210) 495-5256 or Dianna F. Noble, P.E., Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-2734.

TRD-201001569

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 5, 2010



### Aviation Division - Request for Proposal for Aviation Engineering Services

Hemphill County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Hemphill County Airport during the course of the next five years through multiple grants.

Current Project: Hemphill County. TxDOT CSJ No.: 1004CANAD. Engineering/Design services to: Install game proof fencing (14,500 LF and replace 5 gates) and clearing/grubbing.

The DBE goal for the current project is 5%. TxDOT Project Manager is Russell Deason.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate apron and hangar
2. Conduct drainage study
3. Install PAPI-2 RW 18-36
4. Construct and mark TW A to RW 4
5. Site preparation/drainage for TW to RW 4
6. Construct turnarounds RW 18-36

Hemphill County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Hemphill County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper,

except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 11, 2010 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Geter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.tx-dot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Geter. For technical questions, please contact Russell Deason, Project Manager.

TRD-201001581

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 6, 2010



**Request for Information: Customer Service Center and Toll Plaza Operations**

The Texas Department of Transportation (the department) is seeking information that may assist in the development, deployment, and operation of the customer service center (CSC), in-lane toll collection and facilities maintenance services supporting the department's toll roads. The department is also soliciting information to determine the availability of capable prime vendors that can accomplish this task.

To further this effort, the department has produced this Request for Information (RFI), which is issued solely to obtain information to assist the department in its planning process and to identify vendors that may be interested in participating in any future procurement. This RFI does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit the department to contract for any supply or service whatsoever, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. The department will not

pay for any information or administrative cost incurred in response to this RFI.

**1. Overview**

There are currently four (4) toll roads in the state of Texas operated by the department. The background on these roads can be found at <http://www.texastollways.com/>. The department also anticipates that additional miles of toll roads may come on line over the next 5 years. The department is dedicated to providing a safe and efficient system of tolled highways while ensuring the highest possible level of customer service and efficiency to its customers.

**2. Information requested**

Purpose - The purpose of this RFI is to gauge industry interest in entering into a contract with the department for the purpose of providing systems and services to support customer service center and toll plaza operations.

Objectives - The project will include the development and implementation of a customer service center, staffed by vendor's employees who will be supported by vendor's information system(s). The vendor shall also staff, train and manage the facilities maintenance, courtesy patrol and plaza operations effort.

The objectives of this RFI include:

Identification of potential cost-effective toll services solutions that may be available to the department.

Identification of flexible, cost-effective pricing models for the proposed services, including system and equipment maintenance for five years after system acceptance.

Identification of prospective service levels and corresponding incentives and damages:

a. Performance levels - determine areas in which the department can reduce costs, and by how much, while maintaining quality customer service

b. Incentives - determine how the vendor can be incentivized to reduce the department's cost of operation

c. Liquidated and stipulated damages - determine the appropriate level of damages for failure to achieve specified performance levels

d. Pricing models should consider alternative pricing by transaction, account, or other measurable quantity providing a positive incentive to the vendor while increasing revenue and reducing costs to the department

Identification of the potential timeline for implementing vendor's solution

Identification of business rules or requirements that may be driving vendor costs, and subsequently increasing the cost to the department, but do not add value to the system

Identification of business rules or requirements not found in the draft specifications that may add value to the system

**3. Functional requirements**

This RFI is issued for the purpose of obtaining information that will be reviewed and evaluated by a team composed of staff from different functional areas within the department. It is the department's intent to analyze the responses to determine appropriate and suitable service solutions to meet the department's requirements and to potentially develop specifications for a future RFP.

The various services that the department may elect to have vendor provide under any resulting agreement are described herein.



#### 4. Work Task Requirements

At a high level, this project shall consist of the following service components:

##### **Customer Service Center (CSC) Operations -**

CSC operation and administration

Customer account management

Processing bills and violations

Payment processing

Transponder fulfillment

Violation collection services

Postage, print and mail of all correspondence

Implement and maintain web site and interactive voice response supporting the CSC system

##### **Plaza Operations -**

Plan for, provide, and manage project and operational staffing for all lane operations

Staff and attend manual toll collection booths

Operate automatic coin machine lanes

Support and monitor the operation of electronic toll collection lanes

Secure, deposit, track, and manage revenues

Develop, deploy, and manage courtesy patrol services

##### **Facilities Maintenance -**

Procure, install, and maintain facility furnishings and specialized equipment

Clean and maintain building exteriors and parking lots

Establish and manage janitorial, pest control and landscape services

Develop and coordinate interaction with mechanical / electrical equipment maintenance services

Administer security and access control

Supply and maintain vehicles and insurance

**All that is necessary** - Provide any and all necessary services, equipment, and software that are required to render complete and full operations as described herein. Vendor will install and debug the system(s) until all functional requirements, business rules and system requirements are achieved.

#### 5. Response Format

Please number the answers to match the question numbers below. Responses to each numbered item are limited to 3 pages in length. In addition, please provide a brief (no more than 3 page) summary of your organization and your previous experience with toll road customer service center operations, toll systems, manual toll collection and other relevant qualifications.

Respondents are invited to provide a written summary, and any additional literature, of how best to address the functionality as described in this RFI. The response should be organized with separate sections as follows:

##### 1.1 Title Page

The title page should include:

(1) The following title & subtitle:

#### STATEWIDE TOLL SERVICES

##### **Response to the Request for Information from the State of Texas**

(2) Company name, address, and point-of-contact name.

##### 1.2 Company Overview

**(1) Company Profile** - A statement describing your company, products, services, approaches, etc. including any relevant materials, documents, white papers, websites, etc.

**(2) Point-of-Contact** - Identification of a single point of contact to respond to any questions regarding the response, including name, Email address, phone number and address.

##### 1.3 Solution Description

**(1) Solution Overview** - An overview of the proposed solution you would anticipate providing to the department should the department move forward with a procurement, including a description of the business model(s) that would achieve the proposed objectives of this RFI.

**(2) Solution Details** - A more detailed description of how the proposed services solution addresses the specifications as defined in this RFI.

##### 1.4 Solution Approach

**(1) Project Management** - A statement describing your approach to managing and staffing the project, detailing the years of toll experience suggested for each position and including your approach to discovery and documentation of the existing environment and validation of the business and technical requirements including information on tools that might be used.

**(2) Estimated Timeline** - Estimate of implementation timeframe for the development and implementation of the services solution.

**(3) Service Levels** - Recommended and/or proposed service levels typically associated with this solution and any specific examples of metrics that are commonly tracked to indicate the status and/or performance levels obtained.

**(4) Incentives and damages** - A statement of the method the department may use to motivate vendor to reach the levels of service and consistently reduce the cost of operations, including prospective gain sharing arrangements.

##### 1.5 Solution Infrastructure

**(1) Technical Architecture** - A description of the technical architecture used in the proposed solution and how this promotes adaptability when incorporating a change in business rules and scaling for additional transactions and accounts.

**(2) Hosting** - A statement of the hosting options that might be available for this solution.

**(3) Support** - A statement of the support options that might be available for this solution along with your approach to providing information about general system health, reliability and other system performance metrics.

##### 1.6 Information Solutions

**(1) Actionable information** - A description of methods used to provide actionable information to decision makers in a dynamic operating environment. Explain how this applies to the general ledger, to operations and to executive reporting.

**(2) Self-service information** - A description of methods used to provide business reporting such as inventory, warranty tracking, customer satisfaction, call center, correspondence, etc. without the need for technical assistance.

## 1.7 Operational Approach

(1) **Staffing** - A description of methods used to minimize staff and related costs in the CSC, lanes, courtesy patrol and in maintaining facilities.

(2) **Best Practices** - A description of methods used to operate at expected service levels in a cost effective manner in the CSC, lanes, courtesy patrol and in maintaining facilities. Include staffing, audit, reconciliation and quality assurance approaches to scope of work.

(3) **Outsourcing** - A description of the advantages and disadvantages of including postage and printing and violation collections in the service scope of work, commenting on how vendor maintains excellent customer service while collecting debt.

(4) **Marketing** - A description of the advantages of incorporating a comprehensive marketing plan that incorporates marketing and the web.

## 1.8 Attachments

Any relevant materials, documents, white papers, websites, etc., that help describe the products, approaches, etc. involved in the proposed solution(s).

## 6. Confidentiality/Public Information Act

All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to the department in response to this RFI are, upon their receipt by the department, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Respondents should familiarize themselves with the provisions of the Act. In no event shall the State of Texas, the department, or any of their agents, representatives, consultants, directors, officers or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFI.

If the department receives a request for public disclosure of all or any portion of a response, the department will use reasonable efforts to notify the applicable respondent of the request and give such respondent an opportunity to assert, in writing and at its sole expense, a claimed exception under the Act or other applicable law within the time period specified in the notice issued by the department and allowed under the Act.

If a respondent has special concerns about information which it desires to make available to the department but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such respondent should specifically and conspicuously designate that information **by placing "CONFIDENTIAL" in the center header of each such page affected**. Blanket, all inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information are discouraged and may be deemed invalid. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the department by the Act or other applicable law, and the provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

The department will submit a request for an opinion from the Office of the Attorney General prior to disclosing any documents designated as "confidential." The respondent shall then have the opportunity to assert its basis for non-disclosure to the Office of the Attorney General; however, it is the sole responsibility of the respondent to monitor such proceedings and make timely filings. The department may, but is not obligated to make filings of its own concerning possible disclosure;

however, the department is under no obligation to support the positions of respondent. Under no circumstances will the department be responsible or liable to a respondent or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of the department or its officers, employees, contractors or consultants.

The department will not advise a submitting party as to the nature or content of specific documents entitled to protection from disclosure under the Act or other Texas laws or as to the interpretation of such laws. Each respondent is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the respondent, the department will be a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the respondent shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that the department reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable.

## 7. General Information

RFI Issuance Date: April 16, 2010

RFI Response Deadline: 5:00 p.m. CST on May 7, 2010

Respondents may obtain a set of draft information system functional and technical specifications related to the project by contacting Kathy Garrett at the address and phone number listed below.

The department reserves the right to modify the schedule at any time and for any reason. At its option, the department may elect to follow-up directly with respondents with more detailed questions or to clarify submissions. The department may also elect to conduct a meeting with respondents at a later date to discuss submissions and/or any potential procurement process.

Contracting Office Address:

Texas Department of Transportation - TTA Division

125 East 11th Street

Austin, TX 78701

Point of Contact:

Ms. Kathy Garrett

Toll Systems Coordinator

Texas Turnpike Authority Division

4616 Howard Lane, Austin, Texas 78758

Ph: (512) 874.9723

E-mail: kgarret@dot.state.tx.us

Please send 5 copies of your responses to this RFI to Ms. Garrett at the referenced address.

TRD-201001602

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 7, 2010



## Request for Proposal - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in tax matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on legal matters affecting the department, and as more fully set out below. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

**Description:** The department is a state agency with primary responsibility for planning, designing, constructing, operating, and maintaining the state's transportation system. The department has the responsibility for the development of tolled and nontolled highways, rail facilities, utility facilities, waterways, and certain aviation facilities. In particular, the development of toll projects and rail facilities through public/private partnerships has become a primary focus of the department. The department must deal with taxation issues affecting these responsibilities and the innovative financing structures used in these projects. The primary tax issue relates to the tax consequences to both parties of business relationships between the department and public and private entities, including the federal income tax consequences of the business relationship and financing structure and state sales and property tax consequences, but also includes other tax and related ramifications relating to various modes of transportation, taxes and fees that affect transportation facilities and the customers of these facilities, and general tax matters related to the department's responsibilities as set out above. The department intends to engage outside counsel to represent the agency in these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel must have considerable prior experience with, as well as extensive knowledge of, these subjects.

**Responses:** Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices that might serve the

department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

**Note:** The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

**Format and Person to Contact:** Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

**Deadline for Submission of Response:** All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on May 17, 2010.

TRD-201001524  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 5, 2010



## 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 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 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 at: <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 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)