TEXAS REGISTER

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This month's front cover artwork:

Artist: *George A. Mondragon*

10th Grade

Fox Tech High School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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For more information about the student art project, please call (800) 226-7199.

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PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, 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 Made April 23, 1999

To be members of the Texas Board of Tax Professional Examiners for terms to expire March 1, 2005: Michael A. Amezquita, 2198 North Shadowbrook Circle, Harlingen, Texas 78550, who is replacing Darla Doss of Crosbyton whose term expired; Deborah M. Hunt, 10303 Mourning Dove Circle, Austin, Texas 78750, who is replacing Cora B. Viescas of El Paso whose term expired.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2005: Ann Forehand Sibley, 1701 Lakeland Park Drive, Garland, Texas 75043, who is being reappointed.

To be a member of the Texas Board of Licensure for Professional Medical Physicists for a term to expire February 1, 2005: Kumar Krishen, Ph.D., 4127 Long Grove Drive, Seabrook, Texas 77586, who is being reappointed.

To be members of the Texas Board of Orthotics and Prosthetics for terms to expire February 1, 2005: Wanda Furgason, 2400 Bonita, Brownwood, Texas 76801-7902, who is replacing Dale Sheen of Houston whose term expired; Lupe M. Young, 7710 Mary Carolyn, San Antonio, Texas 78240, who is being reappointed.

To be members of the Board of Protective and Regulatory Services for terms to expire February 1, 2005: Naomi W. Lede, Ed.D, 187 FM 1791, Huntsville, Texas 77340-2006, who is replacing Jean P. Beaumont of College Station whose term expired; Edward L. Wagner, Ph.D., 504 End-O Trail, Harker Heights, Texas 76548, who is replacing Judge William H. Sheehan of Dumas whose term expired.

To be members of the Texas Commission on Fire Protection for terms to expire February 1, 2005: Michael D. Jolly, 116 River Road, Georgetown, Texas 78628, who is replacing Gilbert D. Jalomo of Richmond whose term expired; Captain Alonzo Lopez, Jr., 725 South 18th, Kingsville, Texas 78363, who is being reappointed; Chief Ricardo Saldana, City of Mission Fire Department, 500 East Tom Landry, Mission, Texas 78572, who is being reappointed; Carl Dewayne Wren, 3507 Cattleman Drive, Manchaca, Texas 78652, who is being reappointed.

Appointments Made April 26, 1999

To be a member of the Evergreen Underground Water Conservation District, Board of Directors for a term to expire February 1, 2003: Amond Douglas Brownlow, Route 2 Box 305, Floresville, Texas 78114, who is being reappointed.

To be members of the Guadalupe-Blanco River Authority Board of Directors for terms to expire February 1, 2005: Kathleen A. Devine, 1065 Stonewall, New Braunfels whose term expired; John P. Schneider, Jr., Route 2 Box 143H, Lockhart, Texas 78644, who is replacing Marshall Ray Holybee of Corpus Christi whose term expired; Stephen F. Wilson, DVM, 7 Las Brisas, Port Lavaca, Texas 77979, who is replacing Wanda Roberts of Port Lavaca whose term expired.

George W. Bush, Governor of Texas

Filed: April 27, 1999

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

JC-0037 (RQ-870). Requested from The Honorable Ken Armbrister, Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, and The Honorable Bill Ratliff Chair, Finance Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, concerning how a school district should determine that a design/build contract will provide the school district with the best value for purposes of Education Code section 44.031(a), and related questions.

Summary. Under section 44.031 of the Education Code, a school district may establish by rule a procedure to select the one purchasing method, of the eight listed in that subsection, that will provide the best value to the school district. The district should use the procedure it adopts to determine when a design/build contract will provide it with the best value. When a district determines that a design/build contract will provide the best value to a school district, the district must award the contract in accordance with both section 44.036 of the Education Code and section 2254.004(a) of the Government Code. Attorney General Opinion DM-387 (1996) has been superseded to the extent it is inconsistent with section 44.040 of the Education Code. With respect to a contract to construct, rehabilitate, alter, or repair a facility, a school district may, but is not required to, competitively bid the contract. If it competitively bids the contract, the school district must comply with all provisions of the competitive bidding statutes in chapter 271, subchapter B of the Local Government Code except sections 271.024, 271.025, and 271.027(b). An interlocal contract executed on behalf of a school district need not be awarded on the basis of competitive procurement methods unless the school district requires it. A school district may use the cooperative purchasing method, provided in chapter 271, subchapter D of the Local Government Code, to purchase items. Contracts made through a cooperative purchasing program are deemed to comply with state laws requiring competitive bidding so that a school district need not undertake separate competitive purchasing procedures.

JC-0038 (RQ-524). Requested from The Honorable Elton Bomer, Secretary of State of Texas, P.O. Box 12697, Austin, Texas, 78711-2697, concerning authority of the Secretary of State to adopt rules restricting use of state funds for voter registration under chapter 19 of the Election Code.

Summary. The Secretary of State has authority to adopt rules prohibiting the use of state funds made available under chapter 19 of the Election Code to pay costs associated with the normal operations of the county voter registrar's office.

JC-0039 (RQ-0048). Requested from The Honorable Eddie Lucio, Jr., Chair, Special Committee on Border Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711-2068, concerning whether Texas may implement a Grant Application Revenue Vehicle program in the absence of a constitutional amendment.

Summary. The amendment of the Texas Constitution specifically to permit federal highway reimbursements to be used for paying debt service on Grant Anticipation Revenue Vehicle ("GARVEE") bonds would be more prudent than the issuance of such bonds with merely statutory authorization.

JC-0040 (RQ-888). Requested from Mr. Eric M. Bost, Commissioner, Texas Department of Human Services, P.O. Box 149030, Austin, Texas, 78714-9030, concerning use of annual leave by employees receiving workers' compensation benefits.

Summary. The Department of Human Services may not deny the use of annual leave to employees receiving workers' compensation benefits, including employees who are on leave under the federal Family Medical Leave Act. The Department may not limit annual leave for employees receiving workers' compensation benefits to an amount that, added to the workers' compensation benefits, will total 100 percent of the employee's salary. Such offsets against workers' compensation payments are not permissible unless expressly authorized by statute.

JC-0041 (RQ-1224). Requested from D. C. "Jim" Dozier, J.D., Ph.D., Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas, 78723, concerning whether section 141.065 of the Human Resources Code prohibits a peace officer from simultaneously serving as a juvenile probation officer.

Summary. Section 141.065 of the Human Resources Code prohibits a "peace officer," as defined by article 2.12 of the Code of Criminal Procedure, or other law, from simultaneously serving as a juvenile probation officer. It does not prohibit a mere licensee of the Texas Commission on Law Enforcement Officer Standards and Education from serving as a juvenile probation officer.

JC-0042 (RQ-1056). Requested from Ms. Suzanne N. Bauer, Hopkins County Auditor, P.O. Box 288, Sulphur Springs, Texas, 75483, concerning whether a prosecutor may defer prosecution of a violation of the law contingent upon the offender's donation of money to a governmental or nonprofit organization, and related questions.

Summary. A prosecutor, such as the Hopkins County Attorney, may not enter into an agreement with an offender whereby the prosecutor will "defer" prosecution in exchange for the offender's agreement to contribute money to an organization of the prosecutor's choice.

TRD-9902656

Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 5, 1999

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Request for Opinions

RQ-0055. Requested from Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas, 79901, concerning constitutionality of an "Early Exit" Plan for School District Employees, and related questions.

RQ-0056. Requested from The Honorable Barry Belford, Chair, Committee on Calendars, Texas House of Representatives, P.O. Box 2910, GW.12, Austin, Texas, 78768-2910 concerning authority of a school district to participate in a "Texas Safe Sports Week".

TRD-9902657
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 5, 1999

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 15. Alternative Fuels Research and Education Division

Subchapter B. Propane Consumer Rebate Program

16 TAC §15.130, §15.145

The Railroad Commission of Texas proposes amendments to §15.130 and §15.145, relating to the Alternative Fuels Research and Education Division's Propane Consumer Rebate Program. The commission proposes this action: (1) to increase the available options for verifying compliance with the rules of the program, and (2) to increase the number of verifications performed without increasing the overall cost of verification. This increased verification activity is justified by the doubling of funding for the consumer rebate program to more than $1 million a year under Texas Natural Resources Code §113.2435(c)(5) and §113.246(b) as amended by Senate Bill 925, 75th Legislature, effective September 1, 1997, and implements the recommendations of the commission's internal auditor.

Amended paragraph (5) in §15.130 and new subsection (b) in §15.145 add surveys and questionnaires conducted by telephone, mail or electronic media to the options available for verifying rebate applicants' and participating propane dealers' compliance with commission rules governing operation of the rebate program. In re-lettered §15.145(c), deleting "inspected and" clarifies that the commission will not pay rebates for installations that are found to be out of compliance by any means of verification, including but not limited to an on-site inspection. In re- lettered §15.145(d), deleting "inspected by the commission after payment of a rebate and" after "If an installation is" and adding "after payment of a rebate" after "found not to be in compliance" clarifies that the requirements of this section apply to installations that are found to be out of compliance by any means of verification, including but not limited to an on-site inspection.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that there will be no additional cost to state government for each of the first five years that the amended sections are in effect. The cost of commission employees' time spent in preparation, administration and enforcement of the telephone, mail and electronic verification system will be offset by reductions in the amount of time and the amount of travel funds spent by the division's six regional field staff in preparing, administering and conducting on-site inspections of installations.

Mr. Kelly has determined that there will be no fiscal implications for local governments as a result of enforcing or administering the sections as amended. Mr. Kelly has also determined that there will be fiscal implications for certain small businesses that choose to participate in the voluntary consumer rebate program. Certain participating propane dealers will be required to review additional records relating to applications they have helped process or to installations for which they have conducted the required safety inspection. The extent to which the cost of performing these services will be offset by increased propane sales and individual businesses' cost-recovery practices will vary from company to company and cannot be determined in advance.

Mr. Kelly has also determined that for each year the sections as amended are in effect, the public benefit anticipated as a result will be increased compliance with commission rules relating to the propane consumer rebate program. There will be no anticipated economic cost to persons who would be required to comply with the sections as amended, since participation in the propane consumer rebate program is voluntary.

Comments on the proposed amendments may be submitted to Dan Kelly, Director, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Natural Resources Code, §§113.2434(a) and 113.2435(b), which authorize the commission to adopt rules relating to the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial

fuels for the purpose of achieving energy conservation and efficiency and improving air quality in this state. Texas Natural Resources Code, §113.243(c)(6), authorizes the commission to use money in the Alternative Fuels Research and Education Fund to pay the direct and indirect costs of such programs.

Texas Natural Resources Code, §§113.2435, 113.243(c)(6); 113.248, 113.249, and 113.250, are affected by the proposed amendments.

Issued in Austin, Texas on April 27, 1999.

§15.130. Conditions of Receipt of Rebate.

The application forms prescribed by the commission shall include conditions that the consumer agrees:

(1) to practice environmentally sound operating principles;

(2) not to modify the equipment for a period of five years from the date of installation in any way that would materially impair the equipment's performance with respect to energy conservation, energy efficiency or air quality;

(3) not to remove the equipment from this state; [~~and~~]

(4) not to remove eligible equipment permanently from service for a period of five years from the date of installation; and

(5) either to allow commission inspection of the installation or to respond completely and accurately to a commission verification survey or questionnaire, or both, pursuant to §15.145 of this title (relating to Verification; Safety; Disallowance; Refund).

§15.145. Verification; Safety; Disallowance; Refund.

(a) Upon reasonable notice and at any reasonable time, an inspector, employee or agent of the commission may enter premises where an eligible installation has taken place, to verify compliance with the requirements of the rebate program and/or commission LP-gas safety rules. The commission may perform such inspection prior to approving payment of a rebate.

(b) Either in addition to or instead of verifying compliance by inspection of premises where an eligible installation has taken place, the commission may verify compliance by surveys or questionnaires conducted by telephone, mail or electronic media. The commission may direct the surveys or questionnaires for any particular eligible installation to the propane dealer, the consumer or both.

(c) [~~(b)~~] No rebate will be paid for any installation [~~inspected and~~] found to be out of compliance. If an installation found to be out of compliance is not brought into compliance within 30 days, the rebate will be disallowed.

(d) [~~(c)~~] If an installation is [~~inspected by the commission after payment of a rebate and~~] found not to be in compliance after payment of a rebate, the consumer shall have 30 days to bring the installation into compliance. If the installation is not brought into compliance at the end of 30 days, the consumer shall refund the full amount of the rebate to the commission.

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

Filed with the Office of the Secretary of State, on April 27, 1999.

TRD-9902489
Mary Ross McDonald
Deputy General Counsel, Office of the General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: June 13, 1999
For further information, please call: (512) 463–7008

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Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

16 TAC §§65.10, 65.20, 65.50, 65.60, 65.65, 65.100

As part of the rule review specified by the General Appropriations Act, HB1, 75th Legislature, Regular Session, 1997, the Texas Department of Licensing and Regulation proposes amendments to §§65.10, 65.20, 65.50, 65.60, 65.65 and 65.100 concerning boilers.

The proposed amendments number definitions as required by the Texas Register and revise existing language for clean-up and clarity.

The justification for these changes is that the rules were reviewed as required by Rider 167 to ensure that the language was clear and that reasons exist for the continued existence of all rules.

George Bynog, Chief Inspector, Technical Standards-Boiler, has determined that for the first five-year period these sections are in effect, there will be no fiscal implications.

Mr. Bynog has also determined that for each year of the first five years the sections are in effect, the public benefit will be rules that are more readable and easier to understand.

There is no anticipated economic effect on small businesses and persons as required to comply with the sections as proposed.

Comments on the proposal may be submitted to Theda Lambert, General Counsel/Director, Legal Services, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail: theda.lambert@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code Annotated, Chapter 755 (Vernon 1997) which gives the Department the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The code and article affected by this proposal is Texas Health and Safety Code Annotated, Chapter 755 (Vernon 1997) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991).

§65.10. Definitions.

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

(1) Alteration - A substantial change in an original design.

(2) Approved - Approved by the commissioner.

(3) ASME Code - The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda, code cases, and interpretations adopted by the council of the society.

(4) Authorized inspector - An inspector employed by an inspection agency holding a commission issued by the commissioner.

(5) Board - The board of boiler rules.

(6) Boiler - Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.

(7) Certificate inspection - A boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(8) Certificate of operation - A certificate issued by the commissioner to allow the operation of a boiler.

(9) Chief inspector - The inspector appointed in accordance with the Health and Safety Code, Section 755.023.

(10) Code - ASME Code.

(11) Commissioner - The commissioner of Licensing and Regulation.

(12) Condemned boiler - A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the commissioner.

(13) Department - Texas Department of Licensing and Regulation.

(14) Deputy inspector - An inspector appointed by the commissioner.

(15) Electric boiler - A boiler in which the source of heat is electricity.

(16) Existing installation - Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(17) External inspection - An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(18) Heating boiler - A steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.

(19) High-temperature water boiler - A water boiler designed for operation at pressures exceeding 160 psig or temperatures exceeding 250 degrees Fahrenheit.

(20) Hot water heating boiler - A boiler designed for operation at a pressure not exceeding 160 psig or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.

(21) Hot water supply boiler - A boiler designed for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet if the boilers: heat input exceeds 200,000 Btu/hour; water temperatures exceed 210 degrees Fahrenheit; or nominal water-containing capacity exceeds 120 gallons.

(22) Inspection agency - An authorized inspection agency providing inspection services.

(23) Inspector - The chief inspector, a deputy inspector, or an authorized inspector.

(24) Installer - Any person, firm, or corporation who installs boilers and appurtenances within the state.

(25) Internal inspection - A complete and thorough inspection of the interior of a boiler as construction allows.

(26) Lined potable water heater - See potable water heater.

(27) National Board - The National Board of Boiler and Pressure Vessel Inspectors.

(28) National Board Inspection Code - The manual for boiler and pressure vessel inspectors published by the National Board.

(29) New installations - A boiler constructed, installed, or placed in operation after June 3, 1937.

(30) Nonstandard boiler - A boiler that does not qualify as a standard boiler.

(31) Nuclear boiler - A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(32) Owner or operator - Any person, firm, or corporation owning or operating boilers within the State of Texas.

~~[Portable boiler - A boiler which is primarily intended for use in a temporary location.]~~

(33) Portable power boiler - A boiler primarily intended for use at a temporary location.

(34) Potable water heater - A boiler for operation at pressures not exceeding 160 psig and water temperatures not in excess of 210 degrees Fahrenheit when any of the following limitations is exceeded: heat input of 200,000 Btu/hour; nominal water-containing capacity of 120 gallons.

(35) Power boiler - A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage.

(36) Preliminary order - A written order issued by the chief inspector or any deputy inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

(37) Reinstalled boiler - A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(38) Repair - The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(39) Rules - The rules promulgated and enforced by the commissioner in accordance with the Health and Safety Code, Section 755.032.

(40) Safety appliance - Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the commissioner) provided for the purpose of diminishing the danger of accidents.

(41) Secondhand boiler - A boiler of which both the location and ownership have changed.

(42) Special inspection - An inspection by the chief inspector or deputy inspector other than those in the Health and Safety Code, Sections 755.025, 755.026, and 755.027.

(43) Standard boiler - A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the commissioner.

(44) Steam heating boiler - A boiler designed for operation at pressures not exceeding 15 psig.

(45) Unfired steam boiler - A steam generating system that includes: evaporators; heat exchangers; or vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

§65.20. Licensing/Certification/Registration Requirements.

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

(c) Registration.

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

(3) Authority to install boilers and appurtenances. Only persons, firms, or corporations registered as installers with the department are authorized to install boilers and appurtenances provided the following requirements are met.

(A) Except as provided by the Texas Boiler Law, Section 755.022, each boiler installed in this state shall be in accordance with the Texas Boiler Law and Rules.

(B) Request for registration will be submitted to the chief [~~boiler~~] inspector on forms provided by the department. The department shall process within 30 days of receipt provided the application is signed by the individual or an authorized representative of the firm/corporation.

(C) If authorization is granted to install boilers and appurtenances, a certificate of registration will be issued, and it will expire on the triennial anniversary date. The certificate shall indicate authority and scope to install boilers. The certificate shall be signed by the commissioner and chief [~~boiler~~] inspector.

(D) Renewal notification will be forwarded to the installer by the department in sufficient time to accomplish the renewal process prior to the expiration date of the certificate.

(4) (No change.)

(d) (No change.)

(e) Extension of interval between internal inspections.

(1) For the interval between internal inspection to be extended as provided for in the Health and Safety Code, Section 755.026, the following procedure must be followed:

(A) Not less than 30 days prior to the expiration date of the current certificate, the owner or operator shall submit to the commissioner, a separate request for each boiler, stating the desired length of extension, the date of the last internal inspection, and a statement certifying that records are available showing compliance with the Health and Safety Code, Section 755.026 [~~755.025~~];

(B) Upon receipt of the owner's or operator's request and statement that records have been kept as required by the Health and Safety Code, Section 755.026, the commissioner shall confirm the records and ensure the extension period is not exceeded. The commissioner shall then notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved;

(C) The inspection agency shall then review all records, make an external inspection, and submit to the commissioner, along with the external inspection report, a statement confirming compliance with the Health and Safety Code, Section 755.026 and the recommended extension period, not to exceed the approved maximum;

(D) Upon completion of subparagraphs (A)-(C) of this paragraph, a new certificate of operation may be issued for the extended period of operation, provided all fees have been paid.

(2) (No change.)

(f)-(g) (No change.)

(h) Authority to set and seal safety appliances. All safety and safety relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the following, provided the scope of the issued certificate of authorization covers the work to be performed:

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

(3) an organization holding a valid owner/operator certificate of authorization issued by the department. Such authorization may be granted or withheld by the commissioner.

(A)-(I) (No change.)

(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 1 (herein adopted by reference and which exhibit may be secured from the Texas Department of Licensing and Regulation, Technical Standards-Boiler, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711).

(i) The written quality control system shall also include provisions for making revisions, [~~posting, and dating changes in parts,~~] enabling the system to be kept current as required.

(ii) A review of the applicant's quality control system will be performed by an inspector. The review will include a demonstration of the implementation of the applicant's quality control system.

(iii) Each applicant to whom a certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable to the inspector.

(K)-(M) (No change.)

(i) (No change.)

§65.50. Reporting Requirements.

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

(d) Any person, firm, or corporation performing a boiler installation in the state will certify compliance with the Texas Boiler Law and Rules by filing a boiler installation report and manufacturer's data report on new boilers, (and when available, on second hand boilers) with the chief [~~boiler~~] inspector within 30 days of completion. The appropriate form will be provided by the chief [~~boiler~~] inspector upon request.

(e)-(h) (No change.)

§65.60. Responsibilities of the Department.

(a) (No change.)

(b) Commissions.

(1) (No change.)

(2) Authorized inspector.

(A)-(C) (No change.)

(D) In lieu of the examination provided for in §65.20(g) of this title (relating to Licensing/Certification/Registration Requirements), a commission may be issued to an inspector holding a certificate of competency as an inspector of boilers and pressure vessels for a jurisdiction that has a standard written examination substantially equal to that of the State of Texas.

(E) Written requests for new issuances, renewals, or reinstatements will specify if the scope of work to be performed will be ASME code inspections only, inservice inspections only, or both.

(F) When a request is for new issuance or reinstatement as described in §65.20(g)(2)(A)(i) and (ii) of this title (relating to Licensing/Certification/Registration Requirements), the inspector will attend a mandatory indoctrination period of one and one-half days prior to issuance of the commission.

(c)-(g) (No Change.)

§65.65. Boiler Board.

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

(c) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and travelling to and from board meetings. The least expensive method of travel should be used.

(d) (No change.)

§65.100. Technical Requirements.

(a) Ventilation.

(1) The boiler room must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

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

(b)-(g) (No change.)

(h) Nuclear boilers.

(1) Nuclear boilers shall be inspected inservice by the owner or operator in accordance with American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI.

(2) The owner or operator shall engage the services of an inspection agency, qualified in accordance with American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) N626.1, licensed by the Texas State Board of Insurance, and authorized to provide inspection services by the commissioner.

(3) The chief inspector shall assign, after receipt of the completed N-3 Owner's Data Report, a state serial number to the nuclear boiler.

(A) All N-5 data reports for piping systems and N-3 Owner's Data Reports shall be filed with the chief inspector.

(B) National Board registration described in §65.50(a) of this title (relating to Reporting Requirements) or §65.20(c)(1)(D) of this title (relating to Licensing/Certification/Registration Requirements) is not required.

(4) The certificate of operation will be issued after receipt of the preservice inspection summary report and prior to commercial service. The summary report shall include all activities required by ASME code, Section XI, except for the results of examinations or test of items obtainable only during power ascension testing. These items shall be filed as an amendment to the summary report within 60 days of the completion of the power ascension testing. The [~~These~~] items identified to be submitted in the amendment shall be agreed upon by mutual consent as provided for in paragraph (11) of this subsection prior to power ascension testing and issuance of the certificate of operation.

(5)-(11) (No change.)

(i)-(m) (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 27, 1999.

TRD-9902485
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 13, 1999
For further information, please call: (512) 463–7348

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Chapter 70. Industrialized Housing and Buildings

16 TAC §§70.50, 70.100, 70.101

The Texas Department of Licensing and Regulation proposes amendments to §§70.50, 70.100 and 70.101 concerning industrialized housing and buildings. The sections are being proposed to simplify the reporting requirements for builders and adopt the latest edition of the applicable building codes.

The amendments to §70.50 simplify the reporting requirements for builders and the amendments to §§70.100 and 70.101 adopt the latest code editions.

The justification for the changes in §70.50 is to eliminate confusion caused by present reporting requirements. The justification for the changes in §§70.100 and 70.101 is that the Texas Industrialized Building Code Council has determined that the revisions are in the public interest in accordance with Article 5221f-1, §2(c).

Jimmy Martin, Director, Enforcement Division, has determined that for the first five-year period these sections are in effect, there will be no fiscal implications for state or local government.

Mr. Martin has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be less confusion in reporting of units installed and a higher level of building safety and quality.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be minimal. The cost of compliance will also be minimal.

Comments on the proposal may be submitted to Theda Lambert, General Counsel/Director, Legal Services, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail: theda.lambert@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, article 5221f-1 (Vernon 1989) which authorizes the Commissioner

of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the article.

The articles affected by the proposed amendments are Texas Civil Statutes Annotated, article 5221f-1 (Vernon 1989) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991).

§70.50. Manufacturer's and Builder's Monthly Reports.

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components which were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. The report must state the name and address of the industrialized builder to whom the structures, modules, or modular components were sold, consigned, or shipped. If any such units were produced and stored, the report must state the storage location. The report shall also contain:

(1) the serial or identification number of the units;

(2) the decal or insignia number assigned to each identified unit;

(3) the registration number of the industrialized builder (as assigned by the department) to whom the units were sold, consigned, and shipped or the installation permit number issued by the Department;

(4) the address to which the [~~building site location to which any~~] units were shipped;

(5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, restaurant, equipment shelter, bank building, hazardous storage building, etc.;

(6) any other information the department may require; and

(7) an indication of zero units if there was not activity for the reporting month.

(b) Each industrialized builder shall submit a monthly report to the department of all industrialized housing, buildings, modules, and modular components which were installed during the month. A copy of the report shall be kept on file by the industrialized builder for a minimum of five years. The report shall contain:

(1) the specific address of each building site on which the industrialized builder has performed any on-site construction work during the month;

(2) identification of the type of foundation system, either permanent or temporary, on which the unit was installed, in accordance with the following:

(A) if the builder is responsible for the installation and site work, then the builder shall provide a notarized statement certifying that the unit was installed and inspected in compliance with the engineered plans, applicable codes, department rules, and site inspection procedures for industrialized housing and buildings; or

(B) if the builder is not responsible for the installation and site work, then identification of the installation permit number, issued by the Department, or builder registration number, assigned by the Department, of the person responsible.

[~~(A) if the unit was installed within the corporate limits of a city, the name of the city responsible for the site inspection;~~]

[~~(B) if the unit was installed outside the corporate limits of a city and if the builder is not responsible for the installation and site work, then identification of the installation permit number or builder registration number obtained from the Department by the person responsible;~~]

[~~(C) if the unit was installed outside the corporate limits of a city and if the builder is responsible for the installation and site work and the unit is installed on a permanent foundation system, identification of the Texas approved inspector that performed the site inspection; and~~]

[~~(D) if the unit was installed outside the corporate limits of a city and if the builder is responsible for the installation and the site work and the unit is installed on a temporary foundation system, then the builder shall provide a notarized statement certifying that the unit was installed on a temporary foundation system in compliance with the engineered plans and all applicable codes.~~]

(3)-(5) (No change).

(c)-(d) (No change).

§70.100. Mandatory State Codes.

All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes and their appendices:

(1) National Fire Protection Association - National Electrical Code, 1996 Edition; [~~and~~]

(2) either:

(A) the Uniform Building Code, 1997 [~~1994~~] Edition, published by the International Conference of Building Officials; [~~the Uniform Mechanical Code, 1994 Edition, published by the International Conference of Building Officials; and the International Plumbing Code, 1995 Edition, published by the International Code Council, and Building Officials and Code Administrators International, and the International Conference of Building Officials and Southern Building Code Congress International;~~] or

(B) the Standard Building Code, 1997 [~~1994~~] Edition, published by the Southern Building Code Congress International; and [~~the Standard Plumbing Code, 1994 Edition, published by the Southern Building Code Congress International; the Standard Mechanical Code, 1994 Edition, published by the Southern Building Code Congress International; and the Standard Gas Code, 1994 Edition, published by the Southern Building Code Congress International.~~]

(3) the International Fuel Gas Code, 1997 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Conference International; the International Plumbing Code, 1997 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Conference International; and the International Mechanical Code, 1998 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Conference International.

§70.101. Amendments to Mandatory State Codes.

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

(d) The 1997 [~~1994~~] Edition of the Uniform Building code shall be amended as follows.

(1) Amend Appendix Chapter 13, Section 1302.2 to read: "To comply with the purpose of this appendix, buildings shall be designed to comply with the requirements of the International Energy Conservation Code promulgated by the International Code Council, dated 1998." [as follows:]

[(A) Amend Section 1302.2 to read: "In order to comply with the purpose of this appendix, residential buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the International Conference of Building Officials, the Southern Building Code Congress International, the Building Officials and Code Administrators International, and the National Conference of States on Building Codes and Standards, dated 1993."]

[(B) Add Section 1302.3 to read: "In order to comply with the purpose of this appendix, commercial buildings and high rise residential buildings shall be designed to comply with the requirements of ASHRAE/IES 90.1/89, Energy Efficient Design of New Buildings Except New Low Rise Residential Buildings."]

(2) Accessibility requirements for the physically handicapped shall be amended as follows.

(A) Delete Chapter 11 and Appendix Chapter 11 and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21(a) and (c) of this title (relating to Registration - Subject Buildings and Facilities), dated June 1, 1994.

(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), The Texas Accessibility Standards (TAS) shall be substituted.

[(3) Amend Appendix Chapter 3, Division III, Section 332 to read: Buildings regulated by this division shall be designed and constructed to comply with the requirements of the Council of American Buildings Officials One and Two Family Dwelling code, 1995 Edition (as it applies to detached one and two family dwellings), promulgated jointly by the International Conference of Building Officials, the Building Officials and Code Administrators International and the Southern Building Code Congress International."]

[(4) Amend Section 707.3 by adding the following text to the exceptions: "3. This section shall not apply to cellulose installation regulated by the Consumer Protection Safety Commission as provided in CPSC 16 CFR, Parts 1209 and 1404."]

(e) The 1997 [1994] Edition of the Standard Building Code shall be amended as follows:

(1) Amend Appendix E as follows. [Delete Appendix E, Energy Conservation and replace with the following: All residential buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the International Conference of Building Officials, the Southern Building Code Congress International, the Building Officials and Code Administrators International, and the National Conference of States on Building Codes and Standards, dated 1993. All commercial buildings and High rise residential buildings shall be designed by comply with the requirements of ASHRAE/IES90.1/89, Energy Efficient Design of New Buildings Except New Low Rise Residential Buildings.]

(A) Amend Section E101.2 as follows: "All buildings, except those listed below, shall be designed in accordance with the International Energy Conservation Code.

(B) Delete Section E102.

(2) Accessibility requirements for the physically handicapped shall be amended as follows:

(A) Delete Chapter 11 [and Appendix I] and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21 (a) and (c) of this title (relating to Registration - Subject Buildings and Facilities), dated June 1, 1994.

(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), the Texas Accessibility Standards (TAS) shall be substituted.

(3) Revise Chapter 35, Reference Standards, Section 3502 as follows.

[(A) Revise "CABO One and Two Family Dwelling Code, 1989 (1990 amendments) to read "CABO One and Two Family Dwelling Code, 1995 edition."]

(A) [(B)] Delete "CABO/ANSI A117.1-92, Accessible and Usable Building, and Facilities.

(B) [(C)] Add Texas Accessibility Standards (TAS), dated April 1, 1994.

(4) Delete Appendix B, Recommended Schedule of Permit Fees. [Amend Section 708.8 Cellulose Fiber Thermal Insulation by deleting the existing text and replacing with the following: "The provisions of 708 shall not apply to cellulose insulation regulated by the Consumer Product Safety Commission as provided in CPSC 16 CFR, parts 1209 and 1404."]

(5) Amend Appendix C as follows: "All one and two family dwellings not more than three stories in height and their accessory structures shall be designed and constructed in accordance with the CABO One and Two Family Dwelling Code. All structures constructed in accordance with this appendix shall meet the height and area requirements for Group R3 occupancies in Table 500 of the Standard Building Code." [Amend Section 3502, Referenced Standards, by deleting the following: "ASTM C 739 91, Cellulosic Fiber (Wood Based) Loose Fill Thermal Insulation 708.8."]

(f) Amend the 1997 edition of the International Plumbing Code by deleting Appendix A, Plumbing Permit Fee Schedule.

(g) Amend the 1998 edition of the International Mechanical Code by deleting Appendix B, Recommended Permit Fee Schedule.

(h) Revise section 4702 of the 1995 edition of the One and Two Family Dwelling Code, "ASCE 7-1988, Minimum Design Loads for Buildings and Other Structures" to read: "ASCE 7-1995, Minimum Design Loads for Buildings and Other Structures."

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 27, 1999.

TRD-9902484

Rachelle A. Martin

Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463–7357

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 34. State Fire Marshal

Subchapter F. Fire Alarm Rules

28 TAC §§34.606 - 34.609, 34.613 - 34.615, 34.623

The Texas Department of Insurance proposes amendments to Subchapter F, concerning fire alarm rules, by amending §§34.606 - 34.609, 34.613 - 34.615, and 34.623. These proposed amendments are necessary, in part, to implement legislation enacted by the 75th Legislature in Senate Bill 371. Senate Bill 371, in part, transferred the operations of the state fire marshal and all of the powers, duties, rights, obligations, contracts, records, personnel, property, funds, and unspent appropriations of the Texas Commission on Fire Protection with respect to the administration of Article 5.43-2 of the Insurance Code from the Texas Commission on Fire Protection to the Texas Department of Insurance, effective September 1, 1997. The Texas Department of Insurance now regulates fire detection and alarm devices; accordingly, §§34.606, 34.607, 34.608, 34.609, 34.613, 34.614, 34.615 and 34.623, which refer to the Texas Commission on Fire Protection, are amended to reflect the transfer of authority from that agency to the Commissioner of Insurance. Section 34.606 has also been reformatted to number the definitions contained in that section and to delete definitions that are already defined by statute. Section 34.607, which adopts by reference minimum standards and recommendations of the National Fire Protection Association and Underwriters Laboratories, is amended by replacing some of the currently adopted standards and recommendations by the most recent versions of those standards and recommendations. The adoption of the most recent standards and recommendations is necessary because as the technology for fire detection and alarm devices develops, the minimum standards of design and performance also change. This results in better protection of the public from fire by the application of the most recent standards and recommendations to fire detection and alarm devices. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enable both the fire alarm industry and the public to know what standards are applicable in all jurisdictions. The changes to the standards were made to clarify existing requirements, eliminate redundant language, restructure the document for ease in use, mandate existing current installation practices, encourage competent system design, adapt existing requirements to current state-of-the-art equipment, and add installation requirements to provide a greater level of safety to the public that rely on the performance of fire alarm and detection systems. Changes were made concerning the resounding of trouble signals, separate annunciation of areas of refuge, control and listing of alarm software and firmware, providing an additional firefighter warning circuit in elevators, providing separate control units for suppression systems, restricting control of subscriber phone lines used for monitoring, providing emergency lighting for proprietary supervising stations, placement of smoke detectors in beam and solid joist construction, spacing of detectors used for smoke control, providing remote indicators for duct detectors in concealed spaces, resolving conflicts with the requirements of the Americans with Disabilities Act pertaining to the use and placement of notification devices, limiting sound levels for audible devices, requirements for reacceptance testing, guidance when performing sensitivity tests on unmarked detectors, limiting the use of certain types of wires for fire alarm systems and requiring a new circuit integrity rating to be marked on certain fire alarm wire. The department has filed a copy of these revised standards and recommendations with the Secretary of State's Texas Register Section. In addition, the proposed amendment to §34.613 provides for a new certificate of registration for single station fire alarm companies. The proposed amendments to §34.614 establish the registration and renewal fees for those companies. In addition, §34.615 is amended to limit the number of times a license applicant may schedule the required examination to three within a twelve-month period.

G. Mike Davis, state fire marshal, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state government. Mr. Davis anticipates that the administration of the fire alarm licensing program by the Texas Department of Insurance will be more efficient because fewer resources will be required to administer the tests given to licensing applicants. There will be no fiscal implications for local government as a result of enforcing or administering the new standards, and no effect on the local economy or local employment.

Mr. Davis also has determined that for each year the proposed amendments are in effect, the anticipated public benefit from enforcing and administering these sections is improved continuity of effective and efficient regulation of fire alarm and detection devices. Additionally, the public will be better protected from fire as a result of the adoption and enforcement of the most current nationally recognized standards applicable to fire alarm and detection devices. The most recent standards will improve the quality, type and quantity of equipment provided to the consumer. Limiting the number of times a license applicant may schedule a required examination within a year will provide for more efficient administration of examination of applicants. Currently, license applicants are scheduling examinations but not taking the examinations. The limitation on the number of times an examination may be scheduled should also encourage applicants to prepare better for the examination, resulting in a higher percentage of applicants passing the examination on the first or second attempt. Thus, the consumer should benefit from the earlier licensing of fire alarm business employees who possess the knowledge necessary to competently plan, sell, install, service and repair fire alarm products. More efficiency in the examination process should also provide a savings to registered fire alarm firms who pay the costs of sending their employees to take examinations. Mr. Davis does not anticipate any measurable additional costs resulting from these amendments because the fire alarm industry has been required to comply with all the standards previously adopted by the Commission on Fire Protection. It is also anticipated that any increases in costs resulting from the proposed amendments would be passed on to consumers by the fire alarm industry. The estimated cost to purchase all of the proposed updated standards is approximately $500, and since fire alarm firms and persons in the fire alarm industry will only need to purchase the applicable standards in their area of expertise, the cost may actually be less. For example, approximately 90% of fire alarm firms are not central sta-

tions and therefore would not have to purchase UL 827, which costs $103. The estimated cost to purchase all of the updated standards will not be more than $500 and will be the same cost for all persons and companies, including small and large businesses, who purchase the updated standards. The cost to a fire alarm firm or person in the fire alarm industry qualifying as a small business under the Government Code, §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same price for all purchasers of the updated standards. The proposed amendments may not be waived for a fire alarm firm or person in the fire alarm industry qualifying as a small business under the Government Code, §2006.001 because the use of these standards is prescribed by statute. The cost to small businesses working in the fire alarm industry would be the cost to purchase the newly adopted standards and, as noted for the fire alarm industry as a whole, the cost may actually be less since most fire alarm firms do not work in all areas of the industry and would not need to purchase all of the standards.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to G. Mike Davis, State Fire Marshal, Texas Department of Insurance, P.O. Box 149221, Mail Code 108-FM, Austin, Texas 78714-9221. Requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed pursuant to the Insurance Code Articles 5.43-2 and 1.03A. Section 6 of Article 5.43-2 provides that the Commissioner of Insurance may adopt rules necessary to the administration of this article. The rules may establish specialized licenses and certificates of registration for organizations or persons engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring or maintaining fire alarm or fire detection devices or systems. Section 6 also provides that the commissioner shall adopt standards applicable to any fire alarm device, equipment, or system regulated by the article. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following statutes are affected by the proposed sections: §§34.606 - 34.609, 34.613 - 34.615 and 34.623 Insurance Code, Article 5.43-2

§34.606. Definitions.

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

(1) Business - Inspecting, planning, certifying, leasing, selling, servicing, testing, installing, monitoring, or maintaining of fire alarm or fire detection devices and systems.

(2) Certificate - The certificate of registration issued by the state fire marshal.

(3) Certify - To attest to the proper planning or servicing, installing, or maintaining of fire detection and fire alarm devices and systems, including monitoring equipment, by attaching a completed installation/service record label and completing an installation certificate form or other additional form required by a governmental authority.

(4) Commissioner - The commissioner of insurance.

(5) Department - The Texas Department of Insurance.

[~~Commission - The Texas Commission on Fire Protection.~~]

(6) Direct supervision - The control of work, excluding the installation of conduit, raceways, junction boxes, back boxes, or similar electrical enclosures, as it is being performed on fire detection or fire alarm devices and systems by a licensed fire alarm technician or a licensed fire alarm planning superintendent.

(7) Firm - A person or an organization, as defined in the Insurance Code, Article 5.43-2.

[~~Full-coverage system - A combination of fire detection and fire alarm devices and equipment installed in all areas of a building according to required standards.~~]

[~~License - The document issued to a fire alarm technician or a fire alarm planning superintendent.~~]

(8) Local authority having jurisdiction - As used in the Texas Insurance Code, Article 5.43-2, §9(c), means a fire chief, fire marshal, or other designated official having statutory authority.

(9) Monitoring equipment - Equipment used to transmit and receive fire alarm, trouble, and supervisory signals from protected premises to a firm registered to monitor or one exempt from licensing by the Insurance Code, Article 5.43-2.

(10) NFPA - National Fire Protection Association, a nationally recognized standards-making organization.

(11) NICET - National Institute for Certification in Engineering Technologies.

[~~Person - A natural person.~~]

(12) Plan - To lay out, detail, draw, calculate, devise, or arrange an assembly of fire alarm or detection devices, equipment, and appurtenances, including monitoring equipment, in accordance with standards adopted in this chapter.

(13) Primary registered firm - The registered fire alarm company with the responsibility for the fire alarm system certification.

[~~Registered firm - A person, partnership, corporation, organization, or association holding a current certificate of registration.~~]

(14) Repair - To restore to proper operating condition.

(15) Test - The act of subjecting a fire detection or alarm device or system, including monitoring equipment, to any procedure required by applicable standards or manufacturers' recommendations to determine whether it is properly installed or operates correctly.

§34.607. Adopted Standards.

(a) The commissioner [~~commission~~] adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this chapter, the Texas Insurance Code, Article 5.43-2, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

(1) NFPA 11-1998 [~~11-1994~~], Standard for Low-Expansion Foam.

(2) NFPA 11A-1994, Standard for Medium- and High-Expansion Foam Systems.

(3) NFPA 12-1998 [~~12-1993~~], Standard on Carbon Dioxide Extinguishing Systems.

(4) NFPA 12A-1997 [~~12A-1992~~], Standard on Halon 1301 Fire Extinguishing Systems.

(5) NFPA 13-1996 [~~13-1994~~], Standard for the Installation of Sprinkler Systems.

(6) NFPA 13D-1996 [~~13D-1994~~], Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(7) NFPA 13R-1996 [~~13R-1994~~], Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(8) NFPA 15-1996 [~~15-1990~~], Standard for Water Spray Fixed Systems for Fire Protection.

(9) NFPA 16-1995, Standard for the Installation of Deluge Foam-Water Sprinkler and Foam Water Spray Systems.

(10) NFPA 17-1998 [~~17-1994~~], Standard for Dry Chemical Extinguishing Systems.

(11) NFPA 17A-1998 [~~17A-1994~~], Standard for Wet Chemical Extinguishing Systems.

(12) NFPA 25-1998 [~~25-1995~~], Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(13) NFPA 70-1999 [~~70-1996~~], National Electrical Code.

(14) NFPA 72-1996 [~~72-1993~~], National Fire Alarm Code.

(15) NFPA 90A-1996[~~90A-1993~~], Standard for the Installation of Air Conditioning and Ventilating Systems.

(16) NFPA 101-1997 [~~101-1994~~], and later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code), or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101.

(17) UL 827 October 1, 1996 [~~1989, as amended through October 14, 1993,~~] Standard for Central Station Alarm Services. [~~Stations for watchmen, fire alarm, and supervisory services.~~]

(b) (No change.)

§34.608. Approved Testing Laboratories.

The commissioner [~~commission~~] approves an organization as an approved testing laboratory which lists equipment and appurtenances for use in compliance with standards adopted in §34.607 of this title (relating to Adopted Standards) if the organization meets the requirements of an approved testing laboratory in accordance with Subchapter D of this chapter (relating to Testing Laboratory Rules).

§34.609. Approved Testing Organization.

The commissioner [~~commission~~] approves the National Institute for Certification in Engineering Technologies (NICET) as a testing standards organization for testing license applicants.

§34.613. Applications.

(a) Certificates of registration.

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

(5) Applicants for a certificate of registration who engage in monitoring must provide the specific business location(s) where monitoring will take place and the name and license number of the fire alarm licensee(s) at each business location. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner [~~Texas Commission on Fire Protection~~] and a statement that the monitoring service is in compliance with adopted NFPA 72.

(6) Applicants for a certificate of registration - single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

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

§34.614. Fees.

(a) Every fee required in accordance with the provisions of the Insurance Code, Article 5.43-2, and the sections of this chapter must be paid by cash, money order, or check. Money orders and checks must be made payable to the Texas Department of Insurance [~~Texas Commission on Fire Protection~~].

(b) (No change.)

(c) Fees are as follows:
Figure: 28 TAC §34.614(a)

(d) (No change.)

(e) Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees and must be determined in accordance with the following schedule.
Figure: 28 TAC §34.614(e)

§34.615. Examination.

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

(d) An applicant may only schedule each type of examination three times within a twelve-month period.

§34.623. Enforcement.

(a) The state fire marshal, or his representative, may conduct investigations of registered firms to determine compliance with the Insurance Code, Article 5.43-2 and this chapter. An investigation may be initiated on the written complaint of any party or by the Texas Department of Insurance [~~Texas Commission on Fire Protection~~] on its own motion.

(b) (No change.)

(c) The Texas Department of Insurance [~~Texas Commission on Fire Protection~~], in its discretion, may require correction of the violations found, or it may initiate agency proceedings seeking appropriate sanctions pursuant to the Insurance Code, Article 1.10, §7(a) and Article 5.43-2, §10(b).

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 May 3, 1999.

TRD-9902589
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 106. Exemptions from Permitting

Subchapter V. Thermal Control Devices

30 TAC §106.494

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §106.494, Pathological Waste Incinerators.

EXPLANATION OF THE PROPOSED RULE

Pathological waste incinerators are authorized at animal feeding operations under 30 TAC Chapter 106, Exemptions from Permitting. Section 106.494(E) authorizes the construction and use of a dual-chambered incinerator with a minimum secondary chamber temperature of 1,400 degrees Fahrenheit and a minimum 1/4-second retention time, provided the unit is located 700 feet from the nearest property line. A significant number of poultry farm owners or operators cannot place incinerators with these specifications on their property and meet the required setback in the exemption. They would either be forced to obtain a permit for the unit, use a different method of disposal, or obtain an incinerator capable of higher secondary chamber temperatures and longer residence time. The commission believes that incineration is a superior method of disposal as opposed to burial, which produces a significant risk of contamination to groundwater sources.

The 75th Texas Legislature, 1997, enacted Senate Bill 1910 (SB 1910), which requires the commission to adopt rules for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The legislation states that the rules must specify the acceptable methods of disposal to include, among other methods, incineration. The rules will also prohibit onsite burial except in the event of a major die-off that exceeds the capacity of a facility to dispose of carcasses by the normal means used by the facility. The commission anticipates that with the prohibition against routine burial, incineration of carcasses will be the most widely used method of disposal. While SB 1910 allows several methods of disposal, the commission believes that incineration is a safe and more convenient method for onsite disposal and will be preferred by most facility operators. The commission reexamined the conditions of §106.494(E) to determine if the property-line setback could be reduced to allow smaller farms to use incinerators while still meeting the property-line particulate matter concentration standards in 30 TAC Chapter 111 and the National Ambient Air Quality Standards (NAAQS) for particulate.

The commission analyzed various setback scenarios using updated air dispersion modeling techniques to assess effects based on operating hours and stack height, given the prescribed hourly rated capacity, temperature, and retention time. The commission found that most incineration units currently available have a stack exit height that will allow proper dispersion of exhaust gases at a setback reduced from the current 700-foot requirement. Consequently, the commission is proposing to retain the current setback and also add a range of reduced setback distance requirements depending on stack height and operating hours. The proposal will include a new table of allowable setback distances based on stack height.

The commission also proposes to rearrange the language of the section to clearly differentiate definitions from the operational conditions of exempted incinerators and to locate definitions at the beginning of the section in accordance with the regulation format of the commission. A definition of "stack height" would also be added. The commission would add a statement concerning the general purpose of definitions according to Texas Register formatting rules.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state government or units of local government as a result of administration or enforcement of the proposed amendments. The proposed amendments are anticipated to provide additional flexibility in the use and placement of pathological incinerators.

SB 1910 required the commission to develop rules for the safe and adequate disposal of poultry carcasses. The commission has determined that incineration of pathological waste, including poultry carcasses, is a safe, adequate, and cost-effective method of disposal. Pathological waste incinerators are authorized at animal feeding operations, such as poultry farms, and are exempted from permitting if the requirements in Chapter 106, Exemption From Permitting, are met. However, a significant number of small poultry farmers cannot place incinerators on their property and meet the existing exemption requirement of a 700-foot setback from the nearest property line. These farms would either be forced to permit the unit or use a different method of disposal. The commission staff has determined that a range of setback distances combined with certain factors of incinerator configuration and operation, including stack height and hourly charge rate, will meet the property line particulate matter concentration standards in Chapter 111, Control of Air Pollution From Visible Emissions And Particulate Matter, the NAAQS, and qualify for permit exemption. This amendment to Chapter 106 does not require incineration as the sole method of pathological waste disposal, but is offered in order to allow greater flexibility in the use and placement of pathological incinerators should the waste generator choose incineration as the method of disposal.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 106 are in effect, the public benefit anticipated from enforcement of and compliance with this rule will be greater flexibility for the regulatory process while maintaining particulate concentration standards in Chapter 111, compliance with the NAAQS, enhanced ease of compliance with pathological waste regulations, and reductions in costs of regulation. Additionally, by providing flexibility in the use of incineration, this proposal should provide convenient options to burial, thus helping to protect groundwater supplies and saving landfill space. The fiscal implications to individuals and small businesses are contained in the Small Business Analysis Section of this fiscal note.

SMALL BUSINESS ANALYSIS

The intent of the proposed amendments to Chapter 106 is to provide flexibility for the use of pathological incinerators at locations, such as small poultry farms, where a 700-foot setback from the nearest property line is not feasible. By providing a method of reducing setback distances of incinerators from property lines, while complying with particulate concentration standards and the NAAQS, the commission is expanding the ability of small businesses to use the incineration disposal option available under existing state law. Neither §106.494 nor these proposed amendments require incineration as the sole method for pathological disposal. Therefore, the purchase and operation cost of incinerators will not be addressed in this rulemaking.

This proposal adds flexibility to current disposal options so it does not impose any new costs on operators. Some operators may incur costs by using the minimum property-line setback options under these proposed amendments. For example, poultry operations with restricted space may have to extend the incinerator stacks to meet the proposed minimum setback distances. Stock incinerators typically have a stack height of 12 to 15 feet. Compliance with the minimum setback of 90 feet could require up to a six-foot extension of the stack. The commission estimates that extending the stacks could cost approximately $300 per foot. Based on information from the industry concerning geographic size of regulated operations, the commission believes the need to increase stack height will be rare. The commission believes that the range of setbacks contained in the proposed amendments will allow most small businesses to place or modify incinerators within their property and meet exemption criteria. Because the selection of incineration remains the option of the waste generator and this amendment would allow greater flexibility for compliance with existing regulations, the economic effect on small businesses is considered to be positive.

DRAFT REGULATORY IMPACT ANALYSIS

The intent of these amendments is to provide a greater range of flexibility for incineration authorized under §106.494 while still protecting human health. The previous section concerning SMALL BUSINESS ANALYSIS addresses the situation where operators may incur discretionary costs that are directly associated with exercising the flexibility that would be provided by these proposed amendments. The commission believes that the flexibility of these amendments will make these situations unlikely and isolated. This conclusion is based on information from the poultry industry concerning the size of poultry farms and the ability of operators to locate incinerators within the property and meet required setbacks. The commission believes that the overall economic effect of these amendments will be positive. Therefore, this 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. It does not meet the definition of a major environmental rule under Government Code, §2001.0225(f)(3). The public may comment on this draft regulatory impact analysis under the Code, §2001.29.

TAKINGS IMPACT ANALYSIS

The proposed amendments are intended to provide greater flexibility for the use of incinerators at animal feeding operations as authorized under §106.494. The effect of the amendments will be to ease existing restrictions in the regulation regarding setback of incinerators from property lines while maintaining the ability to meet the particulate concentrations in Chapter 111 and the NAAQS for particulate. Adoption of these amendments would not require a governmental entity to compensate a private property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution. Neither does this action restrict or limit the owner's right to the property that would otherwise exist in the absence of this proposed action. This proposal, therefore, does not meet the definition of a takings under the Code, §2007.002(5).

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed action in §106.494, the commission has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This proposed action allows the option of relocating sources of emissions. It does not allow any new emissions over those currently allowed by the exemption from permitting. The sources that are the subject of this proposal are not addressed by 40 Code of Federal Regulations (CFR), therefore, this proposal is consistent with 40 CFR.

PUBLIC HEARING

A public hearing on this proposal will be held June 8, 1999, at 2:00 p.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99001-106-AI. Comments must be received by 5:00 p.m., June 14, 1999. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, and §382.017, which authorizes the commission to adopt rules consistent with the policy and

purposes of the TCAA. The amendment is also proposed under TCAA, §382.057, which authorizes the commission to exempt certain sources from the requirement to obtain a preconstruction permit under TCAA, §382.0518, if it is found on investigation that such facilities will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan; §382.017, concerning Rules; and §382.057, concerning Exemption.

§106.494. Pathological Waste Incinerators (Previously SE 90).

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

(1) Pathological waste (as defined in 25 TAC §1.132 (relating to Definitions))–Includes, but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, including body parts, tissues, fetuses, organs, and bulk blood and body fluids, regardless of the period of gestation;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(2) Human remains (as defined in Health and Safety Code (H&SC), §711.001)–The body of decedent.

(3) Carcasses–Dead animals, in whole or part.

(4) Crematory (as defined in the H&SC, §711.001)–A structure containing a furnace used or intended to be used for the cremation of human remains.

(5) Animal feeding operations–A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.

(6) Non-commercial incinerator–An incinerator which does not accept pathological waste or carcasses generated off-site for monetary compensation.

(7) Stack height–Elevation of the stack exit above the ground.

(b) Conditions of exemption. Crematories and non-commercial incinerators used to dispose of pathological waste and carcasses which meet the following conditions of this section are exempt . [:] Incinerators used in the recovery of materials are not covered by this section.

(1) Design [~~design~~] requirements.

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

(E) In lieu of subparagraph (D) of this paragraph, incinerators at animal feeding operations that:

(i) (No change.)

(ii) are located a minimum of 700 feet from the nearest property line, shall be designed to maintain a secondary chamber temperature of 1,400 degrees Fahrenheit or more with a gas residence time of 1/4 second or more. Alternatively, incinerators may be located in accordance with Table 494, provided the total manufacturer's rated capacity (burn rate) of all units located less than 700 feet from a property line shall not exceed 200 pounds per hour (lb/hr). Setback distances shall be measured from the stack exit.
Figure: 30 TAC §106.494(b)(1)(E)(ii)

(F) (No change.)

(2) Operational [~~operational~~] conditions.

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

[~~(E) Incinerators used in the recovery of materials are not covered by this section.~~]

(E) [~~(F)~~] Incinerators installed and operated in accordance with the conditions of this section shall not be used to dispose of any medical waste, other than pathological waste and/or carcasses.

(F) [~~(G)~~] Incinerators installed and operated in accordance with the conditions of this section shall also meet the requirements of §§111.121, 111.123, 111.124, 111.125, 111.127, and 111.129 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators; Medical Waste Incinerators; Burning Hazardous Waste Fuels in Commercial Combustion Facilities; Testing Requirements; Monitoring and Recordkeeping Requirements; and Operating Requirements).

(G) [~~(H)~~] Crematories shall be used for the sole purpose of cremation of human remains and appropriate containers.

[~~(3) definitions.~~]

[~~(A) Pathological waste (as defined in 25 TAC §1.132 (relating to Definitions)) Includes, but is not limited to:~~]

[~~(i)~~ ~~human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:~~]

[~~(I)~~ ~~body parts;~~]

[~~(II)~~ ~~tissues or fetuses;~~]

[~~(III)~~ ~~organs; and~~]

[~~(IV)~~ ~~bulk blood and body fluids;~~]

[~~(ii)~~ ~~products of spontaneous or induced human abortions, including body parts, tissues, fetuses, organs, and bulk blood and body fluids, regardless of the period of gestation;~~]

[~~(iii)~~ ~~laboratory specimens of blood and tissue after completion of laboratory examination; and~~]

[~~(iv)~~ ~~anatomical remains.~~]

[~~(B) Human remains (as defined in Health and Safety Code (HSC), §711.001) The body of decedent.~~]

[~~(C) Carcasses–Dead animals, in whole or part.~~]

[~~(D) Crematory (as defined in the HSC, §711.001) A structure containing a furnace used or intended to be used for the cremation of human remains.~~]

[(E) Animal feeding operations–A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.]

[(F) Non-commercial incinerator–An incinerator which does not accept pathological waste or carcasses generated off-site for monetary compensation.]

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 30, 1999.

TRD-9902545
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 29, 1999
For further information, please call: (512) 239-1966

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TITLE 34. PUBLIC FINANCE

Part V. Texas County and District Retirement System

Chapter 103. Calculations or Types of Benefits

34 TAC §103.7

The Texas County and District Retirement System proposes an amendment to §103.7, concerning the determination of the amount of reestablished credit in the retirement system. The amendment is being proposed to exclude certain repayments from the procedure for computing the amount of reestablished credit unless a merger agreement provides otherwise. Including repayments of amounts transferred from a local pension system and the accumulated interest earned by such amounts in the computation for determining the amount of reestablished credit could produce a greater benefit than would be produced if the member's credit had never been canceled.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Mr. Horton has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the preservation of retirement benefits for rehired public employees and the protection of public funds from the cost of providing unintended windfall benefits. There will be no cost to businesses. There will be no costs to persons subject to the proposed rule.

Comments on the proposed amendment may be submitted to Terry Horton, Director, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas, 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.403 is affected by this proposed amendment.

§103.7. Determination of Reestablished Credit.

(a) Except as provided in subsection (b) of this section, for [For] purposes of determining the current service credit and multiple matching credit of the member under Texas [the] Government Code, §843.403, the amount deposited by the member (excluding the withdrawal charge and the amounts described in subsection (b) of this section) after December 31, 1998, to reestablish credit in the retirement system [pursuant to §843.003 of that code] shall be considered to be accumulated contributions made by the member to the retirement system during the calendar year of deposit. The percentage to be used for the determination of the multiple matching credit of the member with respect to such deposit is that percentage adopted by the governing board of the authorizing subdivision and in effect during the month in which the deposit is made. The multiple matching credit percentage may be increased by the governing board on the terms provided by the Government Code, Chapter 844, Subchapter H.

(b) The portion of the member's deposit that is a repayment of the amount transferred from a local pension system to the member's individual account in this retirement system pursuant to a merger under Texas Government Code, §842.006 and the accumulated interest attributable to such transferred amount shall not be considered when determining the current service credit and multiple matching credit of the member under subsection (a) of this section unless the merger agreement provides otherwise. [This section shall apply to those deposits made after December 31, 1998 to reestablish credit in the retirement system in accordance with the Government Code, §843.003(c).]

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 30, 1999.

TRD-9902559
Terry Horton
Director
Texas County and District Retirement System
Proposed date of adoption: June 24, 1999
For further information, please call: (512) 328-8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration

37 TAC §211.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes to amend Title 37, Texas Administrative Code §211.17 concerning the appeals process for license holders. The amendment is proposed to be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Dr. D.C. Jim Dozier, Executive Director of the Commission has determined that for the first five year period that the new section

is in effect, there will be no fiscal implications for the state and local government as a result of enforcing or administering this section.

Dr. Dozier has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing this section will be clearer understanding of the terms associated with the appeals process. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals required to comply with the amendment to this section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile to (512) 936-7714.

The amendment is proposed under Texas Government Code Annotated, Chapter 415, §415.010 (1), which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415,§415.010, General Powers.

§211.17. Appeal.

(a) A person dissatisfied with a final decision of the commission may appeal the decision in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001. [~~by filing a petition with a Travis County district court not later than the 30th day after the date of the final decision.~~]

(b) All or part of the proceedings of a contested case will be transcribed upon the written request of a party with cost to that party, unless the executive director provides otherwise.

(c) Any party who appeals a final decision must pay all preparation costs for the original or certified copy of the record of any proceeding to be submitted to the court.

(d) The effective date of this section is 30 days from date of final publication [~~February 1, 1989~~].

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902463

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 936–7700

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37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new to Title 37, Texas Administrative Code §211.29, concerning the execution of orders showing action taken at Commission meetings. The new section is being proposed to be in accordance with the State Office of Administrative Hearings requirements concerning orders showing action taken at Commission meetings. The new section explains the authority that the chairman or presiding officer have when signing written orders showing actions taken by the Commissioner's.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier has also determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be to notify the public of the responsibilities of the chairman or presiding officer at public meetings. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The new section is proposed under Texas Government Code Annotated, Chapter 415,§415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415,§415.010- General Powers.

§211.29. Execution of Orders Showing Action Taken at Commission Meeting.

(a) The chairman or presiding officer shall have the authority to sign written orders showing actions taken by the Commissioner's at public meetings if he or she did not vote against the action. In the event that the chairman or presiding officer votes against the action taken, then a commissioner who has voted with the majority shall sign the order on behalf of the Commission.

(b) The effective date of this section is 30 days from date of final publication.

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902467

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 936–7700

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Chapter 221. Proficiency Certificates and Other Pest-Basic Licenses

37 TAC §221.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes to amend Title 37, Texas Administrative Code §221.17, concerning peace officer proficiency certificates for license holders. The amendment is proposed to implement a new option for license holders who seek to obtain the current intermediate peace officer certification. The

license holder will now have the option of completing four out of five courses; Spanish for Law Enforcement has been added to the course requirement list.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier also has determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the rule will be more knowledgeable peace officers. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The amendments are proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.17. Peace Officer Proficiency.

(a) To qualify for a basic, intermediate, advanced or master peace officer certificate, the applicant must hold a peace officer license.

(b) The requirements for a basic peace officer certificate include:

(1) one year of experience as a peace officer; and

(2) successful completion of a course of instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting peace officers and county jailers, including:

(A) civil service;

(B) compensation, including overtime compensation, and vacation time;

(C) personnel files and other employee records;

(D) management-employee relations in law enforcement organizations;

(E) work-related injuries;

(F) complaints and investigations of employee misconduct; and

(G) disciplinary actions and the appeal of disciplinary actions.

(c) The requirements for an intermediate peace officer certificate include:

(1) a basic peace officer certificate;

(2) one of the following combinations of points and peace officer experience:

(A) 20 points and eight years experience;

(B) 40 points and six years experience;

(C) 60 points or an associate's degree and four years experience; or

(D) 120 points or a bachelor's degree and two years experience; and

(3) if the basic peace officer certificate was issued or qualified for on or after January 1, 1987, the license holder must also complete four of the five [~~the~~] current intermediate peace officer certification courses, which include:

(A) Child Abuse Prevention and Investigation;

(B) Crime Scene Investigation;

(C) Use of Force; [~~and~~]

(D) Arrest, Search and Seizure;and

(E) Spanish for Law Enforcement.

(d) The requirements for an advanced peace officer certificate include:

(1) an intermediate peace officer certificate; and

(2) one of the following combinations of points and experience:

(A) 40 points and 12 years experience;

(B) 60 points or an associate's degree and nine years experience;

(C) 120 points or a bachelor's degree and six years experience; or

(D) a post-graduate degree and four years experience.

(e) The requirements for a master peace officer certificate include:

(1) an advanced peace officer certificate; and

(2) one of the following combinations of points and experience:

(A) an associate's degree and 20 years experience, or 60 points and 20 years experience;

(B) a bachelor's degree and 15 years experience, or 120 points and 15 years experience;

(C) a master's degree and 12 years experience, or 165 points and 12 years experience; or

(D) a doctorate and 10 years experience, or 200 points and 10 years experience.

(f) The effective date of this section is 30 days from date of final publication[~~June 1, 1998~~].

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902464

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 936–7700

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37 TAC §221.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission)proposes an amendment to Title 37, Texas Administrative Code §221.19, concerning jailer proficiency certificates for license holders. The amendment is proposed to implement a new option for license holders who seek to obtain the current intermediate jailer certification. The license holder will now have the option of completing four out of five courses; Spanish for Law Enforcement has been added to the course requirement list.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier also has determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the rule will be more knowledgeable jailers. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The amendments are proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.19. Jailer Proficiency.

(a) To qualify for a basic, intermediate or advanced jailer certificate, the applicant must hold a jailer license.

(b) The requirements for a basic jailer certificate include:

(1) one year of experience as a jailer; and

(2) successful completion of a course of instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting peace officers and county jailers, including:

(A) civil service;

(B) compensation, including overtime compensation, and vacation time;

(C) personnel files and other employment records;

(D) management-employee relations in law enforcement organizations;

(E) work-related injuries;

(F) complaints and investigations of employee misconduct; and

(G) disciplinary actions and the appeal of disciplinary action.

(c) The requirements for an intermediate jailer certificate include:

(1) training related to the management and operation of a correctional facility (including county jails); and

(2) one of the following combinations of points and jailer experience:

(A) 20 points and six years experience;

(B) 40 points and four years experience;

(C) 60 points or an associate's degree and two years experience; or

(D) 120 points or a bachelor's degree and one year experience; and

(3) if the basic jailer certificate was issued or qualified for on or after March 1, 1993, the applicant must also complete four of the five[~~the~~] current intermediate jailer certification courses, which include:

(A) Suicide Detection and Prevention in Jails;

(B) Inmate Rights and Privileges;

(C) Interpersonal Communications in the Correctional Setting; [~~and~~]

(D) Use of Force in a Jail Setting and

(E) Spanish for Law Enforcement.

(d) The requirements for an advanced jailer certificate include:

(1) an intermediate jailer certificate; and

(2) one of the following combinations of points and jailer experience:

(A) 40 points and eight years experience;

(B) 60 points or an associate's degree and six years experience;

(C) 120 points or a bachelor's degree and four years experience; or

(D) a post-graduate degree and two years experience.

(e) the effective date of this section is 30 days from date of final publication [~~September 1,1998~~].

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902465

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 936–7700

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37 TAC §221.25

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §221.25, concerning emergency telecommunications operator proficiency certifi-

cates. The amendment is proposed to add the word operator to the title of this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier also has determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the rule will be more knowledgeable jailers. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The amendments are proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.25. Emergency Telecommunications Operator Proficiency.

(a) To qualify for an emergency telecommunications operator's certificate, an applicant must:

(1) submit documentation that the applicant is currently employed as an emergency telecommunications operator, and has been employed as an emergency telecommunications operator for a minimum of four years; and

(2) complete the currently required emergency telecommunications operators training courses.

(b) The effective date of this section is 30 days after date of final publication [~~November 1, 1997~~].

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902466

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1999

For further information, please call: (512) 936–7700

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37 TAC §221.26

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new to Title 37, Texas Administrative Code §221.26, concerning emergency telecommunications technician proficiency certificates. The new section is being proposed to implement a new proficiency certification for emergency telecommunication technicians.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier has also determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be more knowledgeable and proficient emergency telecommunication technicians. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The new section is proposed under Texas Government Code Annotated, Chapter 415,§415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415,§415.010-General Powers.

§221.26. Emergency Telecommunications Technician Proficiency.

(a) To qualify for an emergency telecommunications technician certificate, an applicant must:

(1) submit documentation that the applicant is currently employed as an emergency telecommunications technician, and has been employed as an emergency telecommunications technician for a minimum of four years; and

(2) complete the currently required emergency telecommunications technicians training courses.

(b) The effective date of this section is 30 days after date of final publication.

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902469

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: September 1, 1999

For further information, please call: (512) 936–7700

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37 TAC §221.37

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new to Title 37, Texas Administrative Code §221.37, concerning the Commission's requirements that must be met to be awarded the academic recognition award; considered by the Commission to be a special accomplishment.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier also has determined that for each of the first five years the new section is in effect, the public benefit anticipated

as a result of enforcing or administering the section will be more knowledgeable and proficient peace officers, reserve officers, jailers and telecommunicators. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The new section is proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed amendment: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.37. Academic Recognition Award.

(a) To qualify, an applicant for an academic recognition award must:

(1) Have held a commission license or an acknowledgement as a peace officer, reserve officer, jailer, or a telecommunicator for at least two years;

(2) have graduated from an accredited college or university with a bachelor's degree;

(3) make application with a certified transcript from an accredited college;

(4) not have been under any disciplinary sanctions from the commission in the previous two years; and

(5) pay the required fees.

(b) The award consists of a certificate and a uniform ribbon, pin, or other insignia.

(c) Commissioning agency retains discretion to allow or disallow the wearing of the uniform ribbon, pin or other insignia described in subsection (b) of this section.

(d) The effective date of this section is September 1, 1999.

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

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902468

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: September 1, 1999

For further information, please call: (512) 936–7700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter AA. Vendor Payment

40 TAC §19.2612

The Texas Department of Human Services (DHS) proposes new §19.2612, concerning quality incentive payment, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the new section is to reward Medicaid nursing facilities which provide high quality services. The rule allows DHS to establish a quality incentive payment system under which nursing facilities may receive monetary quality incentives, on a sliding scale, based on the level of quality in their facilities. Quality will be measured in two arenas: resident outcomes and regulatory compliance.

Eric M. Bost, commissioner, has determined that for the first five years the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The fiscal impact cannot be determined until the appropriations for Fiscal Year 2000 and 2001 have been determined. There will be no fiscal implications for local government as a result of enforcing or administering the new section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a higher quality of services within the Medicaid nursing facilities. There will be no adverse economic effect on large or small businesses. The quality incentive payments will be in addition to the regular Medicaid nursing facility rate. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-155, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.2612. Quality Incentive Payment.

For services delivered after September 1, 1999, the department may make Quality Incentive payments to facilities according to reimbursement rules developed by the Health and Human Services Commission. The Department of Human Services will determine the qualifying facilities.

(1) The Board of Human Services will review the adopted plan at least biennially.

(2) Incentive payments will be based on:

(A) specific resident care domains selected from the Center for Health Systems Research and Analysis (CHSRA) Quality Indicators; and

(B) regulatory compliance.

(3) The incentive payment is in addition to the daily vendor rate paid to the provider.

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 30, 1999.

TRD-9902566
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: August 15, 1999
For further information, please call: (512) 438–3765

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Part II. Texas Rehabilitation Commission

Chapter 104. Informal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services

40 TAC §104.5

The Texas Rehabilitation Commission (TRC) proposes an amendment to §104.5, concerning Informal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services.

The section is being amended to replace the word "opinion" with "decision" in subsection (k)(1) and (C).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the replacement of the word "opinion" with "decision". There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§104.5. Formal Appeal and Mediation.

(a) The formal appeal process commences with the filing of a Petition for Administrative Hearing with the Office for Administrative Hearings and Subrogation.

(b) Role of Office for Administrative Hearings and Subrogation. Upon receipt of the Petition for Administrative Hearing, the Office for Administrative Hearings and Subrogation shall:

(1) acknowledge receipt of the petition for administrative hearing (via certified mail, return receipt requested) and advise the appellant of the availability of the Client Assistance Program, including the address and telephone number;

(2) date-stamp the Petition and record a docket control number for the appeal;

(3) select the impartial hearings officer (IHO), who is appointed by the commissioner, on a random basis from a pool of qualified persons identified jointly by TRC and the Rehabilitation Council of Texas in accordance with the Rehabilitation Act and forward a copy of the Petition for Administrative Hearing to the IHO;

(4) forward a copy of the Petition for Administrative Hearing to the Office of the General Counsel, Deputy Commissioner for Rehabilitation Services and Commission Representative immediately upon receipt;

(5) provide administrative support to the IHO:

(A) serve as the custodian of records for all documents, motions, and pleadings directed to the IHO;

(B) coordinate and schedule all dates, meetings, hearings;

(C) make all necessary arrangements for the formal appeal:

(i) schedule and set up the hearing location;

(ii) if required, retain the services of a certified shorthand reporter to prepare a transcript of the proceedings;

(iii) provide any requested reasonable accommodations;

(6) compile and maintain the official record of the appeal;

(7) accompany IHO to prehearing conference, administrative hearing and provide necessary assistance during the proceedings;

(c) Mediation. Applicants and eligible individuals who have requested appeals may agree with the Commission to attempt resolution of disputes involving determinations described in §104.3(a) of this title (relating to General Provisions) through mediation. The mediation process must be voluntary on the part of the parties. It may not be used to deny or delay the right of an individual to a hearing under §104.3(h) of this title, or to deny any other right afforded by law, and it will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The Commission will bear the cost of the mediation process. Clients/Applicants are responsible for the cost of any attorney or other person representing him/her.

(1) List of mediators. The Commission will maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which mediators will be selected.

(2) Scheduling. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(3) Agreement. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement and signed by both parties or their representatives, and the mediator.

(4) Confidentiality. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(d) Impartial Hearing Officer.

(1) Qualifications. The IHO:

(A) cannot be an employee of a public agency;

(B) cannot be a member of the Rehabilitation Council of Texas (the Act, §105, as amended in 1992); and

(C) must have knowledge of the delivery of vocational rehabilitation services, the state plan under the Act, §101, the federal regulations, and commission rules governing the provision of such services and training with respect to the performance of official duties;

(D) must not have been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

(E) must have no personal or financial interest that would conflict with his/her objectivity;

(F) must have successfully completed impartial hearings training presented by the commission; and

(G) must not be a client of TRC.

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(i) conduct a full, fair, and impartial hearing;

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) permit deviations from the rules and procedures prescribed in subsections (f)-(j) of this section, except subsection (j)(4)(F), in the interest of justice or to expedite the proceedings. If prior to adjournment of a hearing either party disagrees with a ruling or otherwise so requests, the IHO shall include in the written record a justification, and an explanation of how the decision is in the interest of justice and/or reasonably necessary to expedite the proceedings. Actions taken under this subsection shall be limited to procedural matters, and no party shall lose any substantive rights.

(B) The IHO shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative(s), including the power to:

(i) administer oaths;

(ii) take testimony;

(iii) rule on questions of evidence;

(iv) rule on discovery issues;

(v) issue orders relating to hearing and prehearing matters, including orders granting permission to subpoena witnesses and imposing sanctions regarding discovery;

(vi) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(vii) admit or deny party status;

(viii) grant continuance(s);

(ix) require parties to submit legal memoranda, proposed findings of fact, and conclusions of law;

(x) make findings of fact and conclusions of law; and

(xi) issue decisions.

(C) An IHO shall disqualify him/herself if the IHO has directly or indirectly had prior involvement with any issues that are the basis for the hearing, or if the IHO has a personal relationship or familial relationship with any party or witness.

(D) Substitution of impartial hearing officers.

(i) If for any reason an IHO is unable to continue presiding over a pending hearing or issue a decision after the conclusion of the hearing, another IHO may be designated as a substitute in accordance with applicable law and these rules.

(ii) The substitute IHO may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as necessary and proper to conclude the hearing and render a decision.

(e) Ex Parte Communications. Unless required for the disposition of ex parte matters authorized by law, the IHO may not communicate, directly or indirectly, in connection with any issue of fact or law with the commissioner or any party or a party's representative, except upon notice to all parties.

(f) Prehearing Procedures.

(1) Prehearing Conference(s).

(A) When appropriate, the IHO may hold a prehearing conference to resolve matters preliminary to the hearing.

(B) A prehearing conference may be convened to address preliminary matters including the following listed in clauses (i)-(xv) of this subparagraph:

(i) issuance of subpoenas;

(ii) factual and legal issues;

(iii) stipulations;

(iv) clarification of the issues at the discretion of the IHO;

(v) requests for official notice;

(vi) identification and exchange of documentary evidence;

(vii) admissibility of evidence;

(viii) identification and qualification of witnesses;

(ix) motions;

(x) discovery disputes;

(xi) order of presentation;

(xii) scheduling;

(xiii) settlement conferences;

(xiv) mediation; and

(xx) such other matters as will promote the orderly and prompt resolution of the issues and conduct of the hearing.

(C) Among other matters, as stated in subsection (b) of this section, an IHO may order:

(i) that the parties jointly discuss the prospects of settlement or stipulations or other dispute resolution methods approved herein and be prepared to report thereon at the prehearing conference;

(ii) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(iii) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(iv) that the parties make a concise statement of undisputed facts and issues at the prehearing conference.

(D) All or part of the prehearing conference may be recorded or transcribed.

(E) The IHO may, after acquiring jurisdiction, issue an order requiring a prehearing "statement of the case." The parties shall file a statement specifying the party's present position on any or all of the following listed in clauses (i)-(v) of this subparagraph as required by the IHO. Parties shall supplement this statement on a timely basis. The statement may include:

(i) the disputed issues or matters to be resolved;

(ii) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;

(iii) a list of facts or exhibits to which a party will stipulate; and

(iv) a list of the witnesses which each party intends to call at the hearing, including a designation of each as either a fact or expert witness, and a brief statement summarizing the testimony and/or opinions (experts) of each witness.

(2) Prehearing Orders.

(A) The IHO may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(B) The prehearing order shall be a part of the hearing record.

(C) If a prehearing conference is not held, the IHO may issue a prehearing order to regulate the conduct of the proceedings of the formal hearing.

(3) Stipulations.

(A) The parties, by stipulation, may agree to any substantive or procedural matter.

(B) A stipulation shall be filed in writing or entered on the record at the prehearing (or hearing).

(C) The IHO may require additional development of stipulated matters.

(g) Pleadings.

(1) In a formal appeal all pleadings, including the Petition for Administrative Hearing, shall contain:

(A) the name of the party making the pleading;

(B) the names of all other known parties;

(C) a concise statement of the facts alleged and relied upon;

(D) a statement of the type of relief, action, or order desired;

(E) any other matter required by law;

(F) a certificate of service, as required by these rules; and

(G) the signature of the party making the pleading or the party's authorized representative.

(2) Any pleading filed pursuant to a formal appeal may be amended up to 14 days prior to the hearing. Amendments filed after that time will be accepted at the discretion of the IHO.

(3) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Commission. All pleadings relating to any matter pending before the Commission shall be filed with the IHO through the Office for Administrative Hearings and Subrogation.

(4) All pleadings shall be typed or printed on 8 1/2 by 11 inch paper with a one-inch margin. Reproductions are acceptable, provided all copies are clear and permanently legible.

(5) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(6) The party or the party's designated representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

(h) Dismissal. After giving notice and hearing, the IHO may upon the motion of any party or the IHO's own motion, dismiss the appeal upon showing of any one of the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal;

(4) moot questions;

(5) lack of jurisdiction;

(6) failure to raise a material issue in the pleading;

(7) failure of a party to appear at a scheduled hearing.

(i) Motions.

(1) Unless otherwise provided by these rules, the following shall apply.

(A) A party may move for appropriate relief before or during a hearing.

(B) A party shall submit all motions in writing or orally at a hearing.

(C) Written motions shall:

(i) be filed no later than 15 days before the date of the hearing, except where good cause is stated in the motion, the IHO may permit a written motion subsequent to that time;

(ii) state concisely the question to be determined;

(iii) be accompanied by any necessary supporting documentation; and

(iv) be served on each party.

(D) An answer to a written motion shall be filed on the earlier of:

(i) seven days after receipt of the motion; or

(ii) on the date of the hearing.

(E) On written notice to all parties or with telephone consent of all parties, the IHO may schedule a conference to consider a written motion.

(F) The IHO may reserve ruling on a motion until after the hearing.

(G) The IHO may issue a written decision or state the decision on the record.

(H) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the IHO's decision.

(I) The filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

(2) Continuance(s) may be granted by the IHO in accordance with applicable law. Motions for continuances shall be in writing or stated in the record and shall set forth the specific grounds upon which the party seeks the continuance.

(3) Unless made during a prehearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed less than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party(ies) and whether or not it is opposed by any party(ies). Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the party(ies) contacted agree on the proposed new date(s).

(j) Hearing.

(1) The IHO shall set the date and time for the hearing. The location shall be the Commission's regional or area office nearest the Appellant's residence or as agreed to by the parties.

(2) Order of procedure at the hearing.

(A) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the respondent may make a similar statement, and any other parties will be afforded similar rights as determined by the IHO. Each party is allowed 10 minutes for such statement.

(B) Evidence shall then be introduced by the appellant. The respondent and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(C) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross-examination.

(D) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(E) Evidence, if any, shall be introduced by the respondent. The appellant and any other parties shall have the opportunity to cross-examine each of the respondent's witnesses.

(F) Any other parties may make statements and introduce evidence. The appellant and respondent shall have opportunity to cross-examine the other parties' witnesses.

(G) The parties may present rebuttal evidence.

(H) The parties may be allowed closing statements at the discretion of the IHO.

(I) The IHO may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(J) Parties shall provide four copies of each exhibit offered.

(3) No evidence shall be admitted which is irrelevant, immaterial, or unduly repetitious.

(4) Documentary evidence and official notice.

(A) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(B) When numerous similar documents which are otherwise admissible are offered into evidence, the IHO may limit the documents received to those which are typical and representative. The IHO may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(C) The following laws, rules, regulations, and policies are officially noticed:

(i) the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et seq.;

(ii) Department of Education regulations, 34 Code of Federal Regulations, Part 361;

(iii) Texas Human Resources Code, Title 7, §111 et seq.;

(iv) TRC State Plan for Vocational Rehabilitation Services;

(v) TRC Rehabilitation Services Manual; and

(vi) TRC Administrative Policies and Procedures Manual.

(D) Exhibits.

(i) Exhibits shall not exceed 8 1/2 by 11 inches (unless they are folded to that size). Maps, drawings, and other exhibits which are not the required size shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(ii) Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(iii) The original of each exhibit offered shall be tendered to the court reporter for identification.

(iv) In the event an exhibit has been identified, objected to, and excluded, the IHO shall determine whether or not the party offering the exhibit withdraws the offer, and, if so, permit the return of the exhibit. If the excluded exhibit is not withdrawn it shall be given an exhibit number for identification, shall be endorsed by the IHO with a ruling, and shall be included in the record for the only purpose of preserving the exception.

(E) Offer of proof. When testimony on direct examination is excluded by ruling of the IHO, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. The IHO may ask such questions of the witness as deemed necessary to satisfy that the witness would testify as represented in the offer of proof.

(5) Failure to attend hearing and default. If, after receiving notice of a hearing, a party fails to attend a hearing, the IHO may proceed in that party's absence and, where appropriate, may issue a decision against the defaulting party.

(k) Impartial Hearing Officer Decision.

(1) Within 30 days of the hearing completion date, the IHO shall issue a decision [~~an opinion~~] based on the provisions of the approved State plan, the applicable regulations, and the Act which shall contain separately stated:

(A) findings of fact;

(B) conclusions of law; and

(C) decision [~~opinion~~].

(2) The Office for Administrative Hearings and Subrogation shall submit the IHO opinion to the Commissioner with a copy to each party.

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 May 3, 1999.

TRD-9902587
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: June 13, 1999
For further information, please call: (512) 424–4050

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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter R. Cost-Finding Methodology for 24–Hour Child-Care Facilities

40 TAC §700.1802

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.1802, concerning cost-finding analysis, in its Child Protective Services chapter. Rules for the cost-finding methodology for 24-hour child care facilities currently include therapy costs in its recommended payment rates for Levels of Care 3 through 6. The purpose of the amendment is to require contractors to access Medicaid for Medicaid-allowable therapy with certain exceptions. The current payment rate for Levels of Care 3 through 6 will not change as a result of this rule change.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. As the state is currently not accessing Medicaid funding for these services, this rule change will allow state access to these federal funds. The expected increase in state matching costs cannot be projected at this time, but it should not be material. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that children in TDPRS conservatorship who reside in TDPRS contracted 24-hour child care facilities will have access to an additional resource for therapy services. There will be no adverse effect on small businesses because the policy will result in contracted 24-hour child care facilities having access to an additional resource for providing therapy services to children in their care. The effect on small businesses is the same for businesses other than small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Clarice Cefai at (512) 438-5330 in TDPRS's Budget and Analysis Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-104, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services, specifically §40.029 granting rulemaking authority to TDPRS, §40.052 regarding delivery of services, §40.0563 relating to the use of federal funds, and §40.058 relating to contracts and agreements.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.1802. Cost-finding Analysis.

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

(c) To develop rate recommendations for Board consideration for Levels of Care 2 through 6 and emergency shelters, TDPRS analyzes the information submitted in provider cost reports and related documentation in the following ways.

(1)-(8) (No change.)

(9) TDPRS includes therapy costs in its recommended payment rates for emergency shelters. TDPRS only includes therapy costs in its recommended payment rates for Levels of Care 3 through 6 [~~and for emergency shelters~~] if the provider cannot access Medicaid.

(A) The provider must access Medicaid for therapy for children in their care unless:

(i) the child is not eligible for Medicaid; or

(ii) the necessary therapy is not a service covered by Medicaid; or

(iii) service limits have been exhausted and the provider has been denied an extension; or

(iv) there are no Medicaid providers available that meet the needs identified in the service plan within 45 miles to provide the therapy; or

(v) it is essential and in the child's best interest for a non- Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transitional period of time not to exceed six weeks or six sessions. Any exception beyond the six weeks or six sessions must be approved by TDPRS prior to the provision of services.

(B) Only if one of the conditions in subparagraph (A) of this paragraph apply are the associated costs to be covered by the level of care payment and considered allowable for inclusion on the provider's cost report.

(10)-(17) (No change.)

(d) (No change.)

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

Filed with the Office of the Secretary of State, on April 30, 1999.

TRD-9902570

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: September 1, 1999

For further information, please call: (512) 438–3765

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Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §725.2024 and §725.3044, concerning requesting an administrative review and application, in its General Licensing Services chapter. The purpose of the amendment to §725.2024 is to clarify procedures for requesting administrative reviews of actions or decisions made by Licensing staff. The purpose of the amendment to §725.3044 is to clarify which facilities are exempt from application fees and licensing fees and eliminate inconsistencies regarding timeframes for notifying applicants regarding the acceptance of their applications.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed amendment to §725.2024 will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Ms. Brown has determined that for the first five-year period the proposed amendment to §725.3044 will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the proposal will be in effect is an estimated increase in revenue of $105 in fiscal year (FY) 1999; $1,225 in FY 2000; $1,225 in FY 2001; $1,225 in FY 2002; and $1,225 in FY 2003. There will be no fiscal implications for local government as a result of enforcing or administering either amendment.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to (1) clarify which facilities are exempt from application and license fees, (2) clarify the procedures for accepting applications, and (3) eliminate inconsistencies in timeframes for requesting administrative reviews. The amendment to §725.2024 will have no adverse impact on small businesses because the proposed section clarifies information in the existing rule regarding procedures related to Licensing regulations. The amendment to §725.3044 will have an adverse economic effect on small businesses. In accordance with the Human Resources Code, Chapter 42, this amendment requires that non-profit 24-hour child care facilities that charge no fees for their services, non-profit 24-hour child care facilities that provide care for children in TDPRS's managing conservatorship, licensed foster family homes, and licensed foster group homes pay a $35 application fee. Because the fee is nominal, the effect on small businesses and large businesses is expected to be the same. There is no anticipated economic cost to persons who are required to comply with proposed §725.2024. The anticipated economic cost to persons who are required to comply with proposed §725.3044 is an additional cost of $35 per facility in fiscal year (FY) 1999; $35 per facility in FY 2000; $35 per facility in FY 2001; $35 per facility in FY 2002; and $35 per facility in FY 2003.

Questions about the content of the proposal may be directed to Char Bateman at (512) 438-2247 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-136, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter U. Day Care Licensing Procedures

40 TAC §725.2024

The amendment is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.2024. Requesting an Administrative Review.

If an applicant or a holder of a license/certificate/registration/listing disagrees with a decision or action by licensing staff and wishes to request an administrative review, the requestor must describe the decision or action in dispute. The specific request must be in writing to a licensing supervisor or administrative staff. The request may be given by telephone or in person, but must be followed up with written notification. The request for an administrative review must be made within 15 [~~14~~] calendar days of notification of the disputed licensing decision or action.

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 30, 1999.

TRD-9902571

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services
Proposed date of adoption: August 1, 1999
For further information, please call: (512) 438–3765

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Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §725.3044

The amendment is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.3044. Application.

(a) Each governing body planning to operate a facility subject to licensing or certification must complete an application and send it to licensing staff. Facilities subject to licensing must attach a $35 non-refundable application fee plus $35 (or $50 for a child-placing agency or maternity home) provisional license fee to the department's Licensing Fee Schedule and send these to the department. The provisional license fee may be refunded if the department does not issue the provisional license.

(b) Facilities that require certification are exempt from application fees and all fees for licenses.

(c) [~~(b) The requirements do not apply to:~~] Facilities have to pay application fees, but not fees for licenses if they are:

[~~(1) facilities that require certification;~~]

(1) [~~(2)~~] non-profit 24-hour child care facilities that:

(A) charge no fees for their services; or

(B) provide care for children in the department's managing conservatorship.

(2) [~~(3)~~] licensed foster family homes and foster group homes.

[~~(4) licensed operating facilities that are changing the corporate structure only (no real change in the facility's ownership).~~]

(d) [~~(c)~~] The applicant is entitled to a written notice from the licensing representative if the application is incomplete or compliance is not substantiated.

(e) [~~(d)~~] An applicant who pays the initial fees and later withdraws the application, but reapplies within 30 days, does not have to pay new fees.

(f) [~~(e)~~] Within 21 calendar days [~~15 workdays~~] of receiving the application, the department notifies the applicant in writing that:

(1) the application is complete and accepted for filing, or

(2) the application is incomplete. The notification letter must explain what is needed to complete it.

(g) [~~(f)~~] The applicant may authorize the department by telephone to change or add to an incomplete application. Staff making the changes must date and initial them and send the applicant a copy with the letter notifying him that the application is complete and accepted for filing.

(h) (g) Within two months of the date that a completed application is accepted for filing, the department decides to issue or deny a license.

(i) [~~(h)~~] The applicant may appeal any dispute about the amount of time the department took to decide that an application was complete or to approve or deny an application. To appeal, the applicant must submit a written request within 30 days after the department's time limit expires. The applicant must send the request stating the nature of the dispute to the director of licensing. If the department exceeded the time limit without establishing good cause, the appeal is decided in the applicant's favor. In this case, the department must reimburse the application fee.

(j) [~~(i)~~] The requirements regarding an application received after revocation or denial of a license are as follows.

(1) If Texas Department of Protective and Regulatory Services (TDPRS) denies an application for a license because of noncompliance with standards or violation of the child care or maternity home licensing law, time limits for an appeal must have ended and the facility must have closed [~~and remained closed~~] before a new application for a license can be accepted. If a facility ceases operation before the end of the time to request an appeal, and if that facility waives in writing the right to request an appeal, TDPRS [~~licensing~~] staff accept a completed application. If the facility begins operation before the provisional license is issued, TDPRS [~~licensing~~] staff deny the application. An application fee and provisional license fee must be sent to TDPRS when a completed application is sent [~~to licensing staff~~]. The cost of reimbursing TDPRS for publishing the notice of revocation, as required by the Human Resources Code, Chapter 42, §42.077, must be added to the application fee.

(2) A person whose license or certification is revoked may not apply for any license or certification under this section before the second anniversary of the date on which the revocation by TDPRS or court order takes effect. The cost of reimbursing TDPRS for publishing the notice of revocation, as required by the Human Resources Code, Chapter 42, §42.077, must be added to the application fee at the time the facility reapplies.

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 30, 1999.

TRD-9902572
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: August 1, 1999
For further information, please call: (512) 438–3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter B. General Permits

43 TAC §28.12

The Texas Department of Transportation proposes an amendment to §28.12, concerning Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

EXPLANATION OF PROPOSED AMENDMENT

The department received a comment during the rule review of Chapter 28 asking that the department consider proposing a rule change concerning the overall width limits for newly constructed houses and storage tanks. The commenter requested that the maximum width be increased from 32 feet to 34 feet. Currently, §28.12(d)(5) states that a permit will not be issued for newly constructed houses or storage tanks that exceed 32 feet overall width. The State of Oklahoma implemented similar legislation in 1991, which allows for the permitted movement of industrialized housing that is 34 feet overall in width.

The amendment to increase the overall width of a newly constructed house or storage tank from 32 feet to 34 feet should pose no additional risk to the traveling public as these loads are traveling on pre-authorized routes and have both front and rear escorts.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment. There are no anticipated economic costs for persons required to comply with the section as proposed.

Lawrance R. Smith, Director, Motor Carrier Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

PUBLIC BENEFIT

Mr. Smith also 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 and administering the amendment will be to produce a positive impact for a small segment of the transportation industry by allowing them to legally transport houses and storage tanks with widths up to 34 feet. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment may be submitted to Lawrance R. Smith, Director, Motor Carrier Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 14, 1999.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize/overweight permits.

No statutes, articles, or codes are affected by the proposed amendment.

§28.12. Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

(a) General. The information in this section applies to single trip permits issued under Transportation Code, Chapter 623, Subchapter D. The department will issue permits under this section in accordance with the requirements of §28.11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(b) Overweight loads.

(1) The maximum weight limits for an overweight permit are specified in §28.11(d) of this title.

(2) The applicant shall pay, in addition to the single-trip permit fee of $30, the applicable highway maintenance fee described in §28.11(c)(3)(B) of this title.

(3) A permit issued for an overdimension load exceeding 200,000 pounds gross weight will have a total permit fee that includes the single-trip permit fee, the highway maintenance fee, and the applicable vehicle supervision fee (VSF) described in §28.11(c)(3)(C) of this title.

(A) When a permit is issued under this subsection, and the permittee has additional identical loads that are to be moved over the same route within 30 days of the movement date of the original permit, a reduced vehicle supervision fee of $35 will be charged in lieu of the full vehicle supervision fee.

(B) An applicant for a permit issued under paragraph (8) of this subsection must pay the vehicle supervision fee at the time of permit application in order to offset department costs for analyses performed in advance of issuing the permit. A request for cancellation must be in writing and received by the department prior to collection of the structural information associated with the permit application. If the application is canceled, the department will return the vehicle supervision fee.

(4) An applicant applying for a permit to move a load that is required for the fulfillment of a fixed price public works contract that was entered into prior to the effective date of this section, and administered by federal, state, or local governmental entities, will not be required to pay the vehicle supervision fee, provided the applicant presents proof of the contract to the MCD prior to permit issuance.

(5) An applicant may elect to provide written certification from a registered professional engineer stating that the bridges and culverts on the proposed travel route are capable of sustaining the movement of an overdimension load exceeding 200,000 pounds gross weight; however, such certification must be approved by the department.

(6) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, all remaining fees are due at the time the permit is issued.

(7) The department will not charge an analysis fee for single and multiple box culverts.

(8) An applicant requesting a permit to move an overdimension load that exceeds 254,300 pounds gross weight, or the weight limits described in §28.11(d) of this title, must submit the following items to the MCD to determine if the permit can be issued:

(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may

be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram;

(B) a map indicating the exact beginning and ending points relative to a state highway;

(C) a copy of the signed contract indicating that the applicant has been retained to transport the shipment; and

(D) the vehicle supervision fee as specified in paragraph (3) of this subsection.

(9) The MCD will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the MCD must be advised, in writing, that the route is capable of accommodating the overdimension load.

(10) Upon receipt of the applicant's written notification, the department will conduct a detailed structural analysis of the bridges on the proposed route based on the applicant's proposed loading diagram, or the applicant may elect to provide written certification from a registered professional engineer stating that the bridges on the proposed travel route are capable of sustaining the movement of the overdimension load. The certification must be approved by the department before the permit will be issued.

(11) A permit may be issued for the movement of oversize and overweight self-propelled off road equipment under the following guidelines.

(A) The weight per inch of tire width must not exceed 650 pounds.

(B) The rim diameter of each wheel must be a minimum of 25 inches.

(C) The maximum weight per axle must not exceed 45,000 pounds.

(D) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.

(E) The equipment must be moved empty.

(F) The equipment must be licensed with a machinery license plate or a one trip registration.

(G) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by the MCD.

(c) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Transportation Code, §623.071, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed nine feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §28.11(d)(3) of this title.

(4) The height and length must not exceed the legal limits specified in Transportation Code, Chapter 621, Subchapter B.

(5) The permit will be issued for a single-trip only, and the fee will be $30. For loads over 80,000 pounds, a highway maintenance fee will be charged as specified in §28.11(c)(3)(B) of this title.

(6) The permit is valid only for travel on any farm-to-market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge when exceeding the posted capacity of the bridge.

(7) Movement will be restricted to daylight hours only.

(d) Houses and storage tanks.

(1) Unless an exception is granted by the MCD, approval for the issuance of a permit for a house or storage tank exceeding 20 feet in width will reside with each district engineer, or the district engineer's designee, along the proposed route.

(2) The issuance of a permit for a house or storage tank exceeding 20 feet in width will be based on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house, including the eaves or porches.

(3) A storage tank must be empty.

(4) The proposed route must include the beginning and ending points on a state highway.

(5) A permit will not be issued for a newly constructed house or storage tank that exceeds 34 [~~32~~] feet overall width unless an exception is granted by the MCD based on a route and traffic study.

(6) A permit will not be issued for the relocation of an existing house or storage tank that exceeds 40 feet overall width, unless an exception is granted by the MCD based on a route and traffic study.

(7) A permit may be issued for the movement of an overweight house provided:

(A) the applicant completes and submits to the MCD a copy of a diagram for moving overweight houses, as shown in Appendix A [~~B~~] of this section;

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two axle groups which may be placed directly in line and across from the other corresponding two axle group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two axle groups, each two axle group is connected to a common mechanical or hydraulic system to ensure that each two axle group shares equally in the weight distribution at all times during the movement; and when the spacing between the two axle groups, measured from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two axle group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

(8) The MCD may waive the requirement that a loading diagram be submitted for the movement of an overweight house if the total weight of all axle groups located in the same transverse plane across the house does not exceed the maximum weight limits specified in §28.11(d)(2) of this title.

(e) Diagram for moving overweight houses. The following Appendix A [~~B~~] indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch.
Figure: 43 TAC §28.12(e)

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 May 3, 1999.

TRD-9902577
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 13, 1999
For further information, please call: (512) 463–8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 217. Licensing Requirements

37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education has withdrawn from consideration for permanent adoption the amendment to §217.9, which appeared in the February 12, 1999, issue of the *Texas Register* (24 TexReg 929).

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902472

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: April 26, 1999

For further information, please call: (512) 936–7700

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter B. Fund Specific Grant Policies

Division 6. Crime Stoppers Assistance Fund

1 TAC §3.605, §3.635

The Office of the Governor adopts amendments to Chapter 3, Subchapter B §3.605, §3.635, Chapter 3 Subchapter C §3.3045, §3.3050, §3.3055, §3.3060, §3.4075, §3.6030, §3.7015, without changes to the proposed text as published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2115). Subchapter B concerns Fund Specific Grant Policies. Subchapter C concerns General Eligibility Requirements. This Chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general these rules do not have any fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed.

Mr. Jones also has determined that for the first five year period the adopted rules will have no anticipated economic cost to persons or small businesses.

No comments were received regarding adoption of the sections.

The amended rules are adopted under Texas Government Code, Title 7, §772.006(a)(11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these amended rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 1999.

TRD-9902496
James Hines
Assistant General Counsel, Office of the Governor
Office of the Governor
Effective date: May 17, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 475–2594

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Subchapter C. General Grant Program Policies

Division 2. General Grant Budget Requirements

1 TAC §§3.3045, 3.3050, 3.3055, 3.3060

The amended rules are adopted under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 1999.

TRD-9902498
James Hines
Assistant General Counsel, Office of the Governor
Office of the Governor
Effective date: May 17, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 475–2594

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Division 3. Special Conditions and Required Documents

1 TAC §3.4075

The new rules are adopted under Texas Government Code, Title 7, §772.006 (a) (11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 1999.

TRD-9902497
James Hines
Assistant General Counsel, Office of the Governor
Office of the Governor
Effective date: May 17, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 475–2594

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Division 5. Administering Grants

1 TAC §3.6030

The amended rule is adopted under Texas Government Code, Title 7, §772.006 (a) (11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 1999.

TRD-9902499
James Hines
Assistant General Counsel, Office of the Governor
Office of the Governor
Effective date: May 17, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 475–2594

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Division 6. Program Monitoring and Audits

1 TAC §3.7015

The amended rule is adopted under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 1999.

TRD-9902500
James Hines
Assistant General Counsel, Office of the Governor
Office of the Governor
Effective date: May 17, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 475–2594

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TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 36. Exotic Livestock and Fowl

4 TAC §36.1, §36.2

The Texas Animal Health Commission adopts amendments to §36.1 and §36.2, concerning Exotic Livestock and Fowl. Section 36.1 is adopted without changes to the proposed text as published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2121) and will not be republished. Section 36.2 is adopted with a minor change to the proposed text as published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2121).

Section 36.1 is amended to make the section more clearly understandable.

Section 36.2 is amended to facilitate orderly commerce and improve marketability of Texas-origin ratites.

No comments were received regarding adoption of the amendments.

The change to §36.2 occurs under subsection (c)(5)(B). The reference has been changed to read "subparagraph (A) of this paragraph" rather than "subparagraphs (A)-(C)".

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §§161.041, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

§36.2. General.

(a) All exotic livestock and ratites entering Texas from any state, territory, foreign country or from any USDA-licensed quarantine facility shall have an entry permit issued by the commission.

(b) All exotic livestock and ratites entering the state of Texas from any state, territory, foreign country or from any USDA-licensed quarantine facility shall be accompanied by a certificate of veterinary inspection stating that they have been inspected by an accredited veterinarian and are free of external parasites and evidence of contagious and communicable disease.

(c) The following named species entering the State of Texas shall meet the specific requirements stated in paragraphs (1)-(5) of this subsection and this information shall be recorded on the certificate:

(1) Exotic cervidae–Negative to a brucellosis test within 30 days prior to entry. Tuberculosis test requirements are specified in §43.23 of this title (relating to Requirements for Entry into Texas).

(2) Exotic Bovidae–Negative to a brucellosis test within 30 days prior to entry. Negative to a tuberculosis test within 60 days prior to entry.

(3) Camelidae–Negative to a brucellosis and axillary skin test for tuberculosis within six months prior to entry, on all animals 18 months of age and older.

(4) Exotic Swine–Negative to a brucellosis and pseudorabies test within 30 days prior to entry.

(5) Ratites–

(A) Each bird will be individually identified with an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease

and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloaceal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(B) Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either a waybill or health certificate without meeting the requirements of subparagraph (A) of this paragraph.

(C) All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag or band.

(D) All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.

(d) The executive director of the commission may require an inspection or test on any exotic livestock or exotic fowl for the detection of any disease or parasite prior to importation when the executive director has determined there is a risk of disease or parasite transmission. Entry may be denied based on the results of these tests or inspections.

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 May 3, 1999.

TRD-9902588
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: May 23, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 719–0714

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

Chapter 65. Commercial Fertilizer Rules

Subchapter C. Labeling

4 TAC §65.17

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts an amendment to 4 TAC: Chapter 65 Commercial Fertilizer Rules §65.17 concerning the listing of fertilizer components without changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 650) and will not be republished.

The rule is being amended to eliminate the requirement to alphabetize fertilizer labeling; this will not deprive the consumer of essential information and it will provide a positive benefit to the fertilizer producer.

There were no comments received regarding the proposed amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, Labeling, §63.051 is affected by the amendment to the rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 1999.

TRD-9902544
Dr. George W. Latimer, Jr.
Assistant to the Associate Vice Chancellor of Agriculture
Office of the Texas State Chemist/Feed and Fertilizer Control Service
Effective date: May 19, 1999
Proposal publication date: February 5, 1999
For further information, please call: (409) 845–1121

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter B. Records and Reports

16 TAC §23.19

The Public Utility Commission of Texas adopts the repeal of §23.19 relating to Registration of Power Marketers and Exempt Wholesale Generators without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12847).

The repeal is necessary to avoid duplicative rule sections. The commission has adopted §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities) to replace §23.19. This repeal is adopted under Project Number 19676.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002.

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.

Filed with the Office of the Secretary of State on May 3, 1999.

TRD-9902586

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 23, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 936-7308

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Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter A. General Provisions

16 TAC §25.5

The Public Utility Commission of Texas (commission) adopts an amendment to §25.5 relating to Definitions without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12848).

The amendment adds three defined terms, "qualifying cogenerator", "qualifying facility", and "qualifying small power producer", to clarify terms used in new §25.105 relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities. This amendment is adopted under Project Number 19676.

The commission received no comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002.

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.

Filed with the Office of the Secretary of State on May 3, 1999.

TRD-9902585
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 23, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 936-7308

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Subchapter E. Certification, Licensing and Registration

16 TAC §25.105

The Public Utility Commission of Texas (commission) adopts new §25.105, relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities, with changes to the text as proposed in the *Texas Register* on December 18, 1998 (23 TexReg 12849). This section is being adopted in Project Number 19676. The section replaces §23.19 of this title (relating to Registration of Power Marketers and Exempt Wholesale Generators).

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC), Chapter 23, to: (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 25 has been established for all commission substantive rules applicable to electric service providers. The duplicative sections of Chapter 23 are proposed for repeal as each new section is proposed for publication in the new chapter.

The commission invited specific comments on the §167 requirement as to whether the reason for adopting the rule continues to exist. No one commented on the §167 requirement. The commission finds that the reason for adopting this section continues to exist.

Section 25.105 provides registration and reporting requirements for power marketers (PMs), exempt wholesale generators (EWGs), and qualifying facilities (QFs). Compared to §23.19, §25.105 adds QFs to PMs and EWGs as persons required to register and provide information concerning their operations. In addition, §25.105 adds to the information required. This information is necessary for the commission to monitor the adequacy of generation facilities and electric service in Texas.

Section 25.105 reflects different section, subsection, and paragraph designations than §23.19 due to the reorganization of the commission's rules. References to the terms "public utility" or "utility" have been changed to "electric utility" where needed as a result of definition changes in the Public Utility Regulatory Act, Texas Utilities Code, Title II (Vernon 1998) (PURA). The definitions located in §23.19(b) have been moved to §25.5 of this title (relating to Definitions).

The commission received comments or reply comments from the following parties: Texas Industrial Energy Consumers (TIEC); Occidental Chemical Corporation (OxyChem); Houston Industries Incorporated, now doing business as Reliant Energy (Reliant); Dynegy Marketing and Trade, Calpine Corp., Enron Capital & Trade Resources, Tenaska, Inc., and Coral Power L.L.C. (Independents); and Panda Paris Power, L.P. (Panda). The commenters recognized the commission's need for information from PMs, EWGs, and QFs, but raised concerns about some aspects of the proposed rule.

Reliant argued that much of the information required by the proposed rule is contained in reports submitted to other governmental agencies, and the commission should therefore sift through these unspecified reports to obtain the information that it needs. TIEC requested that subsections (c) and (d) be deleted, because much of the information is contained in Federal Energy Regulatory Commission (FERC) filings and the commission should therefore review the filings at the FERC. The

commission rejects these arguments. The commission has a duty to ensure the adequacy of electric service in Texas. The rule seeks specific information designed to aid the commission in fulfilling that duty. It is appropriate to have this information readily available to the commission for a particular registrant, rather than the commission having to rely primarily on attempts to sift through reports filed with other government agencies, which could change their reporting requirements at any time. Furthermore, the commission would not know when new filings would be made with other government agencies.

OxyChem requested that proposed subsection (c)(8) (final subsection (c)(5)), which requires copies of all FERC registration information, be made prospective only, because some QFs may not have ready access to historical information filed with FERC because of ownership changes or internal record retention policies. This change has been made.

OxyChem argued that subsection (c)(1)'s requirement that an entity state "the type of service it provides in Texas" is ambiguous, and requested that this provision be changed to require that an entity state "whether it is a PM, EWG, or QF". The commission agrees that OxyChem's suggested language is more clear, and this change has been made.

Reliant argued that proposed subsection (c)(1), (2), (3), and (4) of the proposed rule concerning affiliates, duplicate filings already required by a PM, EWG, or QF affiliated with a Texas electric utility. In order to streamline the reporting of affiliate information, the commission has deleted proposed paragraphs (2) and (3) and that portion of paragraph (1) concerning affiliates, and has amended proposed paragraph (4). Proposed paragraph (4), as amended, (final paragraph (2)) requires only that a registrant identify each affiliate that buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric or municipally owned utility in Texas. It is appropriate to have this information readily available for a particular registrant. Furthermore, merely requiring that the registrant identify these types of affiliates is not burdensome, and for registrants not affiliated with a Texas electric utility, no other commission rule requires this type of information. While the Report of Affiliated Activities required by §25.84 (relating to Annual Reporting of Affiliate Transactions for Electric Utilities) requires electric utilities to report their transactions with affiliates, it does not require an electric utility to state which affiliates sell electricity in Texas, if those affiliates have not done business with the electric utility. Thus, final paragraph (c)(2) will require information that generally is not duplicated by other commission reporting requirements.

Some commenters requested that proposed subsection (c)(2) through (4) be limited to information relating to affiliates of electric utilities. The commission has deleted proposed paragraphs (2) and (3) and that portion of paragraph (1) concerning affiliates. Proposed paragraph (4), as amended, (final paragraph (2)) requires only that a registrant identify each affiliate that buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric or municipally owned utility in Texas, and is not limited to affiliates of electric utilities. This information is necessary to identify affiliate relationships among electric providers.

Some commenters argued that proposed subsection (c)(5)(E)'s requirement for a QF to provide each generating unit's capacity reserved to serve the steam host, calls for highly confidential information. This information is necessary to determine how much of a QF generating unit's capacity is available for the wholesale power market. Some commenters argued that the amount of capacity reserved for the steam host, required by proposed subsection (c)(5)(E), is variable. Subparagraph (E) (final subsection (c)(3)(E)) has been clarified to require the maximum capacity reserved for the steam host by year. This clarification should eliminate confidentiality concerns.

Proposed subsection (c)(5)(F) (final subsection (c)(3)(F)) has been amended to require specification of both the utility service area and control area for a generating unit, since a generating unit can be in one utility's service area while at the same time be in another utility's control area.

Some commenters argued that proposed subsection (c)(5)(H)'s requirement to provide summer and winter capacities, net of the generating unit's own use, calls for highly confidential information. Proposed subsection (c)(5)(H) has been deleted.

Some commenters argued that proposed subsection (c)(5)(I)'s requirement to specify firm capacity commitments is unnecessary and requires disclosure of highly confidential information. Subparagraph (I) has been deleted and replaced by an amended paragraph (d)(3), which requires only company firm capacity commitments for generating units in Texas, by reliability council, for the current calendar year and the following four calendar years. This information is necessary for the commission to ascertain the availability of capacity in Texas. This change should eliminate confidentiality concerns.

OxyChem argued that the air permit applications required by proposed subsection (c)(6)(A) (final subsection (c)(4)(A)) should not be required by the commission because they are publicly available on the web site of the Texas Natural Resource Conservation Commission, and therefore registrants should not be required to provide it to the commission. The commission rejects this argument. It is appropriate to have this information readily available to the commission for a particular registrant. In addition, requiring a registrant to provide the commission copies of a document that it has already prepared is not burdensome. Furthermore, if the commission does not require registrants to file it with the commission, the commission will not know when the information is available.

Reliant complained of proposed subsection (c)(7)'s requirement to provide a copy of any applicable policy or procedure statement concerning sales to or purchases from affiliated Texas utilities. The commission has deleted paragraph (7). At this time, the commission will rely on other avenues to monitor activities involving electric utilities and their affiliates, such as reconciliation of purchased power costs pursuant to §23.23(b)(3); §25.84 (relating to Annual Reporting of Affiliate Transactions for Electric Utilities); and §25.196 (relating to Functional Unbundling).

Some commenters argued that subsection (d) should be deleted as unnecessary and highly confidential. The commission has deleted the requirement to provide total volume of fuel purchases. In addition, the commission has changed the remaining information required by proposed subsection (d) to total company generation and sales information, by reliability council, which should eliminate concerns about confidentiality. This information is necessary for the commission to assess the extent to which an EWG or QF participates in the wholesale power market.

This new section is adopted under PURA §14.002, which provides the commission with the power to adopt and enforce rules

reasonably required in the exercise of its power and jurisdiction; §31.001(c), which finds that the public interest requires that rules be formulated and applied to protect the public interest in a more competitive marketplace; §35.006(b), which requires that the commission adopt rules relating to the registration and reporting requirements of power marketers, exempt wholesale generators, and qualifying facilities; and §35.032, which requires power marketers and exempt wholesale generators to register with the commission and provide the commission with information and reports required by commission rules. In addition, the following sections of PURA will be affected by the proposed new section: §34.004, which requires the commission to adopt and periodically update a statewide integrated resource plan; and §37.151(2), which requires that an electric utility or municipally owned utility that holds a certificate of convenience and necessity to provide retail electric utility service in an area provide continuous and adequate service in that area.

Cross-Index to statutes: Public Utility Regulatory Act §§14.002, 31.001(c), 34.004, 35.006(b), 35.032, 37.151(2).

§25.105. Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities.

(a) Purpose. This section contains the registration and reporting requirements for a person intending to do business in Texas as a power marketer (PM), exempt wholesale generator (EWG), or qualifying facility (QF).

(b) Applicability.

(1) A PM, EWG, or QF becomes subject to this section on the date that it first buys or sells electric energy at wholesale in Texas.

(2) No later than 30 days after the date it becomes subject to this section, a PM, EWG, or QF shall register with the commission or provide proof that it has registered with the Federal Energy Regulatory Commission (FERC) or been authorized by the FERC to sell electric energy at market-based rates.

(c) Initial information. Regardless of whether it has registered with the FERC, a PM, EWG, or QF shall:

(1) State: whether it is a PM, EWG, or QF; its address; the name, address, telephone number, facsimile transmission number, and email address of the person to whom communications should be addressed; and the names and types of businesses of the owners (with percentages of ownership).

(2) Identify each affiliate that buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric or municipally owned utility in Texas.

(3) Describe each existing facility used to provide service. A power marketer should describe the location of each office from which it carries on its business in Texas. An EWG or QF should describe each of its existing generating units in Texas, by providing the following information:

(A) Name;

(B) Net dependable capacity in megawatts (MW);

(C) Primary and secondary fuels;

(D) Technology (e.g., combined cycle, wind turbines, air pump storage);

(E) If the unit is a cogenerator, maximum amount of capacity in MW reserved to serve its steam host by year;

(F) Location, by county, utility service area, and control area;

(G) Reliability council; and

(H) Commercial operation date.

(4) Provide the following information for each generating unit planned or under construction:

(A) A copy of pages 1 and 2 of Texas Natural Resource Conservation Commission Form PI-1, General Application, Air Quality Permit;

(B) Gross and net capacity design ratings in MW; and

(C) Copies of press releases announcing the major construction milestones.

(5) Submit copies of all of its FERC registration information, filed with FERC subsequent to the effective date of this section.

(6) Submit the information required in subsection (d) of this section for the previous year. If a person files under this subsection between January 1 and February 28, the information required in subsection (d) of this section can be provided in a separate filing by February 28.

(7) Submit an affidavit by an authorized person that the registrant is a PM, EWG, or QF.

(d) Annual information for existing generating units. An EWG or QF shall provide the following information by February 28 of each year:

(1) Total company megawatt-hour (MWH) generation at the busbar in Texas, by reliability council, for the immediately preceding year;

(2) Total company MWH wholesale sales in Texas, by reliability council, for the immediately preceding year; and.

(3) Total company firm capacity commitments in MW for generating units in Texas, by reliability council, for the current calendar year and the following four calendar years.

(e) Material change in information. Each PM, EWG, or QF shall report any material change in the information provided pursuant to this section within 30 days of the change.

(f) Commission list of power marketers, exempt wholesale generators, and qualifying facilities. The commission will maintain a list of PMs, EWGs, and QFs registered in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 1999.

TRD-9902584
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 23, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 936-7308

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 295. Occupational Health

The Texas Department of Health (department) adopts the repeal of existing §§295.4-295.5 and §§295.7-295.8; amendments to §§295.1-295.3; and new §§295.4-295.9, and §§295.11-295.13, concerning the requirements for public employers to take actions to protect their employees from hazardous chemicals. Sections 295.1-295.2, 295.4-295.7, and 295.11-295.12 are adopted with changes to the proposed text published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11066). Sections 295.3, 295.8-295.9 and 295.13 are adopted without changes and repealed §§295.4-295.5 and §§295.7-295.8 are adopted without changes and therefore will not be republished.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.1-295.8 have been reviewed and the department has determined that reasons for readopting the sections continue to exist.

The sections are amended to ensure consistency between the rules and the Health and Safety Code, Chapter 502, which was amended in 1993. The amendment to §295.1 limits the scope of the rules to worker right-to-know issues and establishes an effective date of September 1, 1999. The amendment to §295.2 adds new definitions and amends existing definitions to clarify the intent of the rules. All the definitions are being numbered in new Texas Register format to comply with 1 TAC, §91.1 effective February 17, 1998. The amendment to §295.3 reflects a change in the division name. New §295.4 clarifies how threshold amounts for the workplace chemical list shall be applied for multiple work areas and workplaces and announces the availability of a model form for the workplace chemical list. New §295.5 establishes standards for employers, chemical manufacturers, and distributors to provide material safety data sheets for hazardous chemicals. New §295.6 clarifies the circumstances under which an employer is responsible for labeling hazardous chemical containers. New §295.7 clarifies the scope of the written hazard communication program and establishes standards for this document, the employee education and training program, and training records. New §295.8 establishes standards for employers and the department related to complaint investigations and random compliance inspections. New §295.9 clarifies reporting requirements regarding employee fatalities and injuries related to chemical accidents. New §295.11 clarifies the procedures for employers to respond to written notices of violation and summary letters related to informal conferences, the conditions under which administrative penalties will be assessed, and the department's options in assessing administrative penalties. Four severity levels for violations and a penalty matrix are established and examples of violations for each severity level are provided. New §295.12 establishes standards for the workplace notice and clarifies employee rights. New §295.13 corrects an existing legal citation error in the Hazard Communication Act, Health and Safety Code, Chapter 502, concerning standards for physician treatment.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the sections.

Change: Concerning §295.4(a), the department has deleted unnecessary language in the last sentence.

Change: Concerning §295.4(b), the department has moved and revised language from §295.2(17), the definition of "workplace," to new §295.4(b) to clarify that subdivision of contiguous facilities into separate workplaces may result in a requirement for multiple workplace chemical lists.

Change: Concerning §295.4(c), the department has replaced the term "required" with the term "mandatory."

Change: Concerning §295.2(14), the definition of "label," the department has deleted the phrase "and workplace chemical list" because this phrase may be confusing to an employer who has hazardous chemicals that are not required to be listed on the workplace chemical list.

Change: Concerning §295.2(15), the definition of the "OSHA Standard" (the Hazard Communication Standard of the United States Department of Labor, Occupational Safety and Health Administration (OSHA)), the department has added this definition because the reference to this standard in §295.1 has been deleted and this federal law is referenced in other sections of the rules.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting changes.

Comment: Concerning the rules in general, three commenters questioned the need for proposing changes to the existing rules.

Response: The rules were amended to ensure consistency between the rules and the Health and Safety Code, Chapter 502. The reasons for the proposed changes were set forth in the Proposed Preamble.

Comment: Concerning the rules in general, two commenters stated that the rules should "be opened up for a full review and 90 day comment period."

Response: The department has reviewed and considered for readoption the existing rules, as required by the General Appropriations Act, House Bill 1, Article IX, Rider 167. A Notice of Intention to Review for §§295.1 - 295.8 was published in the September 4, 1998, issue of the Texas Register that stated comments would be accepted 30 days following the publication of the notice. The department received no comments during this period. The department also notes that the rule comment period was extended from 30 days to 60 days by the Board of Health at the October, 1998 meeting.

Comment: Concerning the rules in general, one commenter recommended that the department consider an effective date for the rules that provides additional time for the regulated community to learn about the changes and achieve compliance. The commenter also recommended that the department consider providing outreach seminars on the rules for the regulated community.

Response: The department agrees with the commenter and has provided new language in §295.1, establishing an effective date of September 1, 1999. The department plans to provide outreach materials and seminars to the regulated community prior to this date.

Comment: Concerning the rules in general, five commenters stated that the rules were "too prescriptive."

Response: The department agrees in part with the commenters. The department has revised some of the proposed language to allow employers more flexibility in achieving com-

pliance with the Health and Safety Code, Chapter 502 ("the Act"). However, the department has retained some of the proposed language in order to provide guidance to the regulated community on certain requirements of the Act.

Comment: Concerning the rules in general, nine commenters stated that the proposed rules would be burdensome and would have a fiscal impact on employers.

Response: The department agrees that certain sections of the proposed rules would have expanded employer's duties beyond the minimum requirements of the Act. The department has revised the language in the final rules to be consistent with the Act and reduce the burden on employers. However, because the 1993 revisions to the Act need to be addressed in the final rules, the department has maintained some of the proposed rules language which is deemed necessary for employer guidance. The department notes that employers have been required to comply with the Act's revised requirements since they became effective in 1993. Therefore, the department has determined that the revised Act, rather than the final rules, has had a fiscal impact on employers.

Comment: Concerning the rules in general, six commenters expressed concern about whether the department had received recommendations for rules changes from an advisory committee or other independent group.

Response: The department received recommendations for rules changes from both the regulated community and the Hazard Communication Act Advisory Committee.

Comment: Concerning §295.1(a), two commenters stated that the proposed purpose of the rules was in conflict with the compliance flexibility indicated by the Act.

Response: The department agrees and has substituted the word "guidance" for the phrase "specific criteria" in §295.1(a) to provide consistency with the Act's purpose.

Comment: Concerning §295.1(b), one commenter was concerned that the proposed changes would have the effect of allowing the department to enforce the OSHA Standard and would be in conflict with the legislative intent of the Act. Another commenter did not understand why the "SARA" (federal Superfund Amendments and Reauthorization Act of 1986, Title III, also known as the Emergency Planning and Community Right-to-Know Act) reference in §295.1(b) was being proposed for deletion.

Response: The department agrees that proposed §295.1(b) is unnecessary and could imply that the rules were exceeding the legislative intent of the Act. Therefore, the department has deleted proposed §295.1(b). The department proposed deleting the reference to "SARA" in §295.1(b) to clarify that the Act no longer contains any community right-to-know requirements. During the 1993 revisions to the Act, the community right-to-know requirements of the original Act were moved to separate state laws.

Comment: Concerning §295.2(2), two commenters were concerned about the volume of information needed for "appropriate hazard warnings" on small secondary containers in laboratories.

Response: The department recognizes these concerns, but has determined that the definition of "appropriate hazard warnings," in §295.2(2) is necessary to ensure consistency with the OSHA Standard's definition. The department has modified the language in the definition related to target organs to be consistent with the OSHA Standard. The department agrees that employers may need alternative methods of labeling in order to ensure that small container labels conform to the OSHA Standard, but has determined that §295.6 is the most appropriate section of the rules in which to include language on this issue. The issue of labeling small containers of laboratory chemicals is further addressed in the responses to proposed §295.6(a), (b), and (c), now relettered as §295.6(c), (d), and (e).

Comment: Concerning §295.2(3), two commenters stated that they opposed placing the responsibility of selection of appropriate PPE on the employer because their institutions placed this responsibility on individual principal investigators. Three commenters stated that the phrase "equipment that is worn by" in §295.2(3) should be changed to indicate that the employer is only responsible for providing the PPE, but not for ensuring that employees wear it. Five commenters objected to including language in §295.2(3) which specifies how the employer will determine what PPE is appropriate and two commenters stated that the references to appropriate PPE should be removed from §295.2(3) and proposed as a "stand-alone rule."

Response: The department agrees with the commenters concerning employer responsibilities for PPE use and has clarified the language in §295.2(3) to indicate the limitations of this responsibility. The department notes that while the employer's responsibility for providing PPE may be delegated by an employer to individual staff members, the Act states that the employer is ultimately responsible for meeting this requirement. The department agrees that the employer has responsibility for providing the PPE and training, but does not have responsibility for ensuring that employees wear it. The department disagrees with the objections to the parts of the definition which reference industry standards, fit-testing, and functionality, since these factors are critical in determining whether PPE is "appropriate." Therefore, the department has retained these references in §295.2(3). The department also disagrees with the suggestion for a "stand-alone" PPE rule, since employers need guidance in these rules on what is meant in the Act by "appropriate personal protective equipment."

Comment: Concerning §295.2(4), one commenter stated that the language did not incorporate standard medical terminology.

Response: The department agrees with this recommendation and has revised the language in §295.2(4) to medical terminology. The phrases "caused by a chemical" and "other than drowning" have been in retained in §295.2(4) to be consistent with the scope of the Act.

Comment: Concerning §295.2(5), one commenter suggested using the phrase "with similar properties" instead of "according to their type of physical and/or health hazards."

Response: The department agrees and has substituted the recommended language in §295.2(5).

Comment: Concerning §295.2(6), two commenters requested that clarification be offered on the Act's labeling requirements, with special provisions for very small containers.

Response: The department agrees with the commenters' concerns and has added the phrase "or contains multiple smaller containers of an identical hazardous chemical" to §295.2(6). The changes in §295.2(6) and §295.6 will provide employers with greater flexibility with respect to labeling.

Comment: Concerning §295.2(10), two commenters were concerned that the department was restricting the employer's methodology used for training employees. One commenter also questioned the need for §295.2(10).

Response: The department agrees with the commenters concerning restrictions on training methods and has modified §295.2(10) to allow employers greater flexibility in selecting methods. The department has retained §295.2(10) to clarify the differences between the "employee education and training program" and the "written hazard communication program."

Comment: Concerning §295.2(11), one commenter was concerned that the definition of "employer" would extend applicability of the Act to non-public employers, including private hospitals. One commenter asked for clarification in §295.2(11) regarding applicability to public universities, but also questioned the need for expansion of the Act's definition.

Response: The department agrees with the commenters' concerns related to the language in §295.2(11) and has modified the definition of "employer" to clarify applicability of the Act to public employers, except as noted below. The department has retained §295.2(11) to clarify the difference between "individual facilities operated by an employer" and "the employer." The department notes that the Act specifies in its definition of "employer" that it does not apply to employers who are covered by the OSHA Standard, the federal Coal Mine Health and Safety Act of 1969, or the federal Mine Safety and Health Amendments Act of 1977. However, the Act also specifies that if any of these federal laws are repealed, then the private employers previously covered by these laws, including private hospitals, will be subject to the Act.

Comment: Concerning §295.2(13), two commenters stated that the last sentence of the definition of "heath hazard" was redundant. One commenter stated that the term "irritants" in §295.2(13) should be either deleted or clarified because it has a broad meaning.

Response: The department disagrees with the commenters' recommendations and has retained the proposed language in §295.2(13). The term "health hazard" is not clearly defined in the Act because it is incorporated by reference from the OSHA Standard. Because "health hazard" is a critical part of the Act's definition of "hazardous chemicals" and will affect information used in training and on hazardous chemical labels, the department has provided this more complete definition in the final rules. The department has determined that it is unnecessary to define all of the terms which are used in the OSHA Standard's definition of "health hazard" because these terms are clearly defined in either the Standard or its appendices. The term "irritant" has a very specific and narrow meaning under the OSHA Standard.

Comment: Concerning §295.2(14), three commenters requested clarification regarding container sizes that would require complete labeling because they stated that some containers would be too small to bear the required label. Another commenter stated an objection to the requirement in §295.2(14) for the material safety data sheet (MSDS) name to appear on the container label and recommended that the department allow the option of substituting a common name for a hazardous chemical on the container label if this non-MSDS name was more easily recognized in the research environment.

Response: The department agrees with the commenters' concerns about labeling small containers. However, rather than changing the basic definition of "label" in §295.2(14), the department has modified §295.6 to clarify the employer options for labeling small containers. The department disagrees with the recommendation to allow substitution of a non-MSDS name on the label of a hazardous chemical since such action would conflict with the labeling requirements of the Act.

Comment: Concerning proposed §295.2(15), one commenter recommended against expanding the definition of "material safety data sheet (MSDS)" provided in the Act. Nine commenters stated that the requirement in proposed §295.2(15) for MSDSs to be manufacturer-specific would create an unnecessary burden in maintaining these documents, especially with respect to laboratory chemicals. Five commenters stated that the requirement to maintain the most recent manufacturer-specific MSDS was also burdensome and unnecessary because many manufacturers regularly update their MSDSs without making substantial changes to the hazard information. Three commenters were concerned that proposed §295.2(15) would preclude the use of electronic MSDS systems which might be purchased by an employer to comply with the MSDS requirements of the Act and two of these commenters recommended adding language to the definition which referenced the use of "generic" MSDSs. Three commenters requested that the department provide definitions for "appropriate MSDS" and "current MSDS."

Response: The department agrees with many of these comments and has deleted the proposed definition for "MSDS." The department anticipates that this action will provide employers with flexibility in obtaining appropriate MSDSs to comply with the Act and will eliminate the need to define an "appropriate" or "generic" MSDS. The department agrees that maintaining MSDSs that are not manufacturer-specific may be an option for compliance when, in the opinion of the department, the hazardous chemical in question is consistently manufactured according to established industry standards by a number of different manufacturers and the medical treatment information for exposure to the chemical is well understood by and readily available to the medical community. The department suggests that such MSDSs should be described as "substitute MSDSs," rather than "generic MSDSs," to avoid confusion with the OSHA Standard. The department notes that under the Act's requirements, any hazardous chemical product whose formulation is unique to that product requires a manufacturer-specific MSDS. The department has provided standards for "current" MSDSs in §295.5 that will provide employers with greater flexibility to obtain appropriate MSDSs to comply with the Act. The department also agrees that the use of commercially available electronic MSDS systems are a convenient and efficient method for maintaining MSDSs and the data provided in many of these systems is often superior to some manufacturers' MSDSs.

Comment: Concerning §295.2(17), one commenter stated that the definition was unclear and confusing and recommended that the department not expand on the Act's definition of "workplace."

Response: The department agrees with the commenter and has modified §295.2(17) to clarify the definition and delete unnecessary language. However, §295.2(17) is necessary to clarify that workplaces may be subdivided at the employer's discretion.

Comment: Concerning §295.2(18), one commenter stated that the definition of "written hazard communication program" implied that all employers would have to develop a written program for compliance with all aspects of the Act, including those requirements that did not apply to employers. The commenter suggested new language for this definition.

Response: The department agrees with the commenter and has modified the definition of "written hazard communication program" using the suggested language.

Comment: Concerning the proposed repeal of the definition for "physical hazard" in §295.2, one commenter stated that there was no clear definition for either this term or the term "hazardous chemical."

Response: The department disagrees with the commenter. These terms were clearly defined in the Act during the 1993 revisions and are therefore not repeated in the rules. No changes were made as a result of the comment.

Comment: Concerning the proposed repeal of the definition for "work area" in §295.2, five commenters questioned why the definition had been removed and one commenter stated that this action would "change the way business is conducted."

Response: The department disagrees with the commenters. "Work area" was clearly defined in the Act during the 1993 revisions and is therefore not repeated in the rules. This action should not affect how business is conducted. No changes were made as a result of the comments.

Comment: Concerning §295.4(a), one commenter recommended deleting the word "entire" from the second sentence because it could cause confusion.

Response: The department agrees and has made the recommended change.

Comment: Concerning §295.5(a), one commenter recommended deleting the phrase "and appropriate" from the first sentence or to clarify what is meant by "appropriate." Four commenters requested clarification on what is meant by "maintain," "current," and "appropriate." One commenter asked how his agency was supposed to keep MSDSs current for principal investigators when incoming MSDSs were mailed to a central repository for the employer.

Response: The department agrees that the term "appropriate" needs clarification and has revised the language in §295.5(a) to reference the Act's definition of "MSDS." The department also agrees that employers need clarification on "current" MSDSs and has added clarifying language to §295.5(a). The department notes that the "current" MSDS must match the hazardous chemical by both the identity and the formulation, since manufacturers sometimes reformulate their products without changing the identity of the product on the label or the corresponding MSDS. Therefore, the "current" MSDS will be the MSDS which matches the hazardous chemical's name and formulation and which contains the most recent significant hazard information for the formulation as determined by the manufacturer. The department disagrees with the suggestions to clarify in §295.5(a) what is meant by "maintain" or to define how employers will maintain "current" MSDSs because such actions could limit an employer's flexibility in achieving compliance.

Comment: Concerning §295.5(b), five commenters requested clarification for the term "immediate." Four commenters suggested more flexible language for this section.

Response: The department agrees that the language in §295.5(b) needed clarification and flexibility and has revised the language in this section.

Comment: Concerning §295.5(c), one commenter stated that a 30 business day time limit for requesting missing MSDSs would be more reasonable. This commenter also recommended allowing use of a hazardous chemical pending receipt of a missing MSDS. Three commenters expressed concerns about the implied requirement in §295.5(c) to track receipt of incoming MSDSs.

Response: The department agrees that the proposed seven day time limit in §295.5(c) may be unreasonable for some employers and has modified the language to extend this time limit to 30 days. The department disagrees with the recommendation to allow use of a hazardous chemical pending receipt of the MSDS because such action could result in an employee's exposure to the hazardous chemical. The Act, §502.017(b) requires employers to provide to an employee, upon request, an MSDS for any hazardous chemical to which an employee may be exposed, so discontinuing use of chemicals that lack MSDSs is the only way for employers to ensure compliance with the Act. Therefore, the department has retained the requirement in §295.5(c) for employers to discontinue use of a hazardous chemical pending receipt of the chemical's MSDS. The department notes that the Act, rather than the rules, establishes a requirement for employers to ensure that MSDSs are maintained for all purchased chemicals.

Comment: Concerning §295.5(d), two commenters stated that the department could not enforce the section because it was an "issue of interstate commerce" and one commenter questioned why a written request was required.

Response: The department disagrees with the commenters concerning the department's authority to enforce §295.5(d). The Act, §502.006 requires chemical manufacturers and distributors to provide appropriate MSDSs to employers who acquire hazardous chemicals and requires these suppliers to respond to an employer's written request for an MSDS in a timely manner. The intent of §295.5(d) is to establish a reasonable standard for chemical manufacturers and distributors to respond to such requests. Employers will have the flexibility to obtain missing MSDSs from their suppliers or other sources using much more efficient means than written requests, but if an employer fails to obtain a missing MSDS through such other methods, then the employer is required by the Act, §502.006(b) to make the request to the supplier in writing.

Comment: Concerning §295.5(e), five commenters expressed concern regarding the proposed requirement for an employer to maintain a current MSDS, based on the date that the chemical was received in the workplace.

Response: The department agrees with the commenters and has deleted the first sentence of §295.5(e), which would have conflicted with the options provided to employers in §295.5(a) regarding current MSDSs.

Comment: Concerning §295.6 in general, six commenters expressed concern that the department was imposing additional duties on the employer that went beyond the intent of the Act. One commenter stated that the employer should only be held responsible for re-labeling a container when the manufacturer's or distributor's label is "clearly erroneous" or "grossly incomplete."

Response: The department agrees with the commenters and has clarified the language with regard to labeling primary containers in §295.6 to ensure consistency with the Act. New §§295.6(a) and (b) contain language that specifies that employers are responsible for re- labeling hazardous chemical containers only when the original label from the manufacturer or distributor has been removed or is illegible, or in cases where the label information provided is determined to be inaccurate or incomplete with respect to the OSHA Standard. The department agrees that it would be impractical for employers to review the information on the labels of every incoming chemical container to determine whether these labels conform to the OSHA Standard. The department also recognizes that the Act does not require employers to have the education or training required to recognize labels that contain highly technical errors. Employers may rely on the accuracy of the chemical's MSDS for the information needed for re-labeling primary containers that have lost their original labels and for labeling secondary containers. New §295.6(b) clarifies that employers may either obtain replacement labels from their suppliers or prepare their own replacement labels.

Comment: Concerning proposed §295.6(a), now relettered as §295.6(c), one commenter recommended simplifying the section to require an "appropriate hazard warning" as defined in §295.2(2). Six commenters expressed concern about the practicality of labeling small containers.

Response: The department agrees with the commenter regarding the standards for hazard warnings on primary container labels and has revised §295.6(c) to clarify that warnings that conform to the OSHA Standard will be adequate to meet the labeling requirements of the Act. However, the department has determined that the proposed definition of "appropriate hazard warning" would be very restrictive to employers and has revised the language in §295.6(c)(2) to provide the flexibility that is available to employers under the OSHA Standard. The new language will allow employers to use alternative labeling systems in lieu of using more detailed worded labels on containers, as long as the employees receive training on the additional information that is available through other information sources, including MSDSs. The department has also provided new language in this section to clarify the circumstances under which an employer must provide a replacement label. The department also agrees with the commenters concerning the limitations of labeling small containers and has added new language in relettered §§295.6(e) and (g) to provide employers with more options to convey the required label information to employees.

Comment: Concerning proposed §295.6(b), now relettered as §295.6(d), seven commenters stated that it would be impractical to meet the specified labeling requirements for secondary containers, especially with respect to labeling small secondary containers in laboratories.

Response: The department agrees that the proposed language in the section was not consistent with the labeling requirements of the OSHA Standard and has modified the language in §295.6(d)(2) to be consistent with §295.6(c)(2). The department has also clarified in this subsection that the Act, §§502.004(f)(2) and 502.007(b), provides exceptions to the labeling requirements for secondary containers. These exceptions are for chemicals in laboratories that comply with specific requirements of the Act and for portable containers intended for the immediate use of the employee.

Comment: Concerning proposed §295.6(d), now relettered as §295.6(f), two commenters questioned how the labeling requirements for stationary process containers would be applied to laboratories.

Response: A stationary process container would be a secondary container. Therefore, the exemption in the Act, §502.004(f)(2), would apply to such containers in laboratories and an employer who complied with the requirements of the Act, §502.004(f)(2), would not be required to label such containers. No changes were made as a result of the comments.

Comment: Concerning proposed §§295.6(e) and (f), five commenters stated that the proposed hazard warnings were too prescriptive and one commenter noted that the proposed requirements were not consistent with the OSHA Standard.

Response: The department agrees with the commenters and has deleted proposed §§295.6(e) and (f). The department has determined that the requirements for "appropriate hazard warnings" or alternative methods of labeling that comply with §§295.6(c) and (d) will provide adequate hazard warning information which will be more easily understood by employees.

Comment: Concerning proposed §295.6(g), one commenter stated that the proposed language was vague and confusing. Two commenters stated that the proposed section's requirement for concise label information was contradicted by the required level of label detail specified in other sections.

Response: The department agrees with the commenters and has deleted proposed §295.6(g). Since the OSHA Standard requires concise label information, this proposed section also was determined to be unnecessary.

Comment: Concerning proposed §295.6(h), now relettered as §295.6(g), two commenters stated that the proposed language was too restrictive. Three commenters stated that the OSHA Standard did not preclude the use of alternative methods of labeling, such as the National Fire Protection Association (NFPA) 704m Standard and the Hazardous Materials Information Systems (HMIS) Standard.

Response: The department agrees with the commenters and has modified the language in relettered §295.6(g) to provide consistency with the OSHA Standard.

Comment: Concerning proposed §295.6(i), now relettered as §295.6(h), four commenters stated that the language was unreasonable and one commenter suggested that primary containers received prior to January 1, 1986, should only require relabeling "if the label has been removed or defaced, or is grossly inadequate." Two of the commenters were especially concerned about the requirement to re-label older stocks of laboratory chemicals which were still in use.

Response: The department disagrees with the commenters and has retained in relettered §295.6(h) the requirement for re-labeling chemicals which were received prior to the effective date of the Act and which do not meet the Act's requirements for labeling. However, the department has modified the language in this section to clarify that pre-1986 stocks of laboratory chemicals may not require re-labeling if the chemicals are in a laboratory that complies with the requirements of the Act, §502.004(f)(2), or if the existing labels meet the requirements of the Act.

Comment: Concerning §295.7(a), one commenter noted that not all employers would be required to comply with all require-

ments of the Act and requested that the term "all" in the first sentence of this subsection be deleted. This commenter also objected to the requirement for the employer's written programs to provide the names of locations where any required documents or equipment would be stored and for the written programs to be specific to each workplace. Three commenters requested that the term "action" be defined. Two commenters objected to the requirement for the employer to provide training, since his agency placed this responsibility on principal investigators.

Response: The department agrees with the comments regarding employers who may not be required to comply with "all" requirements of the Act and has modified the language in §295.7(a) to be consistent with the definition of "written hazard communication program" in §295.2(18). The department also agrees that the requirement for including in the written program the names of storage locations for documents or equipment is unnecessary and would limit an employer's flexibility in changing such locations. The department has modified the language in §295.7(a) to require that written programs contain only a description of the applicable requirement or section of the Act and a description of the compliance steps that will be taken by the employer. This modified language clarifies what was meant in proposed §295.7(a) by "action." The department agrees that employers with multiple workplaces may wish to develop a standard written hazard communication program that could be directly implemented or modified to meet the needs of each individual workplace. Therefore, the department has modified the last sentence of §295.7(a) to clarify the employer's options in developing such written programs. The department disagrees with the comments regarding responsibility for training. As with all requirements of the Act, the employer has the ultimate responsibility to provide training to employees, but may delegate this responsibility to others.

Comment: Concerning §295.7(b), one commenter stated that referring to "each separate workplace" was confusing and unnecessary and suggested alternative language. This commenter also requested clarification regarding whether having electronic copies of the written hazard communication program available to each workplace would meet the requirements of the Act. Two commenters suggested that employers should only be required to have the written hazard communication program available upon request. These commenters also noted that "separate workplaces do not constitute separate locations" and questioned whether one written program for multiple workplaces would meet the requirements of the Act.

Response: The department agrees with the comments regarding the language and has changed the wording in §295.7(b), using the commenter's suggestion. The department has also added language to §295.7(b) that clarifies that the written program may be maintained at the workplace as either a printed or electronic copy. The department disagrees with the suggestion that employers not be required to maintain a copy of the written program at each workplace because this requirement is specified in the Act, §502.009(b). However, this requirement does not preclude the development of a standard written program which could be used for and maintained at multiple workplaces in either printed or electronic form.

Comment: Concerning §295.7(c), one commenter recommended deleting the section because it will create unnecessary enforcement issues as written.

Response: The department agrees with the commenter, but has determined that §295.7(c) should be retained to provide a listing of topics from the Act to be addressed in a written hazard communication program, if applicable. The department has modified the language in §295.7(c) to make the listing consistent with the requirements of the Act and to clarify that employers need only address those listed requirements that apply to their workplaces.

Comment: Concerning §295.7(d), one commenter stated that the phrase "may result in an exposure" should be changed to "will result in an exposure."

Response: The department disagrees and has retained the language in §295.7(d) to ensure consistency with the Act, §502.009(c). No changes were made as a result of the comment.

Comment: Concerning §295.7(e), one commenter stated that the language was too prescriptive and could prevent employers from tracking training using electronic methods. The commenter recommended that the subsection be deleted or revised. Three commenters questioned how on-going training of employees could be documented to meet the proposed requirements and one of these commenters questioned whether research laboratories would be exempted from the training record requirement. One of these commenters also recommended that the employer should not be required to record the categories of chemicals covered in training.

Response: The department agrees and has modified the language to provide greater flexibility for employers in maintaining training records. The department agrees that employers may have difficulty in tracking on-going training of employees, but notes that the Act requires maintenance of records for "each training session." This requirement does not preclude an employer from providing additional, undocumented training on an on-going basis, but does necessitate maintaining records that will demonstrate that employees have received training on the basic subjects required for compliance with minimum standards of the Act. Research laboratories are not exempt from the Act and are required to maintain training records for their employees. However, certain staff in research laboratories may be exempted from these requirements. For example, graduate and post-doctoral students performing research that is part of an educational curriculum and who are not paid directly by the educational institution are not considered to be "employees" under the Act. The department disagrees with the commenter concerning the record of chemical categories and has retained the proposed language of §295.7(e)(3). The department notes that the employer will have flexibility in establishing the chemical categories to be used in training and the department has determined that such categories are "subjects covered in the training session," as referenced in the Act, §502.009(g).

Comment: Concerning §295.7(f), two commenters questioned whether an employee had to be trained on chemical categories for chemicals to which the employee is not exposed.

Response: The department notes that the last sentence of §295.7(f) adequately clarifies that employees need only be trained on "appropriate" chemical categories, based on "chemicals to which the employee may be exposed" and has retained the language of this subsection. No changes were made as a result of the comments.

Comment: Concerning §§295.7(g) and (h), three commenters stated that the number of chemical categories was excessive and that the goal of training by categories should be to provide training appropriate to the hazard. One of these commenters stated that training regarding the proposed number of chemical categories would require a significant and unnecessary increase in training time.

Response: The department agrees and has deleted §§295.7(g) and (h) to provide employers with greater flexibility in determining the appropriate chemical hazard categories for training.

Comment: Concerning §295.7(k), now relettered as §295.7(i), two commenters stated that the reference to Title 40 Code of Federal Regulations (CFR), Part 311 was not accurate and should be revised or deleted. The commenters stated that Part 311 required training on hazard communication issues, was equivalent to compliance with the OSHA Standard, and was therefore equivalent to the training requirements of the Act.

Response: The department disagrees with the commenters and has retained relettered §295.7(i). The intent of relettered §295.7(i) is to clarify that training that meets the requirements of Title 40 CFR, Part 311 is equivalent to the specific type of training required for employees of emergency service organizations under the Act, §502.009(h). The training required under the Act, §502.009(h) is unique in that it is training for emergency exposures to hazardous chemicals which are not purchased by the employer or routinely handled or used by the employee. No changes were made as a result of the comments.

Comment: Concerning §295.8, one commenter stated that the proposed language in §295.8(a) may encourage disgruntled employees or others to make invalid complaints against an employer. Concerning §§295.8(a) and (b), the commenter also questioned whether the department had a specific reason to be concerned about denial of entry for compliance inspections.

Response: The department disagrees with the commenter regarding invalid complaints and has retained the language in §295.8(a). The Act does not limit the department to investigating only written complaints or proving the validity of a complaint in advance of a compliance inspection of an employer. The department also recognizes an employee's need for anonymity in filing a complaint in a situation where the employer may retaliate against a known complainant. The department has retained the language in §§295.8(a) and (b) concerning denial of entry because the department's representatives have been denied access and violations have been alleged as a result. No changes were made as a result of the comments.

Comment: Concerning §§295.11(c) and (d), one commenter recommended revising the language in §295.11(c) to clarify that an employer may respond to a written notification of violations by requesting an informal conference. The commenter also objected to the term "acceptable" in §§295.11(c) and (d) because it suggests that the department may "demand more than compliance."

Response: The department agrees with the commenter and has revised the language in §295.11(c) concerning the informal conference option. The department also agrees that the term "acceptable" is misleading and has deleted this term from §§295.11(c) and (d).

Comment: Concerning §295.11(e), one commenter recommended revising the classification of severity levels of violations from "minor," "serious," "severe," and "critical" to "administrative," "serious," and "willful." The commenter also questioned what was meant by "a violation of any employee's rights under the Act" and why such a violation should be at the "critical" level."

Response: The department disagrees with the commenter concerning the classification of severity levels and has retained these terms in §295.11(e). The proposed severity level classifications are consistent with the terminology for classifications used by other enforcement programs within the department. The department agrees that violations of some of the employee rights specified in the Act, §502.017, should not be classified as "critical" violations and has deleted this reference in the definition of a "critical violation."

Comment: Concerning §§295.11(g) and (h), one commenter questioned whether the Act authorizes the department to impose a per day penalty and noted that the department is authorized to seek a civil injunction to stop continuing violations.

Response: The department disagrees that a civil injunction is, in all cases, an appropriate action for continuing violations and has retained the language in §§295.11(g) and (h). With regard to administrative penalties, the Act, §502.014(m) states "Each day a violation continues may be considered a separate violation." No changes were made as a result of the comment.

Comment: Concerning §295.11(i) in general, three commenters recommended deleting the subsection, stating that it would not improve worker safety and would "weaken the standard." One commenter stated that the examples were unnecessary and not consistent with the proposed penalty scheme set out in §295.11(e). Five commenters stated that the levels of violations in §295.11(i) would not apply equally to Texas employers because it did not take into consideration the number of employees requiring training, the risk to the employee that is presented by the violation, or the number of MSDSs required to be maintained. Five commenters recommended against the department mixing numbers and percentages in its examples of violations classified by severity level. Two commenters questioned how §295.11(i)(1)(F) would apply if an employer wished to maintain older MSDSs for historical exposure data. Concerning §295.11(3)(G), three commenters questioned whether an employer would be cited for a violation if an MSDS was not provided by the manufacturer or distributor within seven days of the employer's request, and one commenter questioned whether the administrative penalty associated with this violation would be assessed to the employer or the chemical manufacturer or distributor. One commenter recommended that §295.11(i)(3)(B) should indicate a range of four to ten containers and that §295.11(i)(3)(D) should indicate a range of 11% to 25% of employees. One commenter recommended that §§295.11(i)(3)(B) and 295.11(i)(4)(B) should include the phrase "in a workplace" to be consistent with the wording stated in §295.11(i)(2)(A).

Response: The department disagrees with the commenters concerning the need for §295.11(i) and the correlation of its examples with the penalty scheme in §295.11(e). The department has retained the subsection, but has made modifications in the language and deletion of certain subsections in §295.11(i) that were determined to be necessary to ensure consistency with changes in other sections. The intent of §295.11(i) is to provide guidance to the department and employers on the types of violations which may be classified into each of the severity levels. The examples in §295.11(i) will help to ensure greater consistency in enforcement without limiting the depart-

ment's options to consider the risk to employees posed by special circumstances. The department notes that providing such examples of violations in rules is consistent with other enforcement programs in the department. The department agrees with the commenters regarding the problem of ensuring equal application of the severity levels for violations in a variety of employer situations. To address this problem, the department has made recommendations to its representatives to conduct random compliance inspections of workplaces, random employee interviews, and representative sampling of compliance documents. These practices will help to ensure that employers are evaluated on their overall compliance records. The department disagrees with the commenters regarding mixing numbers and percentages in the examples of violations and has retained the language in these subsections. When making these decisions, the department considered the level of risk which the example violation posed for employees and then chose either numbers or percentages to describe the violation, as appropriate. Concerning the issue of an employer's retention of outdated MSDSs, an employer would still be considered to be in compliance with the MSDS requirements of the Act as long as the employer has maintained at least one copy of each current MSDS for each hazardous chemical in the workplace. With regard to the issue of manufacturers or distributors failing to provide requested MSDSs within seven business days of a request, the department has determined that the employer would not be cited for a violation related to a missing MSDS as long as the employer had written proof of the request for the MSDS and the employer had made the request within 30 days of receipt of the chemical. In cases where the employer had written proof of the request for the MSDS and the chemical manufacturer or distributor failed to provide the MSDS within seven business days of the employer's written request, the department would take an enforcement action against the chemical manufacturer or distributor. The department agrees with the suggestions for wording changes to §§295.11(i)(3)(B), 295.11(i)(3)(D), and 295.11(i)(4)(B) and has made the recommended changes to these sections.

Comment: Concerning §295.12(b), two commenters stated that the requirement for capital letters in the required "Notice to Employees" poster was prescriptive and recommended "common English grammar rules for capitalization."

Response: The department disagrees with the commenters and has retained the language in §295.12(b). The department is given authority under the Act, §502.008(c) to provide a suitable form of notice and capitalization of the title of this notice is considered necessary by the department to make it more easily observed. No changes were made as a result of the comments.

Comment: Concerning §295.12(g), one commenter stated that responsibility for maintenance or storage of PPE was not covered by the Act and three commenters stated that this responsibility should belong to the employee. Three commenters recommended deleting and one commenter recommended clarification of the last sentence of the subsection.

Response: The department agrees with the commenters and has revised the language in the last sentence of §295.12(g) to clarify that the employer is responsible for training employees regarding how to maintain and store PPE, but the employer does not have the responsibility for maintenance and storage of this equipment. The department notes that employers should exercise caution in providing previously used PPE to employees because, in circumstances where such equipment has not been properly maintained or stored, the equipment may not be considered to be "appropriate PPE," as described in §295.2(3).

The comments regarding the proposed rules received by the department during the comment period were submitted by representatives of the City of Austin, the Association of Texas Hospitals and Health Care Organizations, the Texas A&M University System, Texas A&M International University, the Texas Agricultural Experiment Station, the College of Engineering at Texas A&M University, Tarleton State University, Baylor College of Dentistry, the University of Texas System, the University of Texas at Austin, the Health and Safety Services Office at the University of Texas Medical Branch at Galveston, the Animal Resources Center of the University of Texas Medical Branch at Galveston, and department staff. None of the commenters were against the rules in their entirety, however they expressed concerns, asked questions and expressed recommendations for change as discussed in the summary of comments.

Subchapter A. Hazard Communication

25 TAC §§295.1–295.3, 295.4–295.9, 295.11–295.13

The amendments and new sections are adopted under the Health and Safety Code, §502.019, which provides the department with the authority to adopt necessary rules to administer and enforce Chapter 502; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167 is implemented by this adoption.

§295.1. Purpose and Scope.

The purpose of these sections is to provide employers and employees with guidance needed to comply with the Texas Hazard Communication Act. These sections shall take effect September 1, 1999.

§295.2. Definitions.

The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act - The Hazard Communication Act, the Health and Safety Code, Chapter 502.

(2) Appropriate hazard warning - Any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the health and physical hazards, including the target organ effects of the chemical(s) in the container(s).

(3) Appropriate personal protective equipment (PPE) or protective equipment - Equipment that is provided to an employee by the employer and provides a level of protection to chemicals to which the employee may be exposed that will be adequate to ensure their health and safety based on current industry standards. In determining the selection of PPE, the employer shall consider all routes of entry, permeability of PPE materials, the duties being performed by the employee, the hazardous chemicals present, and such other factors as may affect the performance of the equipment. The employer must ensure that the provided equipment fits the individual employee and is functional for its intended use as described by the manufacturer's specifications.

(4) Asphyxiation - A death or injury from suffocation that is caused by a chemical and which is due to interference with the oxygen supply of the blood, other than drowning.

(5) Categories of hazardous chemicals - A grouping of hazardous chemicals with similar properties.

(6) Container - Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical or contains multiple smaller containers of an identical hazardous chemical. The term "container" does not mean pipes or piping systems, nor does it mean engines, fuel tanks, or other operating systems in a vehicle. A primary container is the one in which the hazardous chemical is received from the supplier. A secondary container is one to which the hazardous chemical is transferred after receipt from the supplier.

(7) Department - The Texas Department of Health.

(8) Director - The Commissioner of Health.

(9) Emergency service organization - Any organization established to provide the following services for the general public: fire prevention and suppression, hazardous materials response operations, or emergency medical services. An emergency service organization may consist of volunteer members or be a unit of a political subdivision of the state with compensated employees.

(10) Employee education and training program - Actual instruction, regardless of the technology or method used to deliver it, provided by the employer to employees as required by the Act, §502.009. This program is the actual instruction of employees and records of training, as opposed to a written plan for training.

(11) Employer - The overall organizational public entity rather than individual facilities or workplaces. Examples of public employers are an entire state agency, a county, a city, a public school district, a public university, a public college or community college, a river authority, a public hospital, or a volunteer emergency service organization. Each university, college, or community college in a university or college system shall be considered as a separate employer under the Act, §502.003(11).

(12) Handle - To touch, move, or manipulate hazardous chemicals.

(13) Health hazard - A chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

(14) Label - Any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals, which includes the same name as on the material safety data sheet.

(15) OSHA Standard - The Hazard Communication Standard of the United States Department of Labor, Occupational Safety and Health Administration (OSHA), Title 29 Code of Federal Regulations, 1910.1200.

(16) Stationary Process Container - A tank, vat, or other such container which holds different hazardous chemicals at different times.

(17) Workplace - A contiguous facility that is staffed 20 hours or more per week, unless such a facility is subdivided by the employer. Normally this subdivision would be a building, cluster of buildings or other structures, or complex of buildings, but could be for a portion of a building if the employer chooses. Noncontiguous properties are always separate workplaces unless they are temporary workplaces, in which case they can be either work areas of a headquarters workplace or separate workplaces, at the discretion of the employer.

(18) Written hazard communication program - A document which describes an employer's program for compliance with those requirements of the Act imposed on the employer.

§295.4. Workplace Chemical List.

(a) An employer may choose to develop workplace chemical lists by work areas, pursuant to the Act, §502.005(c). However, the workplace chemical list threshold of 55 gallons or 500 pounds must be applied to the aggregate amount of the hazardous chemical in the workplace, even though such chemicals may be present below these thresholds in each work area.

(b) If an employer chooses to subdivide a contiguous facility into separate workplaces, a workplace chemical list must be prepared for each separate workplace.

(c) The department shall make available a model form to assist employers in developing workplace chemical lists. This form will provide a recommended format for the workplace chemical list, but is not mandatory.

§295.5. Material Safety Data Sheets.

(a) The employer shall maintain a current and appropriate MSDS, as defined by the Act, §502.003(17), for each hazardous chemical purchased. Except as described in subsection (b) of this section, MSDSs, whether in printed or electronic form, are considered "readily available" if they can be accessed for review at the workplace during the same workshift in which they are requested. For purposes of this section, a current MSDS shall be one which contains the most recent significant hazard information for the hazardous chemical as determined by the chemical's manufacturer.

(b) An employer shall provide MSDSs to emergency responders as soon as practicable upon request.

(c) An employer shall request or obtain a missing MSDS within 30 business days of receipt of the hazardous chemical. An employer shall not permit the use of any hazardous chemical for which a current MSDS is not available.

(d) A chemical manufacturer or distributor must provide an appropriate MSDS to an employer within seven business days of receipt of the employer's written request.

(e) If the hazardous chemical was last received prior to the original effective date of the Act, January 1, 1986, an MSDS is not required.

§295.6. Labeling of Containers.

(a) Employers shall rely on the manufacturers or distributors of their hazardous chemicals to provide container labels which meet the requirements of the OSHA Standard and shall be responsible for re-labeling a container only:

(1) when the label is illegible; or

(2) when it comes to the attention of the employer that the labeling does not meet the labeling requirements of the OSHA Standard.

(b) An employer who receives an unlabeled or mislabeled primary container of a hazardous chemical from a supplier or a container which requires re-labeling according to subsection (a) of this section shall ensure that such containers are re-labeled to conform to the OSHA Standard prior to use by any employee. Employers may

contact their suppliers to request such replacement labels or may prepare their own replacement labels.

(c) In cases where an employer receives a primary container of a hazardous chemical that requires re-labeling according to subsection (a) of this section, except as provided in the Act, §502.007(b), the employer shall ensure that the replacement label contains the following information:

(1) the identity of the chemical appearing on the MSDS;

(2) the appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the employer's education and training program, will reasonably provide employees with the specific information regarding the physical and health hazards, including the target organ effects of the hazardous chemical; and

(3) the chemical manufacturer's name and address.

(d) Except as provided in the Act, §§502.004(f) and 502.007(b), each secondary container label must include:

(1) the identity of the chemical appearing on the MSDS; and

(2) the appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the employer's education and training program, will reasonably provide employees with the specific information regarding the physical and health hazards including the target organ effects of the hazardous chemical.

(e) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container in the workplace, work area, or temporary workplace throughout each work shift. The employer may add label information in another language to hazardous chemical containers.

(f) Signs, placards, process sheets, batch tickets, operating procedures, or other such written materials may be used in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the label information required by the Act.

(g) Alternative labeling systems may be used by employers, as specified in subsections (c)(2) and (d)(2) of this section. Examples of such labeling systems are the National Fire Protection Association (NFPA) 704m Standard; the Hazardous Materials Information Systems (HMIS) Standard; and the U.S. Department of Transportation shipping label system.

(h) Except as provided in the Act, §502.004(f), containers of hazardous chemicals which were received prior to the original effective date of the Act, January 1, 1986, and which do not meet the requirements of this section, must be re-labeled in accordance with the current labeling requirements of the Act.

§295.7. Written Hazard Communication Program and Employee Education and Training Program.

(a) An employer is required to develop a written hazard communication program which will describe how the employer will comply with those requirements of the Act imposed on the employer. The written hazard communication program must include a description of the procedures that the employer will follow to achieve compliance with each applicable requirement of the Act. Employers may develop written hazard communication programs that are specific to each separate workplace or may develop a standard written program that could be used or modified for each workplace.

(b) An employer shall maintain either a printed or electronic copy of the written hazard communication program at the workplace to which the program applies.

(c) The elements that shall be considered in an employer's written hazard communication program, if applicable, include:

(1) workplace chemical lists;

(2) material safety data sheets;

(3) labels;

(4) employee education and training programs, including the following subjects:

(A) the use of the information provided in material safety data sheets and labels, and how they are related; and

(B) the following subjects which relate to hazardous chemicals known to be present in the employee's work area:

(i) locations;

(ii) the physical effects and short-term and long-term health effects of exposure;

(iii) safe handling;

(iv) the proper use of personal protective equipment;

(v) first aid treatment for exposures; and

(vi) safety instructions on handling, cleanup, and disposal;

(5) reporting employee deaths and injuries;

(6) posting employee notice(s) ;

(7) providing personal protective equipment; and

(8) maintaining employee rights.

(d) The employee education and training program shall include training sessions for employees and the record of each training session. The training subjects listed in subsection (c)(4) of this section shall be conducted in the following manner:

(1) the instruction may be provided by categories of chemicals under the Act, §502.009(d); or

(2) the instruction may be provided for specific chemicals known to be present and to which the employee may be exposed.

(e) Training records may be maintained by the employer in either printed or electronic form, must be developed for each session which is necessary to demonstrate compliance, and shall contain all of the following information:

(1) the date of the training session;

(2) a legible list of names of all the employees who attended the training session;

(3) any of the subjects listed in subsection (c)(4) of this section which were included in the training session, and the names of the categories of chemicals that were covered in the training session, if training is conducted by such categories; and

(4) a legible list of names of all instructors who provided the training for that session.

(f) When training is conducted by categories of hazardous chemicals under the Act, §502.009(d), the employer shall ensure that all the categories used are adequate to cover all hazardous chemicals to which the employees may be exposed. Such training need only cover those categories of chemicals which are appropriate, based on the hazards presented by the chemicals to which the employees may be exposed.

(g) Training for new or newly assigned employees must be completed prior to assigning any duties that may result in exposure to hazardous chemicals.

(h) Emergency service organizations shall provide to their members or employees the following information:

(1) for any hazardous chemicals which the members or employees use or handle, the emergency service organization shall provide the training required by the Act, §502.009(c);

(2) for any hazardous chemicals to which the members or employees may be exposed during emergency responses, the emergency service organization shall provide information on the recognition, evaluation, and control of exposures to such chemicals.

(i) The information referenced in subsection (h)(2) of this section may be in the form of training sessions, written materials, or any other form of communication which provides this information. Training which meets the requirements of the Hazardous Waste Operations and Emergency Response Rule which was promulgated by the U.S. Environmental Protection Agency in Title 40 CFR, Part 311 shall meet the requirements for the Act, §502.009(h), and subsection (h)(2) of this section.

§295.11. Administrative Penalties.

(a) Inspections may be conducted by the director or his representative to determine if an employer is in violation of the Act or the rules adopted by the board to enforce the Act. An employer will be notified in writing of any alleged violations. When an employer receives written notification alleging violations of the Act, a written response shall be sent by the employer to the department within 15 business days of receipt of the notification. The employer's response must conform to one or more of the options provided in the Act, §§502.014(d), (e) and/or (f).

(b) Employers who do not respond to the written notice from the department in accordance with subsection (a) of this section shall be subject to administrative penalties. Each violation of the Act may be cited separately in the written notice and a separate penalty may be proposed for each citation. Each day a violation continues may be considered a separate violation.

(c) Penalties shall be due after an order is issued by the director. An order may be issued on or after the 16th business day following the date that a written notification of violations is received by the employer, unless the department receives a written response which documents that each violation has been corrected or that an informal conference or a formal hearing has been requested. If an informal settlement conference is requested, the employer must respond within 11 business days after the employer receives a summary letter about the informal conference.

(d) The written response from the employer must address each violation separately and must provide the documentation requested by the department or an alternative agreed to by the department. An inappropriate or unacceptable response may result in a penalty being assessed for the underlying violations.

(e) Violations will be classified in one of four severity levels:

(1) a minor violation is related to a minor records keeping deficiency;

(2) a serious violation is related to failure to take an action that poses a threat of harm to any employee or a substantial records keeping deficiency;

(3) a severe violation is related to failure to take an action that poses a substantial threat of harm to any employee or a major records keeping deficiency; or

(4) a critical violation is related to failure to take an action that has caused harm or is likely to cause significant harm to any employee.

(f) Penalty amounts will be assessed based on the following schedule:
Figure: 25 TAC §295.11(f)

(g) Proposed penalties for individual violations may be reduced or enhanced by the department based on consideration of the history of previous violations, good faith efforts made to correct violations, duration of the violation, or any other considerations that justice may require. A maximum reduction or enhancement of 50% per individual proposed penalty may be considered, based on the facts presented to the department.

(h) Follow-up inspections may be made to confirm the status of violations. In cases where the department determines that one or more specific violations of the Act are ongoing, the department may issue a written notice to the employer proposing a per day penalty for each violation.

(i) Examples of violations for the various severity levels include, but are not limited to:

(1) Minor violation:

(A) failure to update the workplace chemical list as needed; failure to maintain previous workplace chemical lists for 30 years; or failure to develop the current workplace chemical list;

(B) failure to include one to five required elements in employee training records for one or more training sessions. Each employee name, training subject, instructor's name, and the date of the training session is a separate element;

(C) having a written hazard communication program which fails to describe how one to three of the criteria specified in §295.7(c) of this title (relating to Written Hazard Communication Program and Employee Education and Training) will be met;

(D) failure to post the workplace notice specified in §295.12 of this title (relating to Employee Notice; Rights of Employees) in up to 25% of the locations where notices are normally posted in the workplaces covered by an inspection;

(E) failure to maintain consistent names for hazardous chemicals on MSDSs, labels, and the workplace chemical list; or

(F) failure to maintain a current MSDS for one hazardous chemical in one workplace.

(2) Serious violation:

(A) failure to provide the proper identity or required hazard information on replacement or secondary labels for up to three containers of hazardous chemicals in a workplace;

(B) failure to provide a replacement or secondary label on a hazardous chemical container;

(C) failure to maintain five or more required elements in employee training records for one or more training sessions. Each employee name, training subject, instructor's name, and the date of the training session is considered a separate element;

(D) failure to post the workplace notice specified in §295.12 of this title in 26% to 99% of the locations where notices are normally posted in the workplaces covered by an inspection;

(E) failure to provide up to 10% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(F) having a written hazard communication program which fails to describe how four to six of the criteria specified in §295.7(c) of this title will be met;

(G) failure to maintain current MSDSs for more than one and less than 6.0% of the hazardous chemicals in one workplace which are surveyed during an inspection; or

(3) Severe violation:

(A) failure to post the notice to employees specified in §295.12 of this title in any of the locations where employee notices are normally posted in any workplace;

(B) failure to provide the proper identity or required hazard information on replacement or secondary labels of four to ten containers of hazardous chemicals in a workplace;

(C) failure to provide replacement or secondary labels on up to five hazardous chemical containers;

(D) failure to provide 11% to 25% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(E) having a written hazard communication program which fails to describe how more than six of the criteria specified in §295.7(c) of this title will be met;

(F) failure to maintain current MSDSs for 6.0% to 10% of the hazardous chemicals in one workplace which are surveyed during an inspection;

(G) failure by a chemical manufacturer or distributor to provide an MSDS to an employer within seven business days of receipt of the employer's written request; or

(H) failure to report an incident to the department as required under the Act, §502.012.

(4) Critical violation:

(A) intentionally removing or defacing a label on a primary container of a hazardous chemical or maintaining another product's label on a hazardous chemical container;

(B) failure to provide the proper identity or required hazard information on replacement or secondary labels of more than ten containers of hazardous chemicals in the workplace;

(C) failure to provide replacement or secondary labels on more than five hazardous chemical containers;

(D) failure to provide more than 25% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(E) denial by an employer to allow a representative of the department to conduct a compliance inspection;

(F) failure to maintain current MSDSs for greater than 10% of the hazardous chemicals in one workplace which are surveyed during an inspection;

(G) failure to provide, at the request of an employee, a copy of an MSDS for a hazardous chemical to a physician or emergency responder for purposes of treating any employee who may have suffered a chemical exposure; or

(H) a request or a requirement for an employee to waive any rights provided by the Act, §502.107.

§295.12. Employee Notice; Rights of Employees.

(a) Employers covered by the Act must post and maintain workplace notices specified in this section. The wording of the required workplace notice may be changed by the director as needed. Figure: 25 TAC §295.12(a)

(b) The workplace notice shall measure at least 8-1/2 by 11 inches and be typed, typeset, or mechanically produced with lettering that is clearly legible. The letters shall not be smaller than 12 characters per inch. The words "NOTICE TO EMPLOYEES" shall be in bold capital letters at least 1/2 inch high. Other words spelled in capital letters in the sample notice shall be reproduced in capital letters.

(c) A current version of the workplace notice shall be clearly posted and unobstructed at all locations in the workplace where notices are normally posted, and at least one location in each workplace.

(d) An employer may add information to the workplace notice as long as the wording required by this section is included. Employers may add the name and telephone number of the employer's safety or environmental health officer to the bottom of the workplace notice in order to facilitate communication within the workplace.

(e) To assist employers in providing the workplace notice information, the department shall make original copies of the workplace notice available for photocopying by employers. A Spanish translation of the workplace notice may be made available by the department.

(f) Employees have guaranteed rights to accessing the workplace chemical list and MSDSs and to receive training under the Act.

(g) Employees have a guaranteed right to receive appropriate personal protective equipment (PPE) from their employer. Employers shall provide appropriate PPE to employees who may be exposed to hazardous chemicals in their workplace. The employer shall provide training to employees regarding how to maintain and store PPE appropriately to ensure that contamination does not occur.

(h) An employee shall not be disciplined, harassed, or discriminated against by an employer for filing complaints, assisting inspectors of the department, participating in proceedings related to the Act, or exercising any rights under the Act.

(i) Employees cannot waive their rights under the Act. A request or requirement for such a waiver by an employer violates the Act.

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 30, 1999.

TRD-9902562

Susan K. Steeg

General Counsel
Texas Department of Health
Effective date: September 1, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 458–7236

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25 TAC §§295.4, 295.5, 295.7, 295.8

The repeals are adopted under the Health and Safety Code, §502.019, which provides the department with the authority to adopt necessary rules to administer and enforce Chapter 502; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167 is implemented by the adoptions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 1999.

TRD-9902561
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 1, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.415

The Commissioner of Insurance adopts an amendment to §1.415, concerning assessment of a maintenance tax surcharge authorized under Texas Insurance Code, Article 5.76-5, for the Texas Workers' Compensation Fund. The funds collected by the surcharge are used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund. The section is adopted without changes to the proposed text as published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 1999).

The amendment is required to reflect the Texas Workers' Compensation Insurance Fund's decision to defease $63.2 million of its outstanding bonded indebtedness from the Fund's accumulated earnings. As a result of the decision, this year the Fund does not need the funds collected from the maintenance tax surcharge to service its bonded indebtedness.

On January 7, 1999, the commissioner adopted an assessment rate of .350% of an insurer's correctly reported gross workers' compensation insurance premiums for the calendar year 1998. This rate would have collected funds sufficient to pay current debt service on the bonds issued on behalf of the Texas Workers' Compensation Fund. As a result of the Fund's decision to prepay the above - referenced amount out of its accumulated earnings, no funds are needed from the maintenance tax surcharge; therefore the rate of assessment is reduced to 0.0% by this amendment. As a result of the amended section, the Comptroller of Public Accounts will refund an estimated $10,708,389 of insurer payments made pursuant to the previously adopted 1999 workers' compensation insurance maintenance tax surcharge.

No comments were received.

The amendment is adopted under the Insurance Code, Articles 5.76-3, 5.76-5, 5.68 and 1.03A and the Texas Labor Code, §403.002. The Insurance Code, Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.76-5 establishes the maintenance tax surcharge. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Texas Labor Code, §403.002 establishes the maintenance tax for workers' compensation insurance companies.

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 30, 1999.

TRD-9902569
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 20, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 120. Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities

30 TAC §§120.1, 120.3, 120.11-120.13, 120.15, 120.21, 120.31

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§120.1, 120.3, 120.11-120.13, 120.15, 120.21, and 120.31, concerning Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities, without changes to the proposed text as published in the January 29, 1999 issue of the *Texas Register* (24 TexReg 503). This action repeals a set of rules which are duplicated in 30 TAC Chapter 335, Subchapters G and L.

The commission also has conducted its review of the rules in Chapter 120 as required by the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The adopted notice of review is published concurrently in the Rule Review section of this edition of the *Texas Register*.

EXPLANATION OF RULES

Chapter 120 and Chapter 335, Subchapter L, were joint rules for the Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities which were first adopted by the Texas Air Control Board (TACB) and the Texas Water Commission (TWC) in 1986, under requirements of the Solid Waste Disposal Act (SWDA). The two sets of rules contained the same permitting requirements and were needed for issuance of "one-stop" permits until the two agencies merged September 1, 1993, creating the Texas Natural Resource Conservation Commission. Today, permittees holding existing "one-stop" permits for solid waste facilities may renew or amend those permits using the existing statutory authority of the SWDA and the rules of the commission in 30 TAC Chapter 335. New applicants whose projects require more than one permit from the commission may avail themselves of the commission's new consolidated permitting rules, 30 TAC §§33.11-33.51. These rules allow applicants to seek multiple authorizations through consolidated processes, and receive a single consolidated permit or receive separate permits. In addition, 30 TAC Chapter 116 may be used by those seeking separate air authorization.

The commission reviewed the joint rules under Chapter 120 and Chapter 335 and determined that the agency no longer needs two sets of rules containing the same requirements. Accordingly, the repeal of Chapter 120 is adopted.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule," as defined in the Code. Specifically, the repeal of Chapter 120 will not cause any change in requirements which are found duplicated in Chapter 335, Subchapters G and L. This rulemaking is not an express requirement of state or federal law, but was developed as a result of the rules review of Chapter 120 in accordance with requirements of the General Appropriations Act, Article IX, §167. This rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and was not developed solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under the Code, 2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal Chapter 120, the provisions of which are duplicated in Chapter 335, Subchapters G and L. Prior to September 1, 1993, the SWDA required the former TWC and the former TACB to establish joint rules for "one-stop" permitting for the control of air pollution from hazardous and solid waste management facilities. Since the merger of the two former agencies into the Texas Natural Resource Conservation Commission, September 1, 1993, the SWDA no longer requires the joint rules for two agencies which no longer exist. With the repeal of Chapter 120, the "one-stop" permitting provisions will remain effective in Chapter 335. Adoption of the repeals will not affect private real property which is the subject of the rules because this rulemaking action does not restrict or limit the owner's right to the property that otherwise would exist in the absence of the rulemaking. Further, this rulemaking is not the producing cause of the reduction in the market value of private real property. Therefore, this action, which involves no change in permitting requirements, does not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the repeals is 31 TAC §501.21, to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas. The primary CMP policy applicable to this rulemaking action is the policy that the commission rules comply with federal regulations in Title 40, Code of Federal Regulations, in order to protect and enhance air quality in the coastal area. The repeals will cause no change in current requirements because the existing provisions of Chapter 120 will continue to be effective under Chapter 335. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. During the public comment period, no interested persons submitted comments on the consistency of the proposed repeals with the CMP.

PUBLIC HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on March 1, 1999, and the comment period closed on March 1, 1999. No oral comments were received on the proposal. Written comments were received from Bracewell & Patterson, L.L.P.

ANALYSIS OF TESTIMONY

Bracewell & Patterson, L.L.P. recommended that references to Chapter 120 in 30 TAC Chapter 122 (§122.10) and in 30 TAC Chapter 281 (§281.48, Appendix E) be clarified or removed because they are obsolete.

The commission supports this recommendation and will address these references in subsequent rulemaking involving these chapters.

STATUTORY AUTHORITY

The repeals are adopted under Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policies and purposes of the TCAA. Also, the repeals are adopted in accordance with the requirements of the General Appropriations Act, Article IX, §167, under which agencies must periodically review rules and consider them for readoption.

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 30, 1999.

TRD-9902548
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 20, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 239-1966

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Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §305.50 and repeal of §305.146, concerning Consolidated Permits. The amendment and repeal are adopted without changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 676). The text of the rule will not be republished.

EXPLANATION OF ADOPTED RULES

This rule adoption deletes the requirement that an industrial solid waste permit applicant must submit listings of evidence of noncompliance concerning solid waste management (although this information could still be voluntarily provided for Texas Natural Resource Conservation Commission consideration); deletes the requirement that an applicant must submit information on debts owed to the state; and repeals a redundant reporting requirement.

Texas Health and Safety Code §361.084, concerning Compliance Summaries, provides that evidence of noncompliance may be offered and admitted into evidence for consideration by the commission in determining whether to issue a permit; however, it does not require this information to be submitted by the applicant as part of a permit application. The agency, separate from the permit application process, generates the information concerning evidence of noncompliance that is proposed to be deleted as a permit application requirement, so there is no loss of information by the elimination of this application requirement. Additionally, commission staff can easily obtain information on an applicant's debts owed to the state, for example, by accessing the agency's database on fee status. Therefore, the commission deleted the requirements that the applicant submit evidence of noncompliances and information on debts owed to the state. The commission retained the requirement for listings of sites owned, operated, or controlled by the applicant to aid in the preparation of internal compliance summaries.

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code §2006.002 requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking reduces regulatory requirements.

FINAL REGULATORY IMPACT ANALYSIS

The rule adoption would 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 eliminates certain permit application requirements relating to evidence of noncompliance and debts owed to the state, and eliminates a redundant reporting requirement, which in turn provides benefits to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. The elimination of these requirements would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule would not have an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state, because the information which is currently being collected through the proposed-to-be-eliminated requirements is already available in other ways or databases at the agency. For example, the agency, separately from the permit application process, generates the information concerning evidence of noncompliance that is proposed to be deleted as a permit application requirement, so there is no loss of information by the elimination of this application requirement. In addition, this adopted rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to delete the mandatory requirement that an industrial solid waste permit applicant submit listings of evidence of non-compliance concerning solid waste management in the application, to delete the requirement than an applicant must submit information on debts owed to the state, and to repeal a redundant reporting requirement. The rules will substantially advance this specific purpose by amending 30 TAC §305.50(2), concerning Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit, and by repealing 30 TAC §305.146, concerning Reporting. Promulgation and enforcement of these rules will not burden private real property because they reduce hazardous waste storage, processing and disposal facility permit application requirements and repeal a redundant reporting requirement. Real property is not the subject of these rules, and therefore, the rule changes do not affect real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the adoption is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this adopted rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this adopted rule would be consistent with the applicable CMP goals and policies because the rule amendments would streamline certain state

permit application requirements which are unnecessary and/or redundant, thereby providing for a more efficient permitting system, thus serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed March 8, 1999. Written comments were submitted by the Texas Chemical Council (TCC).

ANALYSIS OF COMMENTS

The TCC comment letter supported the Chapter 305 changes.

Subchapter C. Application for Permit

30 TAC §305.50

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–6087

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Subchapter G. Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits

30 TAC §305.146

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–6087

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §§335.114 and 335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste. Sections 335.9, 335.10, 335.15, 335.112, and 335.152 are adopted with changes to the proposed text and §§335.115, 335.117, 335.155, 335.159 and the repeals of §335.114 and §335.154 are adopted without changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 678) and will not be republished.

EXPLANATION OF ADOPTED RULES

This rule adoption is needed to make state rules no more stringent than federal rules in accordance with commission policy; to continue an ongoing regulatory reform effort by the commission to reduce unnecessary reporting requirements; and to modify the state hazardous waste program to reflect a federal manifest exemption, thereby establishing equivalency with federal regulations and retaining Texas authorization to operate aspects of the federal hazardous waste program.

The rulemaking will reduce the reporting frequency for interim status and permitted Resource Conservation and Recovery Act (RCRA) hazardous waste storage, processing, and disposal facilities; provide an exemption from manifesting for transport of hazardous waste over right-of-ways on or adjacent to contiguous properties; and correct a wording error.

The adopted reporting amendments and repeals are part of an ongoing regulatory reform effort to reduce unnecessary reporting requirements for hazardous waste management facilities.

The adopted rule amendments will reduce the reporting frequency for interim status and permitted Resource Conservation and Recovery Act (RCRA) hazardous waste storage, processing, and disposal facilities from state required annual reporting to federally required biennial reporting. The commission has determined that this information is not necessary on an annual basis and that the federal biennial reporting frequency is satisfactory for state information requirements.

The United States Environmental Protection Agency (EPA) has also promulgated in 62 Federal Register (FedReg) 6622-6657, February 12, 1997, an exemption from manifesting for transport of hazardous waste over right-of-ways on contiguous properties (properties touching along a boundary) in Title 40 Code of Federal Regulations (CFR) §262.20(f). Under 40 CFR §271.21(e), states, such as the State of Texas, having final RCRA authorization must modify their program to reflect federal program changes and submit the modifications to the EPA for approval. Establishing equivalency with federal regulations will enable the commission to retain authorization to operate aspects of the hazardous waste program. Incorporating the federal manifesting exemption into state rules will also make state rules no more stringent than the federal rules in accordance with commission policy. In addition, removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one waste consolidation area is easier to control and can be better located than numerous smaller areas.

Section 335.9(b), as proposed, is amended by adding this sentence: "Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75." This amendment was made to indicate that waste related information submitted in generator annual and biennial reports (§335.71) does not have to be repeated in permitted or interim status facility biennial reports.

Section 335.10(h), as proposed, is amended to insert the two words "or private" that were omitted from the requirement as it appears in federal rule, 40 CFR §262.20(f). This corrects an inadvertent omission.

Section 335.15(7), as proposed, is amended to do some minor wording improvement and to add that the biennial report required by §264.75 or §265.75 must be submitted to the executive director in letter format rather than by EPA form. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will impose no additional cost on the commission.

Section 335.112(a)(4), as proposed, is amended by adding that the form specified in the federal rule should not be used and that the required information should be submitted to the executive director in letter format. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will impose no additional cost on the commission.

Section 335.152(a)(4), as proposed, is amended by adding that the form specified in the federal rule should not be used and that the required information must be submitted to the executive director in letter format. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will eliminate possible confusion internal to the commission due to a reporting format change.

As a result of these amendments, the commission will expect to receive biennial reports from permitted hazardous waste processing, storage, and disposal facilities with the information required in 40 CFR §264.75(a), (b), and (g)-(j) and from interim status facilities with the information required in §265.75(a), (b), and (f)-(j).

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code (the Code), §2006.002, requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking reduces certain reporting and manifesting requirements for businesses, large and small.

FINAL REGULATORY IMPACT ANALYSIS

The rule adoption would 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 conforms certain state rules to match the federal hazardous waste regulations, which in turn provides benefits to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. The benefit from conforming certain state rules to match the federal hazardous waste regulations is derived from proposing to provide for: (1) an exemption from manifesting requirements for transport of hazardous waste over right-of-ways on contiguous properties, and (2) a reduction in certain reporting requirements for hazardous waste storage, processing, and disposal facilities. The incorporation of the manifesting exemption and the reduction in reporting requirements would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule also would provide a benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state, by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities. Another way of explaining this benefit is that the federal regulations to which the state rules are being conformed are protective of the environment and public health and safety. In the case of the manifesting exemption, for example, the environment and public health and safety would be benefitted because there would be a reduced possibility that the environment or public would come into contact with hazardous waste, since, by removing barriers to consolidation of wastes in one central area, the waste would not be as "spread out" over numerous smaller areas. Thus, the waste could more readily be consolidated in one central area that is easier to control and can be more suitably located than numerous smaller areas. In addition, this adopted rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to the Code 2007.043.The following is a summary of that assessment. The specific purpose of the rule is to reduce state hazardous waste reporting requirements that are more stringent than federal rules, to incorporate a federal manifesting exemption into the state rules, and to correct a wording error. The rules will substantially advance this specific purpose by amendments to 30 TAC Chapter 335, §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §335.114 and §335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste. Promulgation and enforcement of these rules will not burden private real property because they reduce state regulatory requirements. Real property is not the subject of these rules and, therefore, the rule changes do not affect real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the adoption is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this adopted rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this adopted rule would be consistent with the applicable CMP goals and policies because the rule amendments would conform certain of the commission's rules to the federal hazardous waste regulations, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed March 8, 1999. Written comments were submitted by the Texas Chemical Council (TCC).

ANALYSIS OF COMMENTS

The TCC pointed out the omission of two words in §335.10(h).

The commission agrees with this comment because this was an inadvertent omission of two words from 40 CFR §262.20(f). The two missing words have been added in this adoption.

The TCC also questioned which reporting form or mechanism the commission would employ for the Biennial Report. The TCC recommended the continued use of the commission report forms instead of the EPA Form 8700-13B, Biennial Report Form.

The commission agrees with this comment. Currently, much of the information that generators would use to complete the EPA form is reported to the commission electronically and is used by the commission for multiple purposes. Switching to the EPA form could result in less efficient information management, overlapping reporting requirements and increase the reporting burden (cost of changing systems, confusion over requirements) not only for reporters, but also for the commission. Amendments in this adoption to §§335.15(7), 335.112(a)(4), and 335.152(a)(4) require processing, storage, and disposal facilities to continue providing their biennial reports in letter format to the benefit of both the regulated community and the commission.

After discussion of their comments with the TCC by phone, they requested that §335.9(b) be further amended to indicate that waste related generator information provided under §335.9 and §335.71 do not also have to be provided in the processing, storage, and disposal facility biennial report required under 40 CFR §264.75 or §265.75.

The commission agrees with the comment because it is current commission policy that information does not have to be submitted more than once. Additional language has been added to §335.9(b) in this adoption that will address the TCC concerns. Language has also been added to the adoption preamble to clarify exactly which information the commission expects to receive as a result of the requirements in 40 CFR §264.75 or §265.75.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §§335.9, 335.10, 335.15

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) (No change.)

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1)-(6) (No change.)

(b)-(g) (No change.)

(h) No manifest and no marking in accordance with §335.67(b) of this title (related to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

This section applies to owners and operators who receive hazardous or Class 1 waste from off- site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.

(1)-(6) (No change.)

(7) Information which has already been submitted by permitted or interim status facilities under the requirements of this section need not be included in the reports required by 40 CFR §264.75 or §265.75 (relating to Biennial Reports); these biennial reports must be submitted to the executive director in letter format rather than by EPA form.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–6087

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Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §§335.112, 335.115, 335.117

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1)-(3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492), except 40 CFR §§265.71, 265.72, 265.76, and 265.77; the biennial report required by 40 CFR §265.75 must be submitted to the executive director in letter format rather than by EPA form;

(5)-(22) (No change.)

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–6087

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30 TAC §335.114

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

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 30, 1999.

TRD-9902555
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 20, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 239–6087

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Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §§335.152, 335.155, 335.159

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1)-(3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR §§264.71, 264.72, 264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6); the biennial report required by 40 CFR §264.75 must be submitted to the executive director in letter format rather than by EPA form;

(5)-(20) (No change.)

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–6087

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30 TAC §335.154

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

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 Natural Resource Conservation Commission
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration

37 TAC §§211.1, 211.3, 211.15, 211.21, 211.22

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amendments to Title 37, Texas Administrative Code §211.1, concerning definitions, §211.3 concerning the filing of documents, §211.15 concerning license action, §211.21 concerning fees and payments and §211.22 concerning issuance of duplicates or documents, without changes to the proposed text as published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 926).

Section 211.1 will be amending the existing terms; Accredited college or university and Executive Director. This section will also be amended to include new definitions for ALJ or Administrative Law Judge, Hearing examiner or Judge and SOAH-State Office of Administrative Hearings. The amendments to §211.3 eliminates some existing language changing the circumstances of when documents relating to matters before the Commission are considered appropriately filed and received by the executive director or SOAH. The amendments to §211.15 eliminates

the language concerning license expiration or deactivation and the setting of a hearing by the commission upon petition by the holder of an expired or deactivated license. The amendments to §211.21 eliminates the option of cash payments being remitted to the commission by a person, agency or other entity. The amendments to §211.22 include additional language concerning the issuance of a document when all requirements had been previously met in instances when the Commission is issuing a duplicate of a document.

No comments were received regarding the adoption of these amended sections.

The amendments are adopted under Texas Government Code Annotated, Chapter 415, §415.010, which authorizes the Commission to promulgate rules for the administration of Chapter 415.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902459

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 1999

Proposal publication date: February 12, 1999

For further information, please call: (512) 936-7700

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37 TAC §211.10

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new to Title 37, Texas Administrative Code §211.10, concerning proposals for decision and exceptions or briefs. The new section is being adopted without changes to the proposed text published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 928).

The new section is being adopted to be in accordance with the State Office of Administrative Hearings requirements concerning contested case hearings.

The new section explains the rights of an adversely affected party to file exceptions or briefs in response to a proposal for decision.

No comments were received regarding the adoption of this section.

The new section is adopted under Texas Government Code annotated, Chapter 415, §415.010 which authorizes the Commission to adopt rules for the administration of Chapter 415.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902461

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 1999

Proposal publication date: February 12, 1999

For further information, please call: (512) 936-7700

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37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education adopts new to Title 37, Texas Administrative Code §211.27 concerning license renewal. The new section is being adopted without changes to the proposed text published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 929).

The new section is being adopted to implement a procedure whereby licenses of persons who fail to obtain legislatively mandated continuing education will automatically expire on the 2 year anniversary date of licensing.

A meeting was held prior to the publication of the proposed new §211.27 in the *Texas Register*. At the meeting the following two comments were received.

A comment from a staff member of the Dallas Police Department's Training Academy concerning the dates that had originally been listed in this section of when the licenses would be renewed; a change was made in the renewal date.

The other comment was received from the Chief of Police of the Richardson Police Department who suggested that the Commission add some language to subsection (b) of this section concerning the notification of license holders who are not in compliance with the continuing education requirements of the fact that the license will not be renewed not only six months prior to expiration, but notifying them a second time when the license actually expired; an addition was made by including this language in subsection (b) of this section.

The new section is adopted under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to adopt rules for the administration of Chapter 415, and §415.052 which authorizes the Commission to issue licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902462

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 1999

Proposal publication date: February 12, 1999

For further information, please call: (512) 936-7700

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Chapter 217. Licensing Requirements

37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new to Title 37, Texas Administrative Code, §217.11, concerning Waiver of Continuing Education Requirements. The new section is being adopted without changes to the proposed text published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 930).

The new section is being adopted to implement procedures that are to be applied in instances when a licensee requests a waiver of the continuing education requirements due to mitigating circumstances which justify the licensee's failure to obtain the required education. This section also explains the rights of a licensee if his/her request for a waiver is denied.

No comments were received regarding the adoption of this new section.

The new section is adopted under Texas Government Code annotated, Chapter 415, §415.010 (1) which authorizes the Commission to adopt rules for the administration of Chapter 415.

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-9902460

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

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Proposal publication date: February 12, 1999

For further information, please call: (512) 936-7700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 725. General Licensing Procedures

Subchapter JJJ. Court-ordered Social Studies

40 TAC §§725.6050–725.6052

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§725.6050-725.6052 in its General Licensing Procedures chapter. The amendment to §725.6050 is adopted with a change to the proposed text published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1761). The amendments to §§725.6051 and 725.6052 and adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to clarify the qualifications for performing court-ordered social studies and update TDPRS's policies on performing court-ordered social studies.

The amendments will function by ensuring that individuals who conduct court-ordered social studies as part of their child placing activities meet the required qualifications.

No comments were received regarding adoption of the amendments. TDPRS is adopting the definition of human services field in §725.6050(4) with a change for clarification.

The amendments are adopted under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments implement the Human Resources Code, §§42.001- 42.077.

§725.6050. Definitions.

The following terms, when used in this subchapter, have the following meaning unless the context clearly indicates otherwise:

(1) Appropriate professional field - a human services field, regulated under state statutes, that has a licensing/certifying entity able and willing to:

(A) maintain an up-to-date register of licensed/certified individuals who meet minimum qualifications and are available to conduct court-ordered social studies.

(B) investigate any complaints against persons whose activities are regulated by the licensing/certifying entity in regard to the conduct of social studies in a timely manner that meets department requirements.

(C) take appropriate action on the licensing/certification of the individual against whom a complaint has been made, based on the findings of complaint investigations.

(2) Appropriate professional organization - an organization of professionals in a human services field, not regulated under state statutes, requiring licensure/certification and able and willing to:

(A) maintain an up-to-date register of organization members who meet minimum qualifications and are available to conduct court-ordered social studies.

(B) investigate any complaints against members in regard to the conduct of social studies in a timely manner that meets department requirements.

(C) take appropriate action on the organization membership of the individual against whom a complaint has been made, based on the findings of complaint investigations.

(3) Full-time experience - at least 30 hours per week. Part-time experience is counted as a percentage of full-time experience.

(4) Human services field - a field of study designed to prepare an individual in the disciplined application of social work values, principals, and methods.

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 30, 1999.

TRD-9902573

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 1, 1999

Proposal publication date: March 12, 1999

For further information, please call: (512) 438–3765

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Chapter 732. Contracted Services

Subchapter L. Contract Administration

40 TAC §732.240

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §732.240, with changes to

the proposed text published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1763).

The justification for the amendment is to remove the language concerning an accrued expense paid within 90 days of incurrence.

The amendment will function by bringing TDPRS and its contractors into compliance with the Federal Cash Management Improvement Act.

No comments were received regarding adoption of the amendment. TDPRS is adopting subsection (b) with a change for clarification. The second sentence is revised to state, "The value of donated goods or services (in-kind) are unallowable."

The amendment is adopted under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, and other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that Department.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§732.240. General Principles of Allowable and Unallowable Costs.

(a) (No change.)

(b) Only those items that represent an actual cash outlay, or the compensation for the use of buildings, other capital improvements, and equipment on hand through a use allowance or depreciation are allowable. The value of donated goods or services (in-kind) are unallowable. However, depreciation or a use allowance on a donated building, donated capital improvements, or donated equipment subject to ownership requirements and/or donor-imposed conditions is allowable. Contractors shall not use revenues from TDPRS to finance activities other than those activities specifically allowable under their contract with TDPRS. Unallowable uses of contract revenues from TDPRS include, but are not limited to, interfund loans/transfers, interdepartmental loans/transfers, intercompany loans/transfers, and employee loans not considered salary advances.

(c)-(i) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 1999.

TRD-9902574

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 1, 1999

Proposal publication date: March 12, 1999

For further information, please call: (512) 438–3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 21. Right of Way

Subchapter I. Regulation of Signs Along Interstate and Primary Highways

The Texas Department of Transportation adopts amendments to §§21.141, 21.142, 21.144-21.154, 21.157-21.160, the repeal of §§21.155 and 21.156, and new §§21.143, 21.155-21.156, 21.161 and 21.162, concerning the regulation of signs along interstate and primary highways. The amendments to §§21.142, 21.144, 21.146, 21.148, 21.150, 21.152-21.154, 21.158, 21.160, and new §21.143 are adopted with changes to the proposed text as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12269). The repeal of §§21.155 and 21.156, the amendments to §§21.141, 21.145, 21.147, 21.149, 21.151, 21.157, 21.159, and new §§21.155, 21.156, 21.161, and 21.162 are adopted without changes and will not be reprinted.

EXPLANATION OF ADOPTED AMENDMENTS, REPEALED AND NEW SECTIONS

Transportation Code, Chapter 391, (the "Act") concerning highway beautification on interstate and primary systems, provides the commission and the department with the authority to regulate the erection and maintenance of outdoor advertising signs along interstate and primary systems.

Senate Bill 446, 75th Legislature, 1997, amended Transportation Code, Chapter 391, by adding §391.005 to exempt campaign signs, provided they meet certain criteria, from regulation.

Title 23, Code of Federal Regulations (CFR), Part 750 requires the state to adopt certain criteria to continue nonconforming signs, establish exemptions for on-premise signs, recognize zoning enacted by municipalities, and certify municipalities to control signs instead of the state.

The amendments to §21.141 change the reference from sections to subchapter.

The amendments to §21.142 revise the definition of "Act" to reflect that the codification of the statute eliminated the name of the Act. The term "commercial or industrial activities" is changed to clarify what types of activities may not be considered to establish an unzoned commercial area. The term "freeway" has been modified to clarify the point in time when more restrictive spacing for a freeway should be applied. The amendment provides that a road becomes a freeway at the point when a construction contract has been let and the access rights have been obtained. This will decrease the number of signs permitted in nonconforming locations. A new definition is added for the term "interchange," defining the point in time when spacing from an interchange is applied. By using the point in time when a construction contract has been let, the department can minimize the number of nonconforming signs. The term "outdoor advertising or sign" is amended to include logos and symbols. The term "unzoned commercial or industrial area" is amended to require that business activities must be visible from the main-traveled way and that two business activities must be adjacent. The definition also provides what would disqualify the activities from being adjacent. Two activities may occupy one building as long as there is sufficient separation of the two

activities. The term "zoned commercial or industrial area" was amended to comply with Title 23 CFR §750.708, by specifically adding a prohibition against the recognition of spot and strip zoning. A definition for "turning roadway" was added for clarity. The definition for "normal maintenance" has been deleted since it is described in §21.l43. Other definitions were amended or added to conform to federal regulations and to clarify terms used in this subchapter. This section has also been amended to number the definitions in accordance with Texas Register style.

New §21.143 complies with the provisions of 23 CFR §750.707. The section: establishes the conditions applicable to maintaining a nonconforming sign; describes the actions that may be undertaken without a new permit under normal maintenance or reasonable repair and maintenance; and establishes criteria which constitute substantial change to a sign, thus requiring a new permit.

The amendments to §21.144 clarify how measurements of the spacing of signs from parks, rest areas and scenic areas should be taken; and how the height of a sign and distance between signs should be measured.

Section 21.145 was amended to delete the requirement that a sign must be removed within five years of the date it became nonconforming because to do so would require payment to the sign owner. To reduce fraud, the amendments also provide that a permit may be canceled if one of the businesses supporting an unzoned commercial area was solely established to obtain a sign.

The amendments to §21.146 are minor changes that make the section easier to read.

The amendments to §21.147 revise the directional sign exemption for farm and ranch signs to add language that the facilities must raise livestock or grow crops. This will reduce abuse of this exemption. Additionally, an exemption was added for campaign signs as required by Transportation Code, §391.005. An exemption for directional signs for certain attractions and activities was added to reflect the department's policy of not subjecting directional signs to licensing and permitting requirements in §21.147(a)(10). Criteria for on-premise signs have been added to comply with 23 CFR §750.709, requiring the establishment of criteria to determine whether an on-premise sign qualifies for an exemption.

The amendments to §21.148: reflect the language in Transportation Code, §544.006, concerning the prohibition of certain signs which interfere with traffic control devices; clarify that signs in joint use areas with a railroad or utility company are legally nonconforming if they were in existence prior to March 3, 1986; and clarify that prohibited signs include signs that are not otherwise exempt, do not have a permit issued pursuant to §21.150, and are operated without a license issued pursuant to §21.149.

The amendments to §21.149: clarify that licenses are not transferable; specify renewal periods; provide that a license will not be eligible for renewal if the license holder ceases to be authorized to do business in Texas; and remove the requirements that license renewals be notarized and proof of continuing bond coverage be provided annually. These changes reduce unnecessary paperwork associated with license renewals.

Existing §21.149 provides that the department may revoke a license if a check or money order is not honored, but then must offer a hearing on the revocation. The amendments consider the license or license renewal void because if a check is not honored, the applicant should have no standing for a hearing.

Section 21.149 is further amended to provide: minor changes to make the subsection easier to read and comply with Texas Register form; and for the temporary suspension of additional permits or the transfer of existing permits when the Director of the Right of Way Division receives a bond cancellation notice. The section: deletes a provision that a license revocation is abated until the revocation is affirmed by order of the commission, so that the Director of the Right of Way Division can suspend the issuance of new permits or the transfer of existing permits; provides the consequence of an expired or revoked license to permits issued under that license; and provides that notice from the department of a bond cancellation, revocation, or suspension is presumed to be received five days after mailing. This presumption may be rebutted. A presumption of notice will allow the department to proceed when a license holder has not notified the department of a forwarding address or fails to check his or her mail.

The amendments to §21.150: require a signature from the landowner consenting to the erection of a billboard; clarify that the initial permission is assumed to continue unless withdrawn; and deletes language that provides that an indication must be included on the permit application that the site owner has consented to the erection of a sign because the additional permission is not necessary. The section also clarifies requirements regarding permit plates and staking a proposed location, which will make it easier for the department to identify existing and proposed sign sites when reviewing a sign permit application or conducting an inventory. The section requires permits to be considered on a first-come, first-serve basis, to standardize handling of permits. The chart in existing subsection (d)(2) concerning refunds and prorations is deleted because it is obsolete since all refunds have been made. The amendments to §21.150 further authorize the Director of the Right of Way Division to approve a transfer from a lapsed license to a valid license when legal documents can be provided to show that the sign was sold. This will eliminate the consequence of losing a sign when the seller of a sign dies or leaves the country prior to signing a transfer form, but after signing a bill of sale. The amendments provide: that a permit with an unresolved permit violation is not eligible for transfer; and a transaction is void if a check or money order is dishonored upon presentment. Currently, the department may cancel a permit, with notice and an opportunity for a hearing. If a check is not honored, the transaction should be void and the applicant should not be entitled to a hearing. The amendments also provide that a notice of cancellation from the department is presumed to be received five days after mailing in order to allow the department to proceed when a license holder has not notified the department of a forwarding address or fails to check his or her mail. This presumption may be rebutted. The amendments establish that a permit automatically expires if it is not renewed, the license expires or is revoked, or the sign is acquired by the state. In these cases, no cancellation of the permit is necessary and it is not necessary to provide notice and an opportunity for a hearing.

The amendments provide: the reasons why a permit may be canceled; and that a notice may be posted on the sign to provide notice to a sign owner that the sign has become subject to control under the Act, when the owner of a sign cannot be identified by information on the sign. As required in §21.150(n),

this posting will resolve the problem of notifying owners that signs on the National Highway System must be permitted.

Section 21.151 is amended to reflect the reorganization of the department and to update department titles. The term "geographical jurisdiction" was changed to "corporate limits." At the time this policy was originally adopted, municipalities had no authority under the Local Government Code to extend their sign ordinances into their extraterritorial jurisdiction ("ETJ"). Title 23 CFR §750.706, does not permit a state to accept a municipality's control for purposes of meeting the requirements of the federal law, in the municipality's ETJ if there is no zoning in the ETJ. In Texas, state law does not allow a municipality to adopt a zoning ordinance within its ETJ. The term "geographical jurisdiction" needed to be replaced to avoid the misconception that a municipality can control signs in its ETJ, in lieu of state control. When a municipality controls signs in its ETJ pursuant to a local ordinance, the state's control under Transportation Code, Chapter 391 does not supersede the municipality's control. Both entities have jurisdiction.

The amendments establish procedures for a municipality to become certified. All the municipalities that are certified to control signs pursuant to the federal program were certified in the early 70's, and recently the department has received several inquiries for certification from municipalities wishing to become certified.

The amendments authorize the department to conduct reviews of certified municipalities for the purpose of ensuring that the minimum requirements of the federal law for an effective control program are being met. Title 23 CFR §750.706(c)(4) provides that the state should periodically check to assure that the local authorities are enforcing their sign ordinance, and 23 CFR §750.706(c)(5) provides that the state is ultimately responsible for control in these certified municipalities. A municipality may be decertified for not enforcing its sign ordinance. At least three municipalities have been "decertified" since the inception of the Act. The amendments provide a procedure to follow for decertification.

Section 21.152 is amended to require sign owners to obtain a new permit to enlarge a sign built smaller than the size shown on the permit.

Section 21.153 was amended to clarify how distances between signs and distances of the spacing of signs from public parks and the right of way line should be measured.

New §21.154 prohibits the use of LED or video screens and the use of intermittent messages. The Federal Highway Administration (FHWA) has recently determined that changeable message signs do not contravene the terms of federal-state agreements that do not specifically prohibit the use of signs with flashing, intermittent, or moving lights. However, according to FHWA, LED and video screens are inconsistent with these agreements. The agreement with Texas, entered into in 1972, prohibits flashing or moving lights, but does not preclude the use of moving parts. The department has determined that further study is necessary to determine the proper frequency of the change and whether the sign would constitute an unsafe distraction to drivers.

The use of reflective materials is authorized as long as the reflective materials do not create the illusion of moving lights or cause an undue distraction to the traveling public. Neon may be used on sign faces as long as the lights do not move or flash or create the illusion of moving or flashing lights.

Section 21.155 and §21.156 are simultaneously repealed and replaced with new §21.155 and §21.156 in a revised and amended form.

New §21.155 provides: the criteria for directional signs contained in 23 CFR §750.154, to eliminate the need to refer to the federal regulations; and the department's selection method, criteria, and registration for directional signs for privately owned activities and attractions. Registration will ensure that the directional signs qualify for the exemption.

New §21.156 specifies criteria for destruction, abandonment, and discontinuance of signs in accordance with 23 CFR 750.707(d)(6). The section provides a process and criteria for the department to follow in determining whether a sign has sustained substantial damage. The sign may not be rebuilt during the appeal process and may not be repaired without a new permit. The existing section had a 50% damage threshold, so that a sign cannot be repaired if it sustains damage in excess of 50% of the cost of erecting a new sign of the same type at the same location. The adopted new section has a 60% threshold. This change will make the section more consistent with the municipal ordinances adopted by certified municipalities pursuant to Local Government Code, §216.013(e). If more than one-half of the poles on a multiple-pole sign are broken or damaged to the point where they cannot be reused, the sign must be discontinued. The section establishes that a sign: may not display obsolete or no advertising matter for 365 days; is considered abandoned if the sign has fallen into disrepair, or become overgrown by trees or other vegetation; and is considered abandoned when the permit renewal fees have not been paid for a period of six months. The section provides: the actions that the department would consider when canceling a permit for abandonment, including that a small temporary sign nailed to the sign does not constitute advertising; that the payment of property taxes, the retention of the sign as a balance sheet asset, or other evidence that the sign is not abandoned will not be considered when establishing whether the sign permit should be canceled; and the department may issue another permit in a conforming location when an existing sign has been abandoned at the location.

Minor amendments were made to §21.157 and §21.158 to provide cross-references and to clarify how measurements would be made.

Amendments to §21.159 clarify that the issuance of a permit or license does not create a property right.

The amendments to §21.160 prioritize the locations where a sign may be relocated. The existing section provides that a sign may not be relocated beyond 3,000 feet under the less restrictive spacing and zoning criteria. The section allows a sign to be relocated within 50 miles of its original location under less restrictive criteria. Often a sign cannot be relocated to the remainder or to another location in the vicinity of the original sign site, either because of insufficient business activity, spacing problems, or because of a local ordinance that does not allow for the relocation of signs. It has become increasingly difficult, due to stricter local sign controls and fewer conforming locations, to relocate signs that are displaced due to highway construction. These amendments make it easier to relocate displaced signs to locations conforming to the minimal requirements set out in the federal-state agreement. The amendments clarify that relocated signs must be reestablished with the same configuration and construction as the original signs and provide a procedure for

bisecting signs. The requirement that a written agreement with a landowner waiving and releasing any claim for damages resulting from the relocation of the sign was deleted because the department does not obtain such a waiver of damages from any other type of leasehold owner in the acquisition process. The amendments provide procedures to amend a permit for a bisection of a sign due to a right of way acquisition. The amendments also clarify that the criteria for relocated signs do not have to be followed by certified cities.

New §21.161 establishes the department's policy concerning tree cutting and violation of access rights for maintenance of signs. It is illegal in Texas to remove vegetation from the right of way to make a sign more visible or to maintain a sign from the state's right of way. These activities have become an increasing problem and may result in cancellation of the permit.

New §21.162 provides an appeal mechanism for permit denials that are not covered by the department's contested case provisions. Currently there is not a formal appeal process to challenge the basis for a permit denial and several sign companies have expressed an interest in such a process.

RESPONSE TO COMMENTS

A public hearing was held on December 15, 1998. Oral comments were received from Gene Leehan, President, Outdoor Advertising Association of Texas; Arnold Velez, Director of Public Affairs, Eller Media, Fort Worth; Lee Vela and Michelle Costa, Eller Media, Houston; and Larry Hopkins, Hopkins Outdoor Advertising. Written comments were received from Scenic Galveston, Inc. (Scenic Galveston), Scenic Texas, Inc. (Scenic Texas), Whiteco Outdoor Advertising (Whiteco), Eller Media Company (Eller), Sign Ad, Inc. (Sign Ad), Hopkins Outdoor (Hopkins) and Reagan National Advertising, Inc. (Reagan). The written and oral comments are responded to as follows. The commenters did not indicate whether they were in favor of or against the proposed rules.

Comment: Sign Ad made a general comment that notice of the proposed changes was inadequate and that all license holders should have been notified formally.

Response: The department published the proposed changes in the December 4, 1998, issue of the *Texas Register*, and held a public hearing December 15, 1998 to receive comments. Government Code, Chapter 2001, provides that publication in the *Texas Register* is formal notice of changes to a state agency rule.

Comment: Concerning §21.141, Hopkins expressed concerns that the scope of the subchapter seems to be broader than the title, since the subchapter encompasses the National Highway System. Whiteco requested clarification on the meaning of the term "regulated highway."

Response: A primary highway is a component of the primary highway system and includes the National Highway System. These terms are derived from the federal statute. The term "regulated highway" is defined to include interstate and primary highways. Those terms are also defined.

Comment: Concerning §21.142 generally, Hopkins would like the word "means" inserted as the first word after each defined term. Hopkins would also like the following definitions added or clarified: continuance, device, intersection, maintain, maintenance, off premise, on premise, park boundary, right of way line, and turning roadways. Reagan and Hopkins requested a definition for the term "adjacent."

Response: The form of the definition section is governed by the Texas Register. The department has added definitions for "intersection" and "turning roadway" for clarity. The common meanings for the other terms will be applied in the context of this subchapter unless otherwise indicated.

Comment: Hopkins expressed concern that the term "permanent building" in §21.142(2)(C)(i) is not consistent with §21.142(30)(A)(i) where the term "main building" is used. Also, Hopkins disagrees with allowing trailers and mobile homes to qualify as a commercial activity.

Response: The department agrees with the comment, therefore the term "main building" has been omitted and subparagraph (A)(i) has been rewritten for consistency. In order to prevent possible abuses, the provision that trailers and mobile homes can qualify as commercial activities has been deleted.

Comment: Eller and Hopkins felt that §21.142(2)(G) in the definition of "commercial or industrial activities" needed further clarification because it was unclear whether the entire business operation would have to be located within 200 feet of the right of way, or only some portion of the operation.

Response: The language has been changed to clarify that some portion of the building, parking lot, storage or processing area where the commercial activity is housed has to be within 200 feet of the right of way.

Comment: Concerning §21.142(2)(J), Hopkins protests the use of the term "employee" in reference to a requirement that an employee must be present at the activity site, because it could exclude an "owner-operator." Hopkins also points out that "available to customers" seems to further define commercial or industrial activities as "retail." Eller expressed concern about defining the amount of hours occupied and type of services that a business must have in order to qualify as unzoned commercial.

Response: The department agrees in part with the comments. The word "employee" was changed to "person" and the requirement that the employee be available to customers has been deleted. The requirement that a business be open five days a week or 30 hours a week was already in the existing section. The language has just been further clarified.

Comment: Eller and Whiteco state that facilities such as campgrounds, golf courses, stadiums, zoos, and racetracks are commercial in nature and should not be excluded pursuant to §21.142(2)(L).

Response: The department checked the zoning of the Texas Motor Speedway and agrees that racetracks and professional sports stadiums are considered commercial and have deleted them from the list of prohibited activities. Language has been added to clarify that the parking lots adjacent to the offices and clubhouses of other recreational facilities would be considered commercial. The department's intent was to prevent the areas without buildings or parking lots on golf courses, campgrounds, and wild animal parks from being counted in the measurement because these undeveloped areas are not commercial in nature.

Comment: Eller protests the addition of §21.142(2)(P), which precludes the use of cemeteries and churches from qualifying an area as unzoned commercial. Eller reasons that in many cases, churches have activities that can be considered com-

mercial, such as warehouse facilities and arena-type seating, and cemeteries exhibit commercial if not industrial characteristics.

Response: In defining an unzoned commercial area, the commission intended to allow signs only in areas occupied by activities which are customarily permitted only in zoned commercial or industrial areas, and to clarify this category by specifically prohibiting certain types of activities which do not meet this criteria. Cities with a comprehensive zoning ordinance routinely allow churches and cemeteries in residential and agricultural zones. Therefore, this subparagraph has not been changed.

Comment: Concerning §21.142(2)(M), Hopkins suggests that the phrase "used for residential purposes" be included after the word "condominiums" so as not to preclude office condominiums.

Response: The department agrees, and the word "residential" was inserted before the word "condominiums."

Comment: Concerning §21.142(2)(N), Hopkins suggests the insertion of the word "non-profit" before the word preschools, to allow a for-profit preschool or trade school to qualify as a commercial or industrial activity. Eller argues that the provision would prohibit the use of corporate training campuses. Eller also points out colleges and universities have uses that exhibit very commercial and industrial uses.

Response: Language has been added to allow trade schools and corporate training centers to qualify as commercial. Because preschools and schools are not activities customarily permitted only in areas zoned commercial, they should not qualify an area as unzoned commercial; however, trade schools and corporate training centers are customarily permitted in zoned commercial or industrial areas. Language has been added that would preclude facilities such as school stadiums from being considered commercial.

Comment: Concerning §21.142(8), Hopkins points out that the definition of the word "erect" in 23 C.F.R. §750.703 does not contain the word "embed," and questions why the word was added.

Response: The term "embed" was a part of the existing definition and not added under the proposed amendment. The department sees no reason to remove the word since it means to set in earth, which is consistent with the meaning of the word "erect" in the context of erecting a sign. The common meaning of the word would apply in the context of this subchapter.

Comment: Concerning §21.142(9), Hopkins expressed opposition to the proposed changes to the definition of "freeway" because a portion of a roadway can be deemed a freeway as it passes through a town.

Response: A roadway can be segmented into freeway portions and non-freeway portions. This is how the subchapter has been interpreted historically. This change is designed to clarify the definition, but it is not a change to the existing interpretation.

Comment: Concerning §21.142(10), Whiteco points out that this is not the definition of "interchange" used by the American Association of State Highway and Transportation Officials (AASHTO), and that AASHTO only provides examples of interchanges. Hopkins proposes to change the definition to "an intersection or junction of regulated roadways in an unincorporated area involving one or more grade separations, including the additional area used or needed for connecting roadways or frontage roads to move traffic from one regulated roadway to another." An interchange under construction would be considered an interchange when the construction contract has been let, regardless of whether it is open to the public.

Response: The reference to the AASHTO definition by Whiteco is unclear. In a "Policy on Geometric Design of Highways and Streets," dated 1994, AASHTO defines interchange as "a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels." The language in this section has been changed to use the AASHTO definition. Mr. Hopkins' revisions would narrow the definition too much by only classifying interchanges between regulated freeways as interchanges, which is not consistent with the common understanding of the term. The spacing requirements in §21.153 have been clarified so that it is clear that spacing from interchanges is only considered outside city limits.

Comment: Concerning §21.142(11), Hopkins suggests that the department change the reference to 23 United States Code §103 to §103(e) to be consistent with the definition of Interstate Highway contained in 23 Code of Regulations §750.703(d).

Response: The department agrees with the suggestion and the more specific reference to subsection 103(e) has been added.

Comment: Concerning §21.142(29), Hopkins protests the use of the term "turning roadways," a term used within the definition of "main-traveled way."

Response: The definition for "main-traveled way" was derived from 23 C.F.R. §750.102(j) and includes the term turning roadways. For clarity, a definition has been added for the term "turning roadway."

Comment: Concerning §21.142(15), Hopkins requests that the department list the roadways on the National Highway System within the section. Mr. Hopkins comments on some confusion surrounding the designation of Spur 557 in Kaufman County.

Response: A listing of the roads on the National Highway System would be extremely voluminous, and while the system is finite, as Mr. Hopkins points out, it does change as additional roadways are built and/or added to the system. The National Highway System roadways are contained on maps available from the Transportation Planning and Programming Division, the Right of Way Division, or any of the district offices (for roads in that district). The state does not add highways to the system on its own initiative. The system is developed in conjunction with Federal Highway Administration and local officials. Spur 557 is not on the National Highway System; however, it was on the Primary System in 1991, and is a regulated highway.

Comment: Concerning §21.142(16), the definition of nonconforming sign adds a sign that does not comply with the provisions of a law or rule promulgated at a later date. Eller requests that the department define who has rulemaking authority or leave the original wording, "with the provisions of a law."

Response: Transportation Code, §391.032, authorizes the Transportation Commission to promulgate rules, concerning the display of outdoor advertising. This authority is contained in the definition of "Act" in §21.142(1).

Comment: Concerning §21.142(17), Hopkins points out that the definition of "normal maintenance" is not used in the subchapter and suggests changing the wording to ensure consistency.

Response: The term has been deleted to avoid confusion. Normal or reasonable repair and maintenance is addressed by new §21.143.

Comment: Concerning §21.142(18), Hopkins suggests changing the definition "outdoor advertising or sign," by inserting the word "prominently" before the word "visible," or alternatively, deleting the phrase "visible from" and inserting the phrase "directed towards."

Response: The definition for "outdoor advertising or sign" and the definition for "visible" are derived from the federal regulations, 23 CFR §750.703(i) and (n), respectively. These definitions, as written, are important in the interpretation of §21.146 relating to Signs Controlled. All signs visible from the highway and placed within 660 feet of the right of way are regulated. This control area is extended beyond the 660 feet outside urban areas, if the sign is visible and was erected for the purpose of having its message seen from a regulated highway. This control criterion is set forth in 23 CFR §750.704. Mr. Hopkins' suggestions would be inconsistent with the federal regulations.

Comment: Concerning §21.142(19), Hopkins points out that the reference to §391.068 contained in the definition of "permit" is confusing due to the statutory references contained in the Act.

Response: The definition of permit refers to the section in the Act entitled "Issuance of Permit." This reference is in the existing section and is not being changed by these amendments. Further, the commission has no authority to change the structure of the enabling legislation.

Comment: Concerning §21.142(22), Hopkins suggests that the department insert the words "rest area" into the definition of public park. Whiteco questions the phrase "A public park . . . so designated by the department or other governmental agency." Whiteco presumably questions what entities have the authority to designate a park.

Response: Because rest areas and public parks are treated differently in §21.153, regarding Spacing, the definitions cannot be combined. The definition of "public park" has been modified to clarify that the designation of a park is made by the entity with jurisdiction over the park.

Comment: Concerning §21.142(23), Hopkins suggests the department add the phrase "and excluding the roadways covered under Chapter 394 (Relating to Regulation of Outdoor Signs on Rural Roads)" to the definition of "regulated highway." Another comment from Whiteco requests clarification of the definition of the term "regulated highway" and asked whether the primary system includes only interstate highways.

Response: The department did not add Hopkins' language because the definition of regulated highway is derived from federal and state statutes. A regulated highway is a highway either on the interstate highway system or the primary system. The primary system includes the National Highway System and anything not on the National Highway System but which was on the old federal aid primary system in 1991. While these terms may seem confusing, they are derived from the Federal Highway Beautification Act. When the National Highway System was adopted, the U.S. Congress wanted the states to continue to control the highways that they had been regulating, even if they were not included in the National Highway System. So Congress redefined the primary system for purposes of meeting the Federal Highway Beautification Act.

Comment: In §21.142(24), Eller asks that the department clarify whether a non-conforming sign that has been removed may be replaced. By this definition, must a sign operator who has removed the face of a sign for temporary operational reasons, surrender the sign permit?

Response: Language has been added to make it clear that copy changes or removing the face does not constitute removal of the sign structure.

Comment: In §21.142(26), Hopkins requests clarification of the definition of "right of way," and suggests limiting the definition to rights of way for regulated highways.

Response: The proposed definition of "right of way" has been deleted to prevent confusion because it was inconsistent with the usage of the term in §21.148, Prohibited signs. Signs in any type of public right of way are intended to be prohibited, whether or not they are on the state highway system.

Comment: Regarding §21.142(26), Hopkins suggests modifying the definition of "sign face" by adding the word "separation" before the word "borders" in the third line.

Response: The department agrees and has made this change.

Comment: Concerning §21.142(30)(A), Hopkins suggests moving a phrase, presumably to make the section clearer.

Response: The adopted amendment does not change the meaning of the subparagraph, and the department has determined that the phrasing is sufficiently clear.

Comment: Regarding §21.142(30)(A)(i), Hopkins suggests deleting the word "main" from the requirement that a building of a commercial activity be within 200 feet of the right of way and clarifying whether it must be the whole building or only a portion of the building. Mr. Hopkins also suggests replacing the words "must be" with "is" in two places.

Response: The department agrees in part and the clause has been modified to make it clearer that only a portion of a permanent building used to qualify the commercial or industrial activity must be within 200 feet of the right of way. The "must be" language was retained.

Comment: Concerning §21.142(30)(A)(ii), Hopkins suggests the department revise the requirement that two businesses cannot be considered adjacent if there is an undeveloped area over 50 feet wide to a criterion of 100 feet and make an allowance for professionally landscaped side-yards.

Response: The historical interpretation of this section has been that 50 feet of undeveloped frontage disqualifies an unzoned commercial area. This is a codification of existing policy, so the department sees no reason to broaden the area. Professionally landscaped side-yards would not be considered an undeveloped area.

Comment: Regarding §21.142(30)(A)(iii), Whiteco states that a business should qualify as a commercial activity if the entire building occupies 300 square feet. Whiteco and Eller state that separate tax identification numbers should be considered distinctive characteristics for determining whether there are two

activities in an unzoned commercial area. Hopkins suggests minor rephrasing of the language.

Response: The requirement that each activity occupy 300 square feet has been in place since 1985. Separate tax identification numbers will be considered when trying to establish whether two activities occupy one space, as is decor and other factors. The department does not wish to list everything that would be considered. Hopkins suggested changes were not made because the department does not think they are necessary.

Comment: Regarding §21.142(30)(B), Hopkins suggests deleting the first occurrence of the word "industrial" in the phrase "An unzoned industrial commercial or industrial area."

Response: This change has been made for clarification.

Comment: Concerning §21.142(30)(B)(ii), Hopkins suggests the department replace the phrase "principal part of the qualifying activity" with "adjacent activity."

Response: The language in this subsection is not being amended and Hopkins' suggestion was not incorporated. The language does not contemplate some portion of the qualifying activities, such as a parking lot, occupying the other side of the highway.

Comment: Regarding §21.142(30)(B)(iii), Hopkins suggests repeating certain language contained in subsection (i) concerning the measurement of the unzoned area in the subsection, presumably for clarity, rather than referring to the "area."

Response: The department does not agree with the suggestion since addition of the language would be redundant.

Comment: Concerning §21.142(30)(B)(iv), Hopkins requests that the department further clarify that the entire area is to be considered when determining whether an area is primarily residential rather than the number of residences in the area versus the number of commercial buildings.

Response: This language is not a change to the existing section and additional clarification is not necessary.

Comment: Regarding §21.142(31), Hopkins suggests the department add the language "unless legal on a rural road" to the definition of "visible." Sign Ad recommends that the definition be deleted.

Response: This definition is derived from 23 CFR §750.703(n). Hopkins change would inappropriately limit the scope of the department's control area. The department does not agree with Sign Ad that the definition be deleted.

Comment: Scenic Texas supports the amendments to §21.142, particularly the amendments to §21.142(32), regarding zoning.

Comment: Whiteco states that zoning should be determined by the city. Hopkins suggests that the department add the following language, "If a municipality's sign ordinance allows billboards in an Agricultural Zoning District, then the rules for an unzoned commercial or industrial area shall apply." Hopkins suggests the deletion of or placing additional qualifications in subparagraphs (A), (B) and (D) that outline unacceptable zoning situations for purpose of enforcing the Act. Hopkins wants the department to recognize billboard overlays or special use permits, if required by current ordinance.

Response: Title 23 CFR §707.708 addresses the acceptance of zoning and is clear that certain types of zoning, such as spot zoning or strip zoning cannot be accepted for the purpose of enforcing the Act. The federal regulations are clear in only permitting signs in areas zoned commercial or industrial or in unzoned commercial or industrial areas. If an area has zoning, that zoning is recognized by the state for purposes of billboard control. If a municipality establishes an agricultural zone, its commercial or industrial nature is obviously questionable. Additionally, it would be unduly burdensome for the state to have to research every city ordinance to establish whether signs are allowed in agricultural zones. If Hopkins' suggested changes were incorporated, the federal requirements would not be adequately met. The hypothetical zoning situations suggested by Hopkins would have to be reviewed on a case-by-case basis.

Comment: Concerning §21.143(a)(2)(B), Hopkins suggests the department insert "substantially destroyed beyond repair as described in §21.156(a)(2)" and delete the word "destroyed."

Response: The department disagrees with the suggested changes since the proposed language already references §21.156.

Comment: Regarding §21.143(b), Hopkins suggests changing the phrase "normal or reasonable repair and maintenance" to "reasonable repair and normal maintenance" in order to more closely match the definition.

Response: To avoid any confusion, the term "normal maintenance" has been deleted from the Definitions section. The use of the term in §21.143 is clear within the context of that section.

Comment: Concerning §21.143(b)(1) and (b)(4), Hopkins suggests replacing the word "device" with "sign structure" and replacing "faces" with "sign faces."

Response: The department agrees with the comment and changes were made for consistency.

Comment: Concerning §21.143(c)(1)(C) and (D), Sign Ad opposes these sections which prohibit changing a multi-pole structure to a mono-pole and changing the materials used in the construction of a sign, such as replacing wood with metal. Sign Ad recommends that the department delete these restrictions, which prohibit upgrades of nonconforming structures. It argues that upgrades should be allowed for safety and aesthetic reasons.

Response: Title 23, CFR §750.707(d), clearly establishes that nonconforming signs may remain as long as they are not substantially changed. The department considers the replacement of a wooden multipole structure with a metal monopole to be a substantial change. Under the current federal regulations, this type of upgrade cannot be allowed.

Comment: Concerning §21.143(c)(1)(E), Hopkins and Reagan suggest the deletion of subparagraph (E), the stipulation that adding electronic components, such as a changeable message or rotating slat faces, would constitute a substantial change to a nonconforming sign and would require a new permit.

Response: The proposed subparagraph, stipulating that the addition of electronic components to a sign would constitute substantial change to a nonconforming sign and would consequently require a new permit, has been deleted. This subparagraph is no longer necessary because the proposal to add trivision technology pursuant to proposed §21.154(b) has been modified so that rotating faces will not be allowed. This modification makes the comments from Hopkins and Reagan moot.

Comment: Concerning §21.143(c)(1)(F), Hopkins suggests replacing the word "changing" with "increasing" in the context of changing the height of a nonconforming sign.

Response: The department agrees and for clarity has made this change.

Comment: Concerning §21.143(c)(1)(H), Hopkins suggests replacing the word "sign" with "sign structure."

Response: The department agrees and for consistency has made this change.

Comment: Relating to §21.144(d), concerning measurements of height, Sign Ad opposes this revision and recommends that the current height regulation be maintained. It argues that the measurement should be made from the point where the sign is actually viewed, rather than perpendicular to the structure. Sign Ad states this will have a "profound affect on the visibility and related income stream of many signs." Whiteco and Eller felt that the criterion for measuring height was unclear and contradictory.

Response: The language has been changed to further clarify this section. The measurement will be taken at the point perpendicular to the sign from the grade of the main-traveled way. Certain districts have historically measured sign height from some viewpoint in front of the sign, depending upon the location of the last hill, or from 500 feet back, or 1,000 feet back. This approach is impractical and unsafe for the department inspectors. The department will now be able to apply the new measurement criteria consistently.

Comment: Relating to §21.144 and §21.153(d), Hopkins suggests the insertion of a new subsection (e) in §21.144. The new subsection would provide that spacing between signs performed under §21.153 of this title (relating to Spacing) shall be measured between points on the regulated highway right of way perpendicular to the center of the signs, not from the outer edges of the signs.

Response: The department agrees that this will be easier to measure, and the change has been made.

Comment: Concerning §21.144(c), Scenic Galveston supports the more detailed criteria for measuring from parks, but thinks the definition of "park" should be contained in this section, §21.153(b), and §21.159(b).

Response: The purpose of defining the term is to avoid having to repeat the entire definition every time the term is used. It is not necessary to repeat the entire definition each time the term is used.

Comment: Concerning §21.145(a), Scenic Galveston does not want the department to amend this section to delete language specifying that signs must be removed five years after an area no longer qualifies as an unzoned commercial area due to the cessation of a business activity.

Response: If enforced, this provision would constitute an amortization of a nonconforming billboard. The Federal Highway Administration has determined that amortization is not an acceptable form of just compensation. For these reasons, if this provision were enforced, the department would have to pay just compensation to the sign owner.

Comment: Concerning §21.145(b), Eller and Sign Ad have concerns about the addition of language to cancel a permit if the department has evidence that an activity supporting an unzoned commercial or industrial area was created primarily or exclusively to qualify an area as an unzoned commercial or industrial area. Eller would like the department to continue the practice of allowing a sign company to front capital to a business in exchange for a sign lease and states that this provision could jeopardize their operations. Sign Ad points out that a sign company has no control over the success or failure of a business. Sign Ad and Whiteco question the department's ability to enforce the provision. Sign Ad wishes to delete the clause: "and that no business has been conducted at the activity site within one year."

Response: In the event a permit is cancelled under this provision, the permit holder would be entitled to a hearing before the State Office of Administrative Hearings and both the state and the permit holder would be entitled to present evidence. The department would not cancel a permit under this provision unless there was evidence of abuse.

Comment: Relating to §21.146(a), Hopkins wishes to add language to the effect that the regulation of signs under Chapter 391 always supersedes regulation under Chapter 394, relating to control of signs on rural roads, over the entire 660 feet deep unzoned commercial or industrial area.

Response: Hopkins' suggested change is unnecessary. Transportation Code, §394.003(1) and §21.421(a) provide that a sign which is allowed under Chapter 391 is exempt from the Rural Road Act.

Comment: Concerning §21.147(b), Hopkins suggests that on-premise sign criteria should be handled as a definitions.

Response: Due to the length of the section, it would be impractical to handle the criteria in the definition section.

Comment: Regarding §21.147(b)(1)(B), Whiteco questions whether state signs in the right of way at each exit fall under the category of off-premise business signs and asks whether they are regulated as well.

Response: State-owned signs in the right of way are considered official signs and are exempt from the Act and from this subchapter. The department regulates the size and placement of official department signs in accordance with the Texas Manual on Uniform Traffic Control Devices.

Comment: Regarding §21.147(b)(2)(C), Hopkins requests clarification on how non-conforming on-premise signs will be handled.

Response: The on-premise sign criteria is largely a codification of existing policy; however, if there are any on-premise signs which meet the previous criteria but fall short of the adopted criteria, they would be allowed to remain as an exemption.

Comment: Concerning §21.148(3), Eller requests clarification on the intent of the section, regarding the prohibition of signs in the right of way, as projected across railroad right of way. Eller questions the significance of "March 3, 1986" and whether the provision will enable the department to collect rent from billboard companies occupying state right of way in the Katy Freeway Railroad corridor. Sign Ad recommends that the provision be deleted, or the phrase "or any political subdivision unless a construction contract has been let" be added. Whiteco questions whether department authorized official signs are prohibited.

Response: This is not a substantive change to the section which was last amended on March 3, 1986. The section prohibits permitting new signs on property used jointly by the department and a railroad. Because the section has not been changed since March 3, 1986, this amendment clarifies that signs permitted in joint use property prior to that date might remain as legal non-conforming structures. The section has nothing to do with the acquisition of railroad corridor property for highway purposes or allowing signs to remain (with or without a lease) on department property pending the construction letting. Sign Ad's proposed language was not incorporated. Department authorized official signs are authorized by law and are exempt. They are not prohibited and will not have to be removed.

Comment: As proposed §21.148(4), provided that signs which "attempt to direct the movement of traffic" would be prohibited. Hopkins and Eller point out that all signs attempt to direct the movement of traffic, and signs with messages such as STOP, EXIT NOW or NEXT EXIT should not be prohibited.

Response: The section was intended to prohibit signs in violation of Transportation Code, §544.006. The proposed language has been changed to a general reference in paragraph (1) to signs prohibited by Transportation Code §544.006. Paragraphs (1),(4),(5), and (6) have been deleted from the proposed language since their substance is now covered in new paragraph (1).

Comment: Hopkins opposes the request for an individual's social security number in §21.149(a)(1)(C).

Response: The commission is required by Family Code, Chapter 232 to provide the social security numbers of individual license holders to a Title IV-D agency. The information is used to revoke or suspend a license for failure to pay child support.

Comment: Hopkins opposes the requirement in §21.149(a)(2)(A)(iii)(IV) that both the effective and execution dates of the bond be provided.

Response: No change was made; this is required for accurate record keeping. The effective date is the definitive date for determining a lapse in bond coverage.

Comment: Hopkins protests the provision in §21.149(b)(2)(C) that the department may ask for proof of continuing bond coverage.

Response: This provision replaced previous §21.149(b)(3)(B) which required that proof of continuing bond coverage be sent in with every renewal. The replaced provision required a renewal submission to include a certified power of attorney from the applicant's surety company together with a fully executed continuation certificate or a copy of the bond. The new provision is significantly less burdensome for the license holder because the license holder does not have to provide the bond coverage unless the department asks for it. The new provision is significantly less burdensome for the department because it will significantly reduce unnecessary paperwork.

The department has revised the time for suspension of permits in subsection (d) from the date of notice of bond cancellation to the bond termination date. This gives the permit holder more time before cancellation since the notice precedes the actual termination date. The word "permanent" has been added before the word "suspension" in subsection (e) and (f) for clarification. Subsection (g) has been revised to allow the license holder to rebut the presumption that he or she received notice of permanent revocation or permanent suspension.

Comment: Regarding §21.150(b), Hopkins would like to add a requirement that the inspectors set an appointment with the applicant to meet on certain sites and review the location. Also, Hopkins does not like the procedure in the Dallas District where the applicant and the real property owner are notified of a permit denial at the same time, creating a situation where the property owner knows of the denial before the applicant.

Response: There are certain circumstances where an unannounced inspection is necessary, particularly in establishing an unzoned commercial activity. There are also safety concerns as to the number of people present on the right of way. Also, an inspector can be more objective without the applicant at the site. The department will review the procedure of mailing a notice to the property owner, but it is not necessary to revise this procedure with a change in the section.

Comment: Concerning §21.150(b)(1)(C), Hopkins suggests that the phrase "site owner" should be replaced with "real property owner."

Response: The department agrees that the suggestion is more specific, and this change has been made.

Comment: Regarding §21.150(b)(2) and (3), Hopkins requests the deletion of the requirement that the application be notarized or delete the requirement of proof of permission from the property owner. He questions the purpose of a notary requirement if the applicant has to prove everything that is sworn to. Whiteco states that the landowner's signature should be adequate if the permit holder withdraws the application and reapplies for the same site. Eller supports the amendment requiring a permit holder to provide documentation that a landowner has granted permission to erect a sign but expresses concern that the proof would also have to be provided on renewals. Scenic Galveston questioned how the proposed revisions would affect or negate their ability as a landowner to withdraw permission for the maintenance of signs on their property.

Response: As to Hopkins' comments, the department deems both requirements necessary on an original application. The notary requirements have been dropped on all renewals. Each application will be required to have the landowner's signature either on or attached to the permit application. The department's language that the permission operates for the life of the permit was intended to mean the life of the permit including any renewals. Language has been added to further clarify this provision. As to Scenic Galveston's comments, the revised language provides that a landowner can provide proof to the department that permission for the occupancy of a sign has been withdrawn and that a lease has expired or been legally terminated. The department will consider this documentation and make a determination whether or not to cancel a permit pursuant to §21.150(i)(7). When a permit is cancelled, the permit holder is entitled to a hearing on the propriety of the cancellation. If there is a legal dispute between the property owner and the sign owner, the department may elect not to cancel the permit until a court determines the issue of whether the lease has been terminated.

Comment: Concerning §21.150(b)(4), Hopkins requests that the term "department's jurisdiction" be changed to the "Act" for consistency.

Response: While this was not a proposed change, the change has been made for consistency. The department also changed the language so that it would be clear that a permit may only be issued in an unzoned commercial or industrial area or in a zoned commercial or industrial area.

Comment: Concerning §21.150(b)(6), Hopkins suggests deletion of the stake requirement because it would influence a sign company's negotiations with adjacent property owners. Hopkins also points out that others, such as an adjacent property owner or competitor could remove the stakes, causing the denial of the application. Whiteco expressed concerns that if a sign should overhang a building it would be impossible to stake every corner.

Response: Staking or marking a location will reduce the number of improperly permitted sign locations. It will also reduce the number of signs that overhang the right of way. It is imperative that sign inspectors know the exact location of the proposed sign to properly evaluate whether the sign meets all pertinent spacing requirements. Sabotage has not been a problem in districts requiring staking. The language has been modified to require the staking of the center-pole rather than the ends of the face and that the sketch submitted with the application must reflect the location of the sign faces in relation to the center pole.

Comment: Regarding §21.150(c), Whiteco requests clarification regarding a second application received by the department while the first application is pending. It questions whether it can be held or must it be denied immediately.

Response: The second application can be held until a determination is made on the first application. Language has been added to further clarify this point.

Comment: Concerning the proposed §21.150(d), Hopkins requests that the terms "permit holder," "license holder," and "sign owner" be defined.

Response: These terms are used in varous sections. The department has determined that definitions are not necessary. A permit holder is the holder of a permit, a license holder the holder of a license and a sign owner the owner of a sign.

Comment: Concerning §21.150(g)(1)(C), Eller questions whether it can transfer all permits in the state (from Patrick and Universal to Eller) for a one-time fee of $2,500.

Response: One transaction can cover multiple districts when the transfer is from one license to another. The transfer from Universal to Eller would be considered one transaction with a cap of $2,500 and the transfer from Patrick to Eller would be another transaction with a cap of $2,500.

Comment: Concerning §21.150(i)(7), Whiteco questions the use of the term "person" in the context of "a person" withdrawing permission for a sign company to occupy their property. Whiteco requests that the provision be changed so that the property owner of the site, as listed on the permit application, or a property owner who has acquired the property by deed be the proper party to withdraw permission.

Response: "Person" is defined in §121.142 and includes all legal entities. The subchapter provides that the sign must be located on property "owned by a person." This has the same effect as the requested change. It is limited to the property owner.

Comment: In §21.150(i)(8) and (10), Whiteco requests clarification on how a permit can be canceled based on cessation of activities or vegetation clearance. Whiteco points out that this should be proved at an administrative hearing.

Response: In the event a permit is cancelled under either of these provisions, the permit holder would be entitled to a hearing before the State Office of Administrative Hearings and both the state and the permit holder would be entitled to present evidence.

Comment: Concerning §21.150(k), Hopkins protests the requirement that notice is presumed to be received five days after mailing and requests that the return receipt on certified mail be required for the notice to be presumed delivered. Hopkins also requested the department to add a provision that a permit holder can show that he was out of town or out of the country and that notice was not received. Whiteco suggested that the notice should be presumed delivered five days after receipt of mailing. Whiteco suggests that the notice of cancellation be sent to the same office as the renewals for that site (and possibly by the district).

Response: The provision was added to solve the problems created by permit holders refusing to pick up certified mail. Language was added that the recipient of the notice may present proof that the notice was not delivered within five days of mailing, in which case the department can extend the time for requesting a hearing. The Director of the Right of Way Division sends notices of cancellation to the address of record provided by the license holder. It would be unduly burdensome for the department to send cancellation notices to multiple unofficial addresses.

Comment: Regarding §21.151, Eller would like the commission to give one entity the right to operate in the ETJ, rather than have dual jurisdiction with the city and the state. Eller also asks whether the provision "allows" the City of Houston to withdraw its jurisdiction over its ETJ.

Response: Municipalities control signs pursuant to the Local Government Code, which also allows them to extend their sign control into their extraterritorial jurisdiction (ETJ). The department's statutory authority is contained in Transportation Code, Chapter 391, enacted to comply with the Federal Highway Beautification Act of 1965, 23 U.S.C.A. §131, and with 23 C.F.R. Chapter 750. While the state may accept a municipality's control inside a city, for purposes of complying with the federal statutes and regulations, the federal statutes do not allow the state to accept a municipalities control in the area of the ETJ, because a municipality cannot zone this area. Additionally, not all cities are certified to control signs for purposes of meeting the federal requirements, and in those cities there is an area of joint jurisdiction. The commission does not have the statutory authority to limit the jurisdiction of a municipality under the Local Government Code. On the other hand, in order to comply with the federal regulations, the state cannot accept a municipality's control in the ETJ, for purposes of meeting the requirements of the federal statute.

Comment: Regarding §21.151(a), Hopkins requests that the term "and with customary use" be defined in the context of a political subdivision establishing criteria for size, lighting, and spacing of outdoor advertising signs consistent with the purposes of the Highway Beautification Act of 1965 be defined.

Response: This term is contained in the federal-state agreement. Therefore, if there were a question as to the meaning, the department would ask the FHWA for its interpretation.

Comment: Concerning §21.152(a), Hopkins requests the insertion of the phrase "sign face" in four places before the words "height" and "length."

Response: The department agrees and for clarification has made these changes.

Comment: Regarding §21.152(b), Hopkins requests that the insertion of "on the main-traveled way of the regulated highway" at the end of the subsection.

Response: The department agrees and for clarification has made this change.

Comment: Concerning §21.152, Hopkins requests that the insertion of "face" or "faces" after "sign" in two places.

Response: The department agrees and has made these changes for clarity.

Comment: In proposed §21.152(f), Hopkins, Reagan, Sign Ad, Whiteco, and Eller protested the requirement that plans for cutouts and extensions be submitted in advance for approval. All commentors thought that the requirement would be overly burdensome and impractical.

Response: The department agrees that this requirement would be impractical and has deleted it.

Comment: Concerning §21.153(c), Hopkins protests a change to subsection (c) that would require 1,000 feet spacing from intersections, interchanges, and rest areas on non-freeway primaries and asks that the change not be made. Hopkins also requests the section be revised so that the department will not consider interchanges, intersections, and ramps located inside the corporate limits of a municipality when determining spacing limitations for a sign located outside the city limits.

Response: The requirement for spacing outside city limits along all regulated highways was an error. In §21.153(c), the term "regulated highway" has been changed to "freeway or interstate regulated highway." As to Hopkins' second request, the department disagrees. Often city limits are extended down highway right of way for miles, making the ramps, etc., inside the city limits. The department thinks the sign location should be the governing factor in spacing from ramps, etc.

Comment: Regarding §21.153(c)(1), Eller questions the spacing requirement that specifies that signs may not be erected within 1,000 feet of an interchange or an intersection , and questions the reasoning as to why this would be a safety concern.

Response: This is not a change to the existing section, although it has been rewritten for clarity. Spacing from interchanges and intersections is required by our federal-state agreement. An intersection of frontage roads and a street crossing under the freeway is usually considered an intersecting component of a larger diamond interchange. Signs would be prohibited 1,000 feet from both the exit and the entrance ramp and in the area inside the interchange.

Comment: Concerning §21.153(c)(2), Hopkins requests a change from "pavement widening" to the "widening of the traveled way" so that pavement markings are considered in the spacing from ramps.

Response: The change has not been made. The term "pavement widening" is the term used in the federal-state agreement with respect to measurements from ramps. Pavement markings are not the determining measurement.

Comment: Regarding §21.153(f), Hopkins suggests that 300 feet spacing inside city limits would better serve the industry instead of 500 feet spacing.

Response: The department disagrees. The federal-state agreement only requires 100 feet spacing, so the department's requirements are already stricter than the federal requirements. This spacing requirement is not a change.

Comment: Eller requests the reconsideration of the exclusion of LED screens in §21.154(a)(1).

Response: The department's agreement with the FHWA prohibits the use of "flashing or intermittent lights." Because LED (light emitting diode) technology uses small lights, and because the FHWA has issued an opinion letter to another state that animated displays are unacceptable, the department does not wish to allow LED until there is further clarification from the FHWA that allowing this technology would not constitute a violation of the department's federal-state agreement.

Comment: Regarding §21.154(b), Eller wants the department to reconsider the requirement that trivision signs complete their rotation in two seconds and asked that it be given at least four seconds, because the requirement would cause undue wear on the signs. He also questioned the reasoning behind the requirement. Whiteco expressed concerns about requiring trivision signs slats to rotate within two seconds and stay stationary for 10 seconds. Whiteco also protested the requirement that all the slats must turn in the same direction. Whiteco stated that a minimum of five seconds is needed for the turn. He said that many of the signs are already up around the state (presumably in certified cities and along non-regulated roads) and that it could not comply with the requirement that all slats must turn in the same direction. Hopkins suggests the insertion of "or prisms" after the words "rotating slats" so that the language would read "A sign may have rotating slats or prisms" because the term is recognized in the industry. Hopkins also wants to add the words "and all at the same time" at the end of the following sentence: "The slats must all turn in the same direction and at the same rate of speed." Scenic Texas strongly opposes allowing trivision signs, stating that it will only make billboards more intrusive than they already are. It point outs that more and more Texas cities are prohibiting new billboard construction and it states that a majority of Texans do not want any more billboards. It states that trivision technology will in no way benefit the citizens of the state and will increase stress, clutter, distraction, and visual pollution.

Response: The department has determined that further study is necessary to assess the effect of trivision technology on the safety of the travelling public and to study whether the rate of the turn and the stationary period should be regulated and if so, assess the most appropriate time limits. The department is also interested in determining whether signs with slats turning in different directions and at different times would have an effect on driver safety. The department surveyed other states and discovered that of 25 states that allow trivision, nine states require the rotation to be completed within one to two seconds. These states had the opinion that a more instantaneous change would distract the driver for a shorter period of time, but the department discovered no definitive studies on the subject.

The department contacted two manufacturers of these signs and found that they could easily be set to change within two seconds. For all of these reasons, the provision to allow trivision signs has been deleted from these rules and will be considered at a later date.

Comment: Regarding §21.154(d)(1), Hopkins suggests that the insertion of the word "sign" before the word "structure" for clarity.

Response: The department agrees and this change has been made.

Comment: Concerning §21.156(a)(2), Scenic Galveston proposes to retain the existing provision that if a sign sustains damage of 50% of its replacement costs, the sign permit would be cancelled, rather than revising the provision to a 60% criterion.

Response: This change was made to make department rules more consistent with certified cities implementing the Act through ordinances adopted under the Local Government Code, Chapter 216.

Comment: Concerning §21.156(b), Whiteco states that the department should have to prove that the sign is vacant for 365 days and it disagrees with the section in general. Whiteco questions whether a permit for a double-faced sign with one face without advertising in excess of 365 days would be cancelled or whether the permit would be changed to a single face. Scenic Galveston supports the provision in §21.156(b)(2) that small temporary signs such as garage sale signs or campaign signs attached to the structure do not constitute advertising matter that would toll the 365 days.

Response: It is unclear whether the commenters disagree with the entirety of §21.156, concerning the discontinuance of signs, or the portion of the section that allows the department to consider a sign abandoned after it has been vacant for 365 days. If the department cancels a permit for this reason, a hearing would be offered, and both parties would have an opportunity to prove their position. Title 23 C.F.R. §750.707(d) requires that states adopt criteria to define destruction, abandonment, and discontinuance. The "structure" would have to be without advertising. Advertising on one face would preclude the department from canceling the permit.

Comment: Concerning §21.158, Hopkins requests that it read: "A sign may not be erected that exceeds an overall height of 42 1/2 feet . . . from the highest point of the sign at the grade level of the traveled way from which the sign is to be viewed. A roof sign having a solid sign face surface may not at any point exceed 24 feet above the roof level. Open sign faces on roof signs in which the uniform open area between individual letters or shapes is not less than 40% of the total gross area of the sign face may be erected to a height of 40 feet above the roof level. The lowest point of a projecting roof or wall sign must be a least 14 feet above grade."

Response: The department agrees with the comment and these changes have been made for clarity.

Comment: Regarding amendments to §21.160(c), Scenic Texas and Scenic Galveston are strongly opposed to these amendments concerning relocation of billboards. Scenic Texas states that the department's present relocation policies are ill-founded and meeting with increased resistance throughout the state. It states that the department's relocation policy is based upon a questionable assumption as to what values would be awarded with respect to condemned billboards, and they think these assumptions should be tested in Texas since they have been tested with success in so many other states. Scenic Texas points out that billboard relocations are unwanted in an increasing number of our cities. The department should be examining how it can pay for billboards, just like it does for churches, schools, businesses, and other structures in the way of a highway project. It states that it is not the time to be relaxing the relocation standards, even going so far as 50 miles from the original location. Scenic Galveston protests the spacing provisions in §21.160 and points out that eventually, as more and more signs are relocated, it will create 500 feet spacing, rather than 1,500 feet spacing along major transportation arteries.

Response: It has become apparent to the department that it is necessary to find alternate relocation sites largely because of the cities which are not allowing relocation to the remainder of property left after the right of way is acquired. This subchapter is stricter than what is required by our federal-state agreement for new permits. The department is proposing to relocate signs only to locations conforming to the federal requirements. These changes are intended to save tax money by decreasing the amount the department would have to pay to purchase billboards being displaced by highway projects.

Comment: Regarding §21.160(c)(5)(D), Hopkins requests clarification on sign relocation within the same district.

Response: The department thinks this is sufficiently explained.

Comment: Concerning §21.160(c)(7), Hopkins suggests adding "or industrial" after the word "commercial." Whiteco wants to change the relocation requirement so that the relocated sign must meet all the applicable criteria in place at the time of the original permit of the relocated sign.

Response: Hopkins' suggestion has been incorporated for consistency. Whiteco's changes were not incorporated. Title 23 CFR §750.707 does not allow the relocation from a nonconforming location to a conforming location. Further, it would be difficult to determine exactly what criteria were in place at the time the original permit was issued, particularly if the sign also had to meet local ordinance criteria.

Comment: Relating to §21.160(c)(8)(B) and (C)(i) and (ii), Sign Ad strongly opposes the provisions, concerning spacing from parks, interchanges, and intersection because it will reduce the number of locations eligible for sign relocation. Sign Ad recommends the addition to both subsections the provision "and located on the same side of the highway," so that the spacing would only be applied if the park or intersection were on the same side of the highway. Hopkins suggests adding language to apply the spacing requirements from interchanges, intersections , rest areas, and ramps to signs only if the interchanges, etc. are outside of incorporated municipalities. Hopkins also wishes to replace the phrase "pavement widening" with, "the widening of the traveled way," to allow measurements from pavement marking.

Response: The department modified §21.160(c)(8)(B) to clarify that parks on both sides of the highway are considered when spacing along a nonfreeway primary roadway, but that only parks on the side with the relocated sign are considered when spacing on freeway primaries and interstates. This is consistent with the new language in §21.153. As to Hopkins comments, spacing from intersections, interchanges, or rest areas applies to both sides of the highway. Often city limits are extended down highway right of way for miles, making the interchanges

and intersections inside the city limits. The department thinks that the sign location should be the governing factor. As to the requested change concerning pavement widening, "pavement widening" is the term used in the federal-state agreement. Pavement markings are not the determining measurement.

Comment: Concerning §21.160(c)(8)(F), Hopkins wants to change the spacing along nonfreeway primary routes inside city limits from 100 feet to 300 feet.

Response: The 100 feet spacing is the spacing provided in the federal-state agreement.

Comment: Sign Ad strongly opposes the provisions of §21.160(c)(9)(G), and (H), and recommends that they be deleted. It maintains that the height of the structure that is being relocated should not have to be reduced and that if it is reduced, the relocated sign will command less income. Sign Ad argues that this will handicap efforts of the state to avoid condemnation and will result in more eminent domain litigation. Sign Ad also protests the requirement that the relocated sign has to be constructed with the same number of poles and of the same type of materials as the existing sign, pointing out that an upgrade to a metal-monopole will be safer and will look better.

Response: The intent of this section is to allow a sign to be relocated to a location that is conforming to the lesser federal standards for spacing and unzoned commercial areas. These locations will, however, be nonconforming to the state standards for spacing and unzoned commercial areas. While the department is providing additional locations for signs to be moved, the sign companies should not be bettered by providing an opportunity to replace nonconforming signs with metal structures in areas that are nonconforming under the state requirements. As to height, the sign has to conform to the height required by the new location. If a sign is moved 50 miles from its original location and the original location is under an elevated freeway, and if the sign is relocated along a highway level, the sign should be relocated at a height appropriate for the highway. Subsection (g) was added to clarify that certified cities would not have to comply with the department's relocation criteria.

Comment: Concerning §21.160(f)(3), Hopkins suggests adding "with compensation for reduction in value" at the end of the subsection. Eller expresses concern that a bisectional taking would not be in lieu of compensation for the portion of the sign damaged.

Response: This section provides a mechanism to amend the permit to reflect the changed position or size of the sign, without having to issue a new permit. A sign owner would still be compensated for any damage to the sign. These provisions govern only the permitting of a structure, not the payment of compensation. This option would have to be agreeable to the sign owner.

Comment: Scenic Texas supports §21.161, Vegetation Control.

Comment: Hopkins supports the new appeal process in §21.162.

Comment: Sign Ad commented that the amendments and new sections will increase the demand on the resources of the department, and therefore there will be a fiscal implication to state government.

Response: The revisions to this subchapter are primarily a codification of existing policy. The department anticipates meeting any increased need with its current resources. Sign Ad's comment did not specifically identify the amendments that they believe will result in increased cost to the department. The amendments to the measurement sections were made to clarify existing policy. Relocation provisions were expanded to allow signs to be relocated with less restrictive spacing and zoning requirements up to 50 miles from the original sign location. This expansion of the relocation section should reduce the number of signs that will have to be purchased by providing more locations for relocation.

43 TAC §§21.141, 21.142, 21.144–21.154, 21.157–21.160

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, Chapter 391, which authorizes the commission to adopt rules to regulate the erection or maintenance of signs along interstate and primary systems.

§21.142. Definitions.

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

(1) Act - Transportation Code, Chapter 391, concerning beautification of a regulated highway.

(2) Commercial or industrial activities - Those activities customarily permitted only in zoned commercial or industrial areas except that none of the following shall be considered commercial or industrial:

(A) outdoor advertising structures;

(B) agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, temporary wayside fresh produce stands;

(C) activities not:

(i) housed in a permanent building or structure;

(ii) having an indoor restroom, telephone, running water, functioning electrical connections, and adequate heating; or

(iii) having permanent flooring other than material such as dirt, gravel, or sand;

(D) activities not housed in a permanent building that is visible from the traffic lanes of the main-traveled way;

(E) activities conducted in a building primarily used as a residence;

(F) railroad right of way;

(G) activities that do not have a portion of the regularly used buildings, parking lots, storage or processing areas within 200 feet from the edge of the right of way;

(H) activities conducted only seasonally;

(I) activities conducted in a building having less than 300 square feet of floor space devoted to the activities;

(J) activities that do not have at least one person who is at the activity site, performing work, an average of at least 30 hours per week or at least five days per week;

(K) activities which have not been open for at least 90 days;

(L) recreational facilities such as campgrounds, golf courses, tennis courts, wild animal parks, and zoos, except for the portion of the activities occupied by permanent buildings which otherwise meet the criteria in this subsection and parking lots;

(M) apartment houses or residential condominiums;

(N) areas used by public or private preschools, secondary schools, colleges and universities for education or recreation (this does not preclude trade schools or corporate training campuses);

(O) quarries or borrow pits, except for any portion of the activities occupied by permanent buildings which otherwise meet the criteria in this subsection and parking lots; and

(P) cemeteries, or churches, synagogues, mosques, or other places primarily used for worship.

(3) Commission - The Texas Transportation Commission.

(4) Conforming sign - A sign which is lawfully in place and complies with size, lighting, and spacing requirements and any other lawful regulations pertaining thereto.

(5) Department - The Texas Department of Transportation.

(6) Director - The director of the Right of Way Division of the department.

(7) District engineer - The chief administrative officer in charge of a district of the department.

(8) Erect - To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any other way bring into being or establish.

(9) Freeway - A divided highway with frontage roads or full control of access. A proposed freeway is designated a freeway for the purposes of this subchapter when the construction contract is awarded, regardless of whether the main-traveled way is open to the public.

(10) Interchange - A system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels. A proposed interchange is designated an interchange for the purposes of this subchapter when the construction contract is awarded, regardless of whether it is open to the public.

(11) Intersection - The common area at the junction of two roadways as defined in Transportation Code, §541.303.

(12) Interstate highway system - That portion of the national system of interstate and defense highways located within the State of Texas which now or hereafter may be so designated officially by the commission and approved pursuant to 23 United States Code §103.

(13) License - An outdoor advertising license issued by the department pursuant to the provisions of Subchapter C of the Act.

(14) Main-traveled way - The traveled way of a highway that carries through traffic. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(15) National Highway System - That portion of connected main highways located within the State of Texas which now or hereafter may be so designated officially by the commission and approved pursuant to 23 United States Code §103.

(16) Nonconforming sign - A lawfully erected sign that does not comply with the provisions of a law or rule promulgated at a later date, or which later fails to comply with a law or rule due to changed conditions.

(17) Nonprofit sign - A sign erected and maintained by a nonprofit organization in a municipality or the extraterritorial jurisdiction of a municipality if the sign advertises or promotes only the municipality or another political subdivision whose jurisdiction is in whole or in part concurrent with the municipality.

(18) Outdoor advertising or sign - An outdoor sign, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo or symbol, or other thing which is designed, intended, or used to advertise or inform, if any part of the advertising or information contents is visible from any place on the main-traveled way of a regulated highway.

(19) Permit - The authorization granted for either the erection and/or maintenance, of an outdoor advertising sign as provided in the Act, §391.068.

(20) Person - An individual, association, partnership, limited partnership, trust, corporation, or other legal entity.

(21) Primary system or federal-aid primary system - That portion of connected main highways which were designated by the commission as the federal-aid primary system in existence on June 1, 1991 and any highway which is not on that system but which is on the National Highway System.

(22) Public park -_ A public park, forest, playground, nature preserve, or scenic area designated and maintained by a political subdivision or governmental agency.

(23) Regulated highway - A highway on the interstate highway system or primary system.

(24) Removed - The dismantling and removal of a substantial portion of the parts and materials of a sign or sign structure from the view of the motoring public. The term shall not include the temporary removal of a sign face for operational reasons.

(25) Rest area - An area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

(26) Sign face - The part of the sign that contains the message or informative contents and is distinguished from other parts of the sign and other sign faces by separation borders or decorative trim. It does not include lighting fixtures, aprons, and catwalks unless they display part of the message or informative contents of the sign.

(27) Sign structure - All of the interrelated parts and materials, such as beams, poles, braces, apron, catwalk, and stringers, that are used, designed to be used, or are intended to be used to support or display a sign face.

(28) Traveled way - That portion of the roadway used for the movement of vehicles, exclusive of shoulders.

(29) Turning Roadway - A connecting roadway for traffic turning between two intersection legs of an interchange.

(30) Unzoned commercial or industrial area -

(A) An area along the highway right of way which has not been zoned under authority of law, which is not predominantly used for residential purposes, and which is within 800 feet, measured

along the edge of the highway right of way, of, and on the same side of the highway as, the principal part of at least two adjacent recognized commercial or industrial activities. To be considered an unzoned commercial or industrial area, the following requirements must be met.

(i) A portion of the regularly used buildings, parking lots, storage or processing areas where each respective business activity is conducted must be within 200 feet of the highway right of way and the permanent building where the activity is conducted must be visible from the main-traveled way.

(ii) To be considered adjacent, there must be no separation of the regularly used buildings, parking lots, storage or processing areas of the two activities by vacant lots, undeveloped areas over 50 feet wide, roads, or streets.

(iii) Two activities may occupy one building as long as each has 300 square feet of floor space dedicated to that activity and otherwise meets the definition of a commercial or industrial activity. There must be separation of the two activities by a dividing wall, separate ownership, or other distinctive characteristics. A separate product line offered by one business will not be considered two activities.

(B) An unzoned commercial or industrial area is more specifically identified as follows.

(i) The area to be considered, based upon the qualifying activities, is 1,600 feet (800 feet on each side) plus the actual or projected frontage of the commercial or industrial activities, measured along the highway right of way by a depth of 660 feet in accordance with §21.144(b) of this title (relating to Measurements).

(ii) The area shall be located on the same side of the highway as the principal part of the qualifying activities.

(iii) The area must be considered as a whole prior to the application of the test for predominantly residential.

(iv) An area shall be considered to be predominantly residential if more than 50% of the area is being used for residential purposes. Roads and streets with residential property on both sides shall be considered as being used for residential purposes. Other roads and streets will be considered nonresidential.

(31) Visible - Capable of being seen, whether legible or not, without visual aid by a person with normal visual acuity.

(32) Zoned commercial or industrial area - An area designated, through a comprehensive zoning action, for general commercial or industrial use by a political subdivision with legal authority to zone. The following areas are not zoned areas:

(A) areas that permit limited commercial or industrial activities incident to other primary land uses;

(B) areas designated for and created primarily to permit outdoor advertising structures along a regulated highway;

(C) unrestricted areas; and

(D) small parcels or narrow strips of land that cannot be put to ordinary commercial or industrial use and are designated for a use classification different from and less restrictive than that of the surrounding area.

§21.144. Measurements.

(a) The depth of an unzoned commercial or industrial area shall be measured from the nearest edge of the highway right of way perpendicular to the centerline of the main-traveled way of the highway.

(b) In determining the length of an unzoned commercial or industrial area, all measurements should be from the outer edges of the regularly used buildings, parking lots, storage, or processing areas of the commercial or industrial activities and shall be along or parallel to the edge of the pavement of the highway. If the business activities do not front the highway, the projected frontage will be measured from the outer edges of the regularly used buildings, parking lots, storage, or processing areas to a point perpendicular to the centerline of the main-traveled way. Measurements shall not be made from the property lines of the activities unless the property lines coincide with the regularly used buildings, parking lots, storage, or processing areas.

(c) Measurements performed under §21.153 of this title (relating to Spacing of Signs) from the boundary of public parks and rest areas shall be measured along the right of way line from the outer edges of the park boundary abutting the right of way.

(d) A sign height measurement performed under §21.158 of this title (relating to Height Restrictions) shall be measured from the grade level of the centerline of the main-traveled way closest to the sign, at a point perpendicular to the sign location.

(e) Spacing between signs performed under §21.153 of this title (relating to Spacing) shall be measured between points along the right of way of the regulated highway perpendicular to the center of the signs.

§21.146. Signs Controlled.

(a) No outdoor advertising sign which is visible from the main-traveled way of a regulated highway may be erected or maintained along a regulated highway except in accordance with this subchapter unless the sign was in place prior to the time the location along such highway first became subject to control under the highway beautification laws. A permit must be obtained and renewed annually in order to maintain any sign, including a sign in existence prior to the time the highway along which it is located became subject to the Act.

(b) Unless the sign is exempt under this subchapter, no person may erect a sign along a regulated highway without a permit in either of the following areas:

(1) within 660 feet of the nearest edge of the highway right of way if the advertising is visible from the main-traveled way of the highway, or

(2) more than 660 feet from the nearest edge of the highway right of way outside an urban area, if the advertising is visible from the main-traveled way of the highway and was erected for the purpose of having its message seen from the main-traveled way of a regulated highway.

§21.148. Prohibited Signs.

The following types of outdoor advertising signs shall not be erected or maintained along, or be visible from, the main-traveled way of a regulated highway unless otherwise authorized by law:

(1) signs prohibited by Transportation Code §544.006, governing the display of unauthorized signs, signals and markings;

(2) signs that are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(3) signs that are erected or maintained within the right of way of a public roadway or within what would be the right of way if the right of way boundary lines were projected across an area of

railroad right of way, utility right of way, or road right of way not owned by the State or any political subdivision. (However, legally erected and permitted signs may be maintained as nonconforming signs in areas used jointly by the department and a railroad or utility company if they were erected prior to March 3, 1986.);

(4) signs erected or maintained without a permit issued in accordance with §21.150 of this title (relating to Permits) or operated without a license issued in accordance with §21.149 of this title (relating to Licenses), which are not otherwise exempt under §21.147 of this title (relating to Exempt Signs).

§21.150. Permits.

(a) Eligibility. Except as provided in subsection (l) of this section, a permit under this section may only be issued to a person holding a valid license issued pursuant to §21.149 of this title (relating to Licenses).

(b) Application and issuance.

(1) Except as provided in §21.151 of this title (relating to Local Control) a person who desires a permit to erect or maintain a sign along a regulated highway must file an application in a form prescribed by the department, which shall include, but not be limited to:

(A) the complete name and address of the applicant;

(B) the proposed location and description of the sign;

(C) the complete legal name and address of the designated site owner;

(D) verification of the applicant's nonprofit status if the sign is a nonprofit sign; and

(E) additional information the department deems necessary.

(2) No permit may be approved unless the applicant has obtained written permission from the owner of the designated site. The department may provide a space on the permit application for this signature or the applicant may provide a copy of the written lease for the site or a consent statement in a form prescribed by the department. The signature must be the signature of the property owner or the owner's duly authorized representative. The owner's permission operates as permission for the life of the permit, unless the owner provides a written statement that permission for the maintenance of the sign has been withdrawn and documentation showing that the lease allowing the sign has been terminated in accordance with the terms of the lease agreement or through a court order. If the sign owner disputes the lease termination in court with the owner, the department will not cancel the permit until a court order is provided.

(3) The application must be signed under oath by the sign owner and filed with the district engineer in whose district the sign is to be erected or maintained, and shall be accompanied by the prescribed fee or fees.

(4) An application will not be approved unless the sign for which the permit is requested is located in an unzoned commercial or industrial area or in a zoned commercial or industrial area, and meets all applicable requirements of the sections under this subchapter, or was lawfully in existence when the sign became subject to the Act.

(5) If approved, a copy of the application, endorsed by the district engineer, or designee, and a Texas sign permit plate will be issued to the applicant. Not later than 30 days after erection of the permitted sign, or after the issuance of a permit if the sign is lawfully in existence when the highway along which it is located becomes subject to control by the department, the sign owner shall cause the permit plate to be securely attached to that portion of the sign structure nearest the highway and visible from the main-traveled way. If the permit plate becomes illegible, the department may require that a replacement plate be obtained in accordance with subsection (f) of this section. The plate must be attached and may not be removed from the sign described in the application.

(6) The proposed location for a new sign must be identified by the applicant on the ground by a stake or paint with at least two feet of the stake visible above the ground. The stake must be set at the proposed location of the center pole. Staking the site is considered part of the application. Stakes must not be moved or removed until the application is denied, or if approved, until the sign has been erected. The sketch submitted with the application must reflect the location of the center-pole and show the exact location of the sign faces in relation to the center pole.

(c) Priority. Permits will be considered on a first-come, first-serve basis. If an application is returned because of errors or incomplete information, other applications received for the same or conflicting sites between the time a denied application is returned to the applicant and the time it is resubmitted, will be considered before the resubmitted application. A second application for a conflicting site may be held until a decision is made on the first application.

(d) Renewals.

(1) Subject to the terms and location stated in the permit application, a permit issued or renewed under this section shall be valid for a period of one year, provided that the sign is erected and maintained in accordance with the applicable sections under this subchapter. The permitted sign must be erected within one year from the date the original permit is issued in order for a sign permit to be eligible for renewal.

(2) A permit issued by the department prior to September 6, 1985, must be renewed no later than October 1, of each succeeding year.

(3) An annual permit issued subsequent to September 5, 1985, must be renewed on or before the anniversary date of the date of issuance.

(4) If a sign continues to meet all applicable requirements, a permit holder may renew a permit by filing a written request in a form prescribed by the department and the prescribed renewal fee at the district office serving the county where the sign is located.

(e) Transfer.

(1) A permit may only be transferred with the written approval of the district engineer. At the time of the transfer, both the transferor and the transferee must hold a valid outdoor advertising license issued pursuant to §21.149 of this title (relating to Licenses), except as provided in subparagraphs (3)-(5) of this subsection.

(2) A permit holder who desires to transfer one or more permits must file a written request in a form prescribed by the department and the prescribed transfer fee at the district office serving the county where the sign is located. The transferor and transferee will each be issued a copy of the approved permit transfer form.

(3) A permit issued under subsection (l) of this section may be transferred to a nonprofit organization that does not hold a valid outdoor advertising license issued under §21.149 of this title (relating to Licenses) if the permit is transferred for the purpose of maintaining a nonprofit sign.

(4) A permit issued under subsection (l) of this section may be transferred for a purpose other than maintaining a nonprofit sign if the transferee holds a valid outdoor advertising license at the time of the transfer.

(5) The director will approve the transfer of one or more sign permits from a lapsed outdoor advertising license to a valid outdoor advertising license, with or without the signature of the transferor, if:

(A) legal documents showing the sale of the sign are provided; and

(B) documents are provided that indicate the transferor is dead or cannot be located.

(6) A permit that has an unresolved permit violation, will not be transferred. An unresolved permit violation means that a permit cancellation is impending or a cancellation has been abated pursuant to subsection (k) of this section pending the outcome of a hearing.

(f) Replacement. In the event a permit plate is lost or stolen, is missing from the sign structure, or becomes illegible, the sign owner must submit to the district engineer a request for a replacement plate in a form prescribed by the department, together with the prescribed replacement plate fee.

(g) Fees.

(1) Except as provided in paragraphs (2) and (3) of this subsection, for a permit issued pursuant to this section:

(A) the original fee is $96;

(B) the annual renewal fee is $40;

(C) the transfer fee is $25 per permit up to a maximum of $2,500 for a single transaction; and

(D) the replacement plate fee is $25.

(2) For a nonprofit sign permit:

(A) the original fee is $10 for each sign;

(B) the annual renewal fee is $10 for each sign; and

(C) the transfer fee is waived for the transfer of a permit issued under subsection (l) of this section if the permit is transferred under subsection (e)(3) of this section. Any other permit transfer is subject to the provisions of paragraph (1) of this subsection.

(3) The initial permit fee is $50 for a sign lawfully in existence which becomes subject to the Act.

(4) A fee prescribed in this subsection is payable by check, cashier's check, or money order, and is nonrefundable.

(5) If a check or money order submitted for fees described in this section is dishonored upon presentment by the department, the permit, renewal, or transfer will be void from inception.

(h) Expiration. A permit automatically expires if:

(1) it is not renewed by the permit holder;

(2) the license under which it was issued expires or is revoked by the department pursuant to §21.149 of this title (relating to Licenses); or

(3) the sign is acquired by the state.

(i) Cancellation. The director may cancel a permit if the sign structure:

(1) is removed;

(2) is not maintained in accordance with applicable sections under this subchapter or the Act;

(3) is damaged beyond the repair threshold contained in §21.156 of title (relating to Discontinuance of Signs);

(4) is abandoned, as determined by §21.156;

(5) is not built in the location described on the permit application or in accordance with the description of the structure on the permit application;

(6) is built by an applicant who uses false or materially misleading information on the permit application;

(7) is located on property owned by a person who withdraws, in writing, the permission granted pursuant to §21.150(b)(2) of this title (relating to Permits);

(8) is located in an area in which the activity has ceased in accordance with §21.145(b) of this title (relating to Cessation of Activities);

(9) is erected, repaired, or maintained in violation of §21.161 of this title (relating to Destruction of Trees/Violation of Control of Access);

(10) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.161 of this title; or

(11) does not have permit plates properly attached under §21.150(b) and (f) of this title (relating to Permits).

(j) Removal. If a permit expires without renewal, is canceled without reinstatement, or if a sign other than an exempt sign is erected or maintained without a permit, the owner of the involved sign and sign structure shall, upon written notification by the district engineer, remove the sign at no cost to the state.

(k) Notice and appeal. Upon determination that a permit should be canceled, the director shall mail by certified mail a notice of cancellation to the address of the record license holder. Notice shall be presumed to be received five days after mailing. The recipient of the notice may provide proof that the notice was not received five days from mailing, in which case, the director of right of way may extend the time for requesting a hearing.

(1) The notice shall clearly state:

(A) the reason for the cancellation;

(B) the effective date of the cancellation; and

(C) the right of the permit holder to request an administrative hearing on the question of the cancellation.

(2) A request for an administrative hearing under this subsection must be made in writing to the director within 10 days of the receipt of the notice of cancellation.

(3) If timely requested, an administrative hearing shall be conducted in accordance with §§1.21 et seq. of this title (relating to Contested Case Procedure), and shall serve to abate the cancellation unless and until that cancellation is affirmed by order of the commission.

(l) Nonprofit signs.

(1) A nonprofit organization may obtain a permit under this section to erect or maintain a nonprofit sign.

(2) In order to qualify for a permit issued under this subsection, a sign must comply with all applicable requirements under this subchapter from which it is not specifically exempted.

(3) An application for a permit under this section must include, in detail, the content of the message to be displayed on the sign. Prior to changing the message, the permit holder must obtain the approval of the district engineer in whose district the sign is maintained.

(4) If at any time the sign ceases to be a nonprofit sign, the permit will be subject to cancellation pursuant to subsection (i) of this section.

(5) If the holder of a permit issued under this subsection loses its nonprofit status or wishes to advertise or promote something other than the municipality or political subdivision, an outdoor advertising license must be obtained pursuant to §21.149 of this title (relating to Licenses), the permit must be converted to a permit for a sign other than a nonprofit sign, and the holder must pay the original permit and annual renewal fees set forth in subsection (g) of this section.

(6) A nonprofit organization that holds a valid permit for a nonconforming sign that would otherwise qualify for a permit under this subsection may convert its permit to one issued under this subsection.

(m) Conversion of rural road permits and registrations. The department will convert a registration issued under §21.431 of this title (relating to Registration of Existing Off-Premise Signs) or a permit issued under §21.441 of this title (relating to Permit for Erection of Off-Premise Sign) to a permit under this section if a highway previously regulated in accordance with Transportation Code, Chapter 394 becomes subject to control under the Act. A holder of a permit or registration converted under this subsection will not be required to pay an original permit fee under subsection (g) of this section; however, the permit must be renewed annually under subsection (d) of this section, on the date the renewal of the permit or registration issued under §21.431 or §21.441 would have been due. In the event a sign owner has prepaid registration fees, the outstanding prepayment will be credited to the sign owner's annual renewal fee. The department will issue permit plates to a holder of a permit or a registration converted under this subsection at no charge. In the event replacement plates are needed after the initial issuance, fees will be charged in accordance with this section.

(n) New highway or change in highway designation. Owners of signs that become subject to the Act because of the construction of a new highway or the change in designation of an existing highway must apply to the department for a permit and must obtain an outdoor advertiser's license pursuant to §21.149 of this title (relating to Licenses) within 30 days after being notified by the department that the sign has become subject to the Act. If the owner of the sign cannot be identified from information on the sign, notice may be given by prominently posting notice on the sign for a period of 30 days.

§21.152. Size of Off-Premise Outdoor Advertising Signs.

(a) An off-premise sign face may not exceed 672 square feet, with a maximum sign face height of 25 feet and a maximum sign face length of 60 feet, inclusive of border and trim, but excluding the sign structure. Temporary protrusions, also known as cutouts, may not exceed 20% of the area indicated on the sign permit. Temporary protrusions may be added to an off-premise sign, provided that no off-premise sign to which one or more temporary protrusions or cutouts have been added shall have an area greater than 807 square feet, with a maximum sign face height of 25 feet and a maximum sign face length of 60 feet, inclusive of temporary protrusions or cutouts, border, and trim, but excluding the sign structure.

(b) The maximum size limitations shall apply to each side of a sign structure or structures visible to approaching traffic on the main-traveled way of the regulated highway.

(c) The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign face.

(d) Sign faces may be placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two faces presented in each direction. The sign structure or structures shall be considered one sign. Two sign faces facing one direction may be presented as one face by covering both faces and the area between the faces with an advertisement, as long as the size limitations of subsection (a) of this section are not exceeded.

(e) Signs which exceed 336 square feet in area, including cutouts, may not be stacked or placed side-by-side.

(f) A sign face may be permanently enlarged by 10% of the size shown on the permit without a new permit, if the enlargement does not cause the face to exceed the maximum size limitations set forth in subsection (a) of this section. If a sign is built with a smaller face than the size shown on the permit or if the face is reduced in size after it is built, a new permit will be required to increase the size of the face beyond the allowed 10%.

§21.153. Spacing of Signs.

(a) Signs may not be located in a manner that creates a safety hazard, including:

(1) causing a driver to be unduly distracted in any way;

(2) obscuring or otherwise interfering with the effectiveness of an official traffic sign, signal or device, or

(3) obstructing or interfering with the driver's view of approaching, merging or intersecting traffic.

(b) Signs may not be located within 1,500 feet of a public park that is adjacent to a regulated highway. This prohibition shall apply:

(1) on either side of the highway on a nonfreeway primary system; and

(2) on the side of the highway adjacent to the public park on an interstate or freeway primary system.

(c) The following spacing limitations apply to signs that will be erected outside incorporated municipalities along a freeway or interstate regulated highway. Signs may not be erected:

(1) in areas adjacent to or within 1,000 feet of interchanges, intersections at grade, or rest areas; or

(2) in areas adjacent to or within 1,000 feet of ramps or their acceleration and deceleration lanes (Such distances shall be measured along the highway from the nearest point of beginning or ending of pavement widening at the exit from, or entrance to, the main-traveled way.)

(d) Signs may not be erected closer than 1,500 feet apart on the same side of a regulated highway.

(e) Signs erected outside of incorporated municipalities along the nonfreeway primary system may not be closer than 750 feet apart on the same side of the highway.

(f) Signs erected in incorporated municipalities along the nonfreeway primary system may not be closer than 300 feet apart on the same side of the highway.

(g) The spacing between signs shall not apply to signs separated by buildings, natural surroundings, or other obstructions which cause only one sign located within the specified spacing to be visible at any one time.

(h) No sign, other than an exempt sign, may be erected within five feet of any highway right of way line. This distance shall be measured from the end of the sign face nearest the right of way.

(i) The spacing rules in this section do not apply to on-premise or directional or other official signs, as provided in the Act, §391.031(b), nor shall measurements be made from these signs.

§21.154. Lighting and Movement of Signs.

(a) Lighting. Signs may be illuminated except for signs that contain, include, or are illuminated by:

(1) any flashing, intermittent, or moving light or lights, including any type of screen using animated or scrolling displays, such as an LED (light emitting diode) screen or any other type of video display, even if the message is stationary, except those giving only public service information such as time, date, temperature, weather, or similar information;

(2) lights that are:

(A) not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated highway; and

(B) of such intensity or brilliance as to cause glare or vision impairment of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle; and

(3) lights that interfere with the effectiveness of, or obscure an official traffic sign, device, or signal.

(b) Moving parts. Signs with intermittent messages are prohibited, including tri-vision signs with rotating slat messages. A cutout on a sign may be animated if it:

(1) is not lighted or enhanced by reflective material so as to create the illusion of flashing or moving lights; or

(2) does not otherwise create a safety hazard to the traveling public.

(c) Reflective materials. Reflective paint and reflective disks may be used on a sign face unless they are determined by the department to:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(d) Non-flashing neon lights may be used on sign faces, unless:

(1) the sign permit specifies an unilluminated sign structure; or

(2) the lights are determined by the department to cause an undue distraction to the traveling public.

§21.158. Height Restrictions.

A sign may not be erected that exceeds an overall height of 42 1/2 feet, measured in accordance with §21.144 of this title (relating to Measurements), from the highest point of the sign to the grade level of the centerline of the main-traveled way closest to the sign, at a point perpendicular to the sign location. A roof sign having a solid sign face surface may not at any point exceed 24 feet above the roof level. Open sign faces on roof signs in which the uniform open area between individual letter or shapes is not less than 40% of the total gross area of the sign face may be erected to a height of 40 feet above the roof level. The lowest point of a projecting roof or wall sign must be at least 14 feet above grade.

§21.160. Relocation.

(a) Purpose. This section provides for the relocation of certain signs along regulated highways within the State of Texas that would otherwise be precluded under this subchapter. All requirements under this subchapter are to be complied with to the extent that they are not in conflict with the provisions of this section.

(b) Permit. When a sign within the proposed highway right of way is to be relocated to accommodate a regulated highway project, the district engineer of the department within whose jurisdiction the sign is located may issue a permit under the conditions set forth in subsections (c) and (d) of this section.

(c) Requirements.

(1) A new sign permit application shall be submitted but will not require payment of a permit fee.

(2) Sign relocation shall be in accordance with all local codes, ordinances, and applicable laws.

(3) The district engineer shall initially determine that the permit is necessary to avoid excessive project costs and/or a delay in the completion of the project.

(4) The existing sign to be relocated must be an off-premise sign legally erected and maintained.

(5) The sign must be situated after its relocation according to the following priority:

(A) upon the remainder of the same tract or parcel of land upon which it was situated before its relocation, if any;

(B) if there is no remainder or if the remainder is not of sufficient size or suitable configuration for the relocation of the sign, then upon the property abutting the proposed highway right of way at the original sign location or upon property abutting the insufficient remainder, if available;

(C) on property adjacent to the locations named in subparagraphs (A) or (B) of this paragraph;

(D) to another location within 50 miles of the original sign location, within the same department-designated district; or

(E) to another location within 50 miles of the original sign location, within another district of the department, with the approval of the district engineer where the sign is to be relocated.

(6) If possible, the sign is to be placed in the same relative position as to line of sight.

(7) The relocated sign must be within a zoned commercial or industrial area or an unzoned commercial or industrial area, except that an unzoned commercial or industrial area may include only one recognized commercial or industrial activity.

(8) The relocated sign location must meet the following spacing criteria.

(A) The sign may not be placed where it is likely to cause a driver to be unduly distracted in any way or where it will

obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic, whether the intersection be of two or more highways or the intersection of a highway with a railroad.

(B) The sign may not be placed within 500 feet of a public park that is adjacent to a regulated highway. This prohibition shall apply:

(i) on either side of the highway on a nonfreeway primary system; and

(ii) on the side of the highway adjacent to the public park on an interstate or freeway primary system.

(C) If the sign is to be placed outside an incorporated municipality along a regulated highway, the sign may not be located in areas adjacent to or within 500 feet of:

(i) interchanges, intersections at grade and rest areas; or

(ii) ramps, their acceleration and deceleration lanes (Such distances shall be measured along the highway from the nearest point of beginning or ending of pavement widening at the exit from, or entrance to, the main-traveled way.)

(D) The sign may not be erected along the interstate and freeway primary systems closer than 500 feet apart on the same side of the highway.

(E) The sign may not be erected along the nonfreeway primary system located outside of municipalities closer than 300 feet apart on the same side of the highway.

(F) The sign may not be erected along the nonfreeway primary system in municipalities closer than 100 feet apart on the same side of the highway.

(G) The sign may not be erected within five feet of any highway right of way line.

(9) The size, configuration, and construction of the relocated sign must conform to the following provisions.

(A) The maximum area for any one sign face shall be 1,200 square feet, with a maximum height of 25 feet and a maximum length of 60 feet.

(B) The maximum size limitations shall apply to each sign face visible to approaching traffic.

(C) The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

(D) Sign faces may be placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two displays to each facing. The sign structure and faces shall be considered one sign.

(E) A sign face that exceeds 350 square feet in area may not be stacked or placed side-by-side.

(F) In no event shall the size of the sign face, the number of sign faces, or lighting, if any, of the relocated sign exceed the size, number of faces, or lighting, if any, of the existing sign.

(G) The relocated sign will be constructed with the same number of poles and of the same type of materials as the existing sign.

(H) The relocated sign must not exceed the maximum height set forth in §21.158 of this title (relating to Height Restrictions).

(10) Except in accordance with subsection (g), the sign replacement site is to be approved by the district engineer or his designee prior to the removal of the existing sign. A permit may be issued pursuant to this section if a sign is designated by the owner as personal property and the sign owner receives relocation benefits, or if the sign is designated by the owner as realty, valued and purchased according to the department's sign valuation schedules, and retained by the sign owner. A permit may not be issued under this section to relocate a sign purchased through an eminent domain proceeding. Relocation benefits will be paid in accordance with Subchapter G of this chapter.

(11) The spacing requirements as provided in paragraph (8) of this subsection do not apply to:

(A) signs separated by buildings, natural surroundings, or other obstructions which cause only one sign located within the specified spacing to be visible at any one time; and

(B) on-premise or directional or official signs, as cited in Transportation Code, §391.031(b), nor shall measurements be made from these signs.

(d) Cessation of activities. When a commercial or industrial activity ceases and a sign other than an exempt sign is no longer located within 800 feet of at least one recognized commercial or industrial activity located on the same side of the highway, the sign will be considered nonconforming.

(e) Waiver of damages. The sign owner must enter into a written agreement with the acquiring agency waiving and releasing any claim for damages against the acquiring agency and the state for any temporary or permanent taking of the sign in consideration of the payment by the acquiring agency of a mutually agreed specified amount of money calculated to cover the cost to the sign owner of the relocation of the sign.

(f) Bisection. An existing permit may be amended by the district office (serving the county where the sign is located) to authorize:

(1) a monopole sign face overhanging the proposed right of way to be shifted to the remainder;

(2) a multipole structure located partially in the proposed right of way to have the poles in the right of way moved to the remainder and the face shifted to the relocated poles; or

(3) the sign to be bisected and the face size reduced.

(g) Relocation Within a Certified City. If a displaced sign is subject to the jurisdiction of a municipality certified to control outdoor advertising pursuant to §21.151 of this title (relating to Local Control), and the sign will be relocated within that municipality, permission to relocate the sign must be obtained only from the certified municipality, in accordance with the municipality's sign and zoning ordinances. A permit from the municipality will be required in order to receive relocation benefits from the department. A separate permit from the department is not required and the specific requirements for a relocation permit contained in subsection(c) need not be met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 1999.

TRD-9902578
Richard Monroe
General Counsel
Texas Department of Transportation
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Proposal publication date: December 4, 1998
For further information, please call: (512) 463–8630

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43 TAC §§21.143, 21.155, 21.156, 21.161, 21.162

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, Chapter 391, which authorizes the commission to adopt rules to regulate the erection or maintenance of signs along interstate and primary systems.

§21.143. Maintenance and Continuance.

(a) Continuance of nonconforming signs. In order for a nonconforming sign structure to be maintained and continued:

(1) the sign structure must:

(A) have existed at the time the conditions changed to make the sign nonconforming;

(B) have been lawful on the date it became subject to control by the department; and

(C) remain substantially the same as it was on the date it became subject to the department's control;

(2) the permit holder's sign:

(A) may not be relocated even if the sign is sold, leased, or otherwise transferred, without affecting its status, unless the relocation is a result of a right of way acquisition requiring relocation to a conforming area pursuant to §21.160 of this title (relating to Relocation);

(B) may not be destroyed, abandoned, or discontinued under §21.156 of this title (relating to Discontinuance of Signs); and

(C) may not be removed for any reason, including repair.

(b) Normal or reasonable repair and maintenance. Subject to the limitations in subsection (c) of this section, the following are considered to be normal or reasonable maintenance activities that do not need a new permit:

(1) replacement of nuts and bolts; nailing, riveting or welding; cleaning and painting; and manipulation to level or plumb the sign structure;

(2) replacement of parts, as long as the basic design or structure of the sign is not altered and materials of the same type are used;

(3) replacement of poles, as long as no more than one-half of the poles are replaced in any 12 month period; and

(4) changing the advertising message, including changing the sign face, as long as similar materials are used to replace the sign face.

(c) Substantial change.

(1) Substantial changes that require a new permit are:

(A) adding lights to an unilluminated sign or adding more intense lighting to an illuminated sign whether or not the lights are attached to the sign structure;

(B) changing the size of the sign beyond what is allowed pursuant to §21.152 of this title (relating to Size of Off-Premise Outdoor Advertising Signs);

(C) changing the number of poles in the sign structure, unless the number of poles in a multiple pole structure is reduced to accommodate a reduction in the size of the original sign, provided that the original sign is not removed and replaced with another sign;

(D) changing the materials used in the construction of the sign, such as replacing wooden materials with metal materials;

(E) adding faces or changing the sign configuration, such as changing from a "V" configuration to a stacked configuration;

(F) increasing the height of the sign from the height designated on the original permit;

(G) moving the sign structure or sign face in any way unless the movement is made in accordance with §21.160 of this title (relating to Relocation);

(H) replacing more than one-half of the poles in a multiple pole sign structure in any 12-month period; or

(I) making repairs that exceed 60% of the cost to erect a new sign of the same type at the same location.

(2) A new permit will not be issued for a nonconforming sign.

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 I. Control of Outdoor Advertising Signs

43 TAC §21.155, §21.156

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, Chapter 391, which authorizes the commission to adopt rules to regulate the erection or maintenance of signs along interstate and primary systems.

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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Proposal publication date: December 4, 1998
For further information, please call: (512) 463–8630

♦ ♦ ♦

Chapter 23. Travel Information

The Texas Department of Transportation adopts amendments to §23.2, concerning definitions, and new §23.14, concerning display and distribution of travel literature in the Texas Travel Information Centers. The amendments and new section are adopted without changes to the text as proposed in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1147), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Texas Civil Statutes, Article 6144e, Section 3, directs the department to maintain and operate Texas Travel Information Centers at the principal gateways to Texas for the purpose of providing road information, travel guidance, and various descriptive materials, pamphlets, and booklets designed to furnish aid and assistance to the traveling public and stimulate travel to and within Texas.

The amendments to §23.2 number the definitions to conform with Texas Register form requirements and also provide new definitions for terms and words used in new §23.14.

New §23.14 provides for the department to accept, to display, and to distribute travel literature and other promotional items in the travel information centers. It allows the department to accept proposals for the use of promotional graphics, photographs, icons, and other promotional items for display. It allows for a fair and equitable way to distribute literature and to prevent preferential treatment or conflicts of interest. The section identifies items to be sold at the travel information centers. It also allows for non-departmental use of the travel information centers for on-site promotions, and provides the department with methods for maintaining the quality and focus of travel literature and on-site promotions.

COMMENTS

No comments were received on the proposed amendments or new section.

Subchapter A. General Provisions

43 TAC §23.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to operate Texas Travel Information Centers.

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 May 3, 1999.

TRD-9902581
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: May 23, 1999
Proposal publication date: February 19, 1999
For further information, please call: (512) 463–8630

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Subchapter B. Travel Information

43 TAC §23.14

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to operate Texas Travel Information Centers.

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 May 3, 1999.

TRD-9902582
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: May 23, 1999
Proposal publication date: February 19, 1999
For further information, please call: (512) 463–8630

♦ ♦ ♦

43 TAC §23.13

The Texas Department of Transportation adopts the repeal of §23.13, concerning the electronic travel information system. The repeal is adopted without changes to the proposed text as published in the *Texas Register* (24 TexReg 1763).

EXPLANATION OF ADOPTED REPEAL

Section 23.13 provided for the creation and maintenance of an electronic travel information system for the purpose of informing travelers about attractions and facilities available to the public. This system has been discontinued and replaced by a comprehensive Internet web site that contains all the pertinent information previously provided by the electronic information system.

COMMENTS

No comments were received on the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to adopt rules for the conduct of the work of the Texas Department of Transportation.

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 May 3, 1999.

TRD-9902583
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: May 23, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 463–8630

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) proposes and seeks comment on the review of 30 TAC Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System (NPDES). This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The commission has assessed Chapter 308 and initially determined that the reason for its adoption continues to exist. The purpose of Chapter 308 is to provide criteria and standards for NPDES through provisions adopted by reference that were promulgated by the EPA pursuant to its authority under the CWA. The subchapters found in Chapter 308 are necessary in order for the commission to perform its responsibilities relating to the delegated NPDES program.

Subchapter A provides criteria and standards for imposing technology based treatment requirements under the CWA, §301(b), relating to timetable for achievement of objectives (effluent limitations), and §402, relating to national pollutant discharge elimination system. This subchapter describes the purpose and scope of the criteria and standards of the treatment requirement and sets out technology based treatment requirement in permits.

Subchapter B provides criteria for issuance of permits to aquaculture projects.

Subchapter C provides the criteria for extending compliance dates for facilities installing innovative technology under the CWA, §301(k), relating to innovative technology. The section describes criteria for requests for and procedures related to compliance extensions, establishes certain permit conditions, and requires supplementary information and recordkeeping.

Subchapter D provides criteria and standards for determining fundamentally different factors under the CWA, §301(b)(1)(A), and §301(b)(2)(A), relating to timetable for achievement of objectives (effluent limitations).

Subchapter G provides criteria for modifying the secondary treatment requirements under the CWA, §301(h), relating to modification of secondary treatment requirements. This section includes general regulations related to the modification criteria, requires the existence of and compliance with applicable water quality standards, requires the establishment of a monitoring program, regulates the effect of discharge on other point and nonpoint sources, defines a required toxics control program, and regulates increases in effluent volume or the amount of pollutants discharged.

Subchapter H provides criteria for determining alternative effluent limitations under the CWA, §316(a), relating to effluent limitations (thermal discharges) that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife.

Subchapter J provides criteria for extending compliance dates under the CWA, §301(i), relating to municipal time extensions. The section provides criteria for permit modification and issuance.

Subchapter K provides criteria and standards for best management practices (BMP) authorized under the CWA, §304(e), relating to best management practices for industry. The section discusses applicability of BMPs, discusses permit terms and conditions, and otherwise regulates BMP programs.

Subchapter M provides ocean discharge criteria. The section requires and regulates a determination of unreasonable degradation of the marine environment, discusses permit requirements, and requires certain information to be required by the program.

Chapter 308 was adopted in 1990 under the Texas Water Code, §5.102 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of the State of Texas and to establish and approve all general policy of the state.

Comments on the commission's review of the rules contained in Chapter 308 may be submitted to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98078-308-WT. Comments must be received by June 14, 1999. For further information, please contact Santos Olivarez at (512) 239-4718.

TRD-9902564

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 30, 1999

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The Texas Natural Resource Conservation Commission (commission) proposes and seeks comment on the review of 30 TAC Chapter 309, Domestic Wastewater Effluent Limitations and Plant Siting. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The commission has assessed Chapter 309 and initially determined that the reason for its adoption continues to exist. The purpose of Chapter 309 is to establish parameters for domestic wastewater effluent treatment, for siting of sewage treatment facilities to avoid nuisance conditions and protect public health, and for land disposal of sewage effluent. Chapter 309 establishes the minimum treatment requirements for domestic wastewater prior to discharges into or adjacent to waters in the state.

Subchapter A establishes a set of minimum effluent quality limitations for treated domestic sewage which is required of permittees in order to maintain water quality as prescribed by the commission's surface water quality standards.

Subchapter B addresses the issues of appropriate siting of domestic wastewater treatment facilities. This subchapter includes requirements for buffer zones, odor abatement, geologic considerations such as floodplains, soil conditions, and location of public and private wells. The odor abatement requirements in this subchapter have been reviewed for consistency and found acceptable by the commission's Air Quality Planning and Assessment Division.

Subchapter C relates to the requirements for land disposal by irrigation of wastewater effluent. The subchapter also includes design requirements for irrigation and percolation systems.

The requirements found in Chapter 309 provide the waste discharge requirements that are needed to complete compliance with Chapter 317 of this title (relating to Design Criteria for Sewerage Systems).

Chapter 309 was adopted under authorization of Texas Water Code, §26.034 which authorizes the commission to review and approve plans and specifications for wastewater treatment facilities, and authorizes the approval of these plans and specifications only if they conform to the waste discharge requirements and water quality standards established by the commission.

The commission is seeking general comments on whether the rule is necessary and should be readopted.

Comments on the commission's review of the rules contained in Chapter 309 may be submitted to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98081-309-WT. Comments must be received by June 14, 1999. For further information contact Santos Olivarez at (512) 239-4718.

TRD-9902565
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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Texas Department of Transportation

Title 43, Part I

In accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Department of Transportation files this notice of intention to review Title 43, TAC, Part I, Chapter 4 (Employment Practices).

As required by §167, the department will accept comments regarding whether the reason for adopting each of the rules in this chapter continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Diana Isabel, Director, Human Resources Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas, 78701-2483, or at (512) 706-6300 or 936-2763.

TRD-9902575
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 3, 1999

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Adopted Rule Reviews

Texas Department of Health

Title 25, Part I

The Texas Department of Health (department) has completed a review of Title 25, Texas Administrative Code, Part I, Chapter 295, Subchapter A. Hazard Communication, §§295.1 - 295.5 and 295.7 - 295.8. Amendments to §§295.1 - 295.3 and the repeal of §§295.4 - 295.5 and 295.7 - 295.8 are being adopted and published in this same issue under the Adopted Rules Section. The Notice of Intention to Review was published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9079). There were no comments received for any of the sections due to the publication of the Notice of Intention to Review. Section 295.10 also was included in the Notice of Intention to Review; however, repeal of that rule will be proposed by the Board of Health in April 1999, and finally adopted later in 1999.

The review has been in accordance with the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, which requires that each state agency review and consider for readoption each rule adopted by that agency. The department has determined that reasons for readopting §§295.1 - 295.3 continue to exist with amendments to those sections. However, §§295.4 - 295.5 and 295.7 - 295.8 are being repealed in order to ensure consistency between the rules and the Health and Safety Code, Chapter 502.

TRD-9902558
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 30, 1999

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Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts without changes, Chapter 1, Agency Administration, in accordance with the Appropriations Act, Section 167.

No comments were received regarding the adoption of this chapter.

TRD-9902632
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: May 4, 1999

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Texas Department of Licensing and Regulation

Title 16, Part IV

The Texas Department of Licensing and Regulation (Department) readopts 16 TAC Chapter 65, Boiler Division: §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.65, 65.70, 65.80, 65.90, and 65.100 in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed rule review was published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 607).

The comment period on the proposal and review closed March 1, 1999. No comments were received regarding re-adoption of this chapter.

Rider 167 requires state agencies to review and consider for re-adoption rules adopted under the Administrative Procedures Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The Department reviewed the rules in Chapter 65 and has determined that the rules are still essential in effectuating the provisions of Texas Health and Safety Code Annotated Chapter 755 (Vernon 1997) which gives the Department the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

As a result of the review process, the Department concurrently proposes amendments to §§65.10, 65.20, 65.50, 65.60, 65.65, and 65.100 and may be found in the Proposed Rules section of this issue of the *Texas Register*.

TRD-9902486
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: April 27, 1999

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Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) adopts the review of the rules in 30 TAC Chapter 12, Payment of Fees. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The notice of proposed review was published in the February 12, 1999 issue of the *Texas Register* (24 TexReg 1004).

The commission readopts the rules in 30 TAC Chapter 12 as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission reviewed the rules in Chapter 12 and determined that the reasons for adopting these rules continue to exist. The rules are consistent with the Texas Water Code, §5.235, which states that "the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction." Through inclusion or reference of Chapter 12 in agency fee rules, all of the fee rules are uniform and consistent with the limits of the Tax Code and any changes to the Tax Code will only require the amendment of Chapter 12, not each and every fee rule.

The public comment period for the review closed March 15, 1999. No comments were received concerning the proposed notice of review.

TRD-9902550
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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The Texas Natural Resource Conservation Commission (commission) adopts the review of 30 TAC Chapter 113, Control of Air Pollution from Toxic Materials. This review was conducted in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed review was published in the January 29, 1999 issue of the *Texas Register* (24 TexReg 608).

The commission readopts the rules contained in 30 TAC Chapter 113, concerning Control of Air Pollution from Toxic Materials, as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continue to exist. For the following reasons, the commission concludes that the requirement for these rules continues to exist and therefore readopts Chapter 113.

The primary need for Chapter 113 is to control air pollution from designated pollutants and facilities, as well as toxic materials throughout the State of Texas, by providing a format for the commission to adopt the federal stationary source performance standards and hazardous air pollutant standards as they are promulgated by the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations (CFR) Parts 60, 61, and 63. By adopting the federal standards, the commission may then request delegation for the state administration of these programs.

Chapter 113 is currently divided into four subchapters. Subchapter A, concerning Definitions, contains the definitions pertinent to rules contained within Chapter 113 only. Subchapter B, concerning National Emission Standards for Hazardous Air Pollutants (NESHAPS), contains state adopted rules which incorporate some of the federal NESHAPS as promulgated in Title 40 of the CFR, Part 61 (40 CFR 61). Subchapter C, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, contains state adopted rules which incorporate the federal NESHAPS as promulgated in 40 CFR 63. The NESHAPS in 40 CFR 63 incorporate the maximum available control technology (MACT) standards as defined for each of the affected source categories, and are also referred to as MACT standards. Subchapter D, concerning Designated Facilities and Pollutants, contains state adopted rules applicable to existing sources which are adopted as emissions guidelines in accordance with §111(d) of the Federal Clean Air Act. These emissions guidelines are promulgated in 40 CFR 60.

The justification for each of the Chapter 113 subchapters and the sections contained therein, therefore, is the same justification used when they were adopted. Subchapter A was adopted on June 3, 1998 to make the Chapter 113 format consistent with other air chapters. This subchapter contains those program-specific definitions that are found only in Chapter 113 and are not applicable to other chapters. Subchapter B was adopted on December 16, 1998 to incorporate one of the federal NESHAPS (Subpart R, Radon Emissions from Phosphogypsum Stacks) as promulgated by EPA in 40 CFR 61. This state-adopted standard allows the commission to incorporate the federal standard into new source review and federal operating

permits. With this action, the commission also requested delegation of the Subpart R NESHAPS from the EPA which, when granted, will allow the commission to administer the program. EPA delegation of state-adopted NESHAPS will eliminate the redundancy of dual program administration. Subchapter C was adopted on June 25, 1997 to incorporate the general provisions and seven of the federal MACT standards promulgated by EPA in 40 CFR 63. Six additional MACT standards were adopted by the commission on October 15, 1997, and a third set of five MACT standards was adopted by the commission on October 7, 1998. Future rulemakings are planned to include additional MACT standards as they are promulgated and/or revised by EPA. These state adopted standards allow the commission to incorporate the federal standards into new source review and federal operating permits. The commission also requested delegation of the MACT standards from the EPA which, when granted, will allow the commission to administer the program. EPA delegation of the MACT standards will eliminate the redundancy of program administration for the affected industry. Subchapter D was adopted on October 7, 1998 in response to a federal requirement in §60.23(a) of 40 CFR 60. Subchapter D includes rules regarding municipal solid waste landfills. Section 60.23(a) requires that within nine months of publication of a final emission guideline document for a designated type of existing facility (as defined in 40 CFR §60.21(b)), each state must adopt rules governing control of the designated pollutants.

The comment period on the review closed March 1, 1999. There were no comments received regarding the review of this chapter.

TRD-9902547
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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The Texas Natural Resource Conservation Commission (commission) adopts the review of 30 TAC Chapter 120, Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities. This review was conducted in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The notice of proposed review was published in the February 5, 1999 issue of the *Texas Register* (24 TexReg 831).

The commission concurrently adopts the repeal of Chapter 120 in the Adopted Rules section of this issue of the *Texas Register*. The commission has determined, as a result of this review, that Chapter 120 is composed solely of rules duplicated in 30 TAC Chapter 335 and that a duplicate set of rules is no longer required by statute and is no longer needed by the agency.

The public comment period for the review closed March 8, 1999. No comments were received concerning the rules review of Chapter 120. However, one comment was received in response to the proposed repeal. The commission has responded to the comment in the preamble to the repeal of Chapter 120 published in the Adopted Rules section of this issue of the *Texas Register*.

TRD-9902549
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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Texas Department of Transportation

Title 43, Part I

The Texas Department of Transportation (the "department") readopts, without changes, Title 43, TAC, Part I, Chapter 17 (Vehicle Titles and Registration). This review was conducted in accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed review was published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1845). One comment was received regarding the readoption of this chapter. The comment related to simplification of the application for certificates of title when multiple vehicles are involved. The department will consider this suggestion for future use. A rule change may not be necessary to implement the suggestion. The Texas Transportation Commission has reviewed the rules in Chapter 17 and has determined that the reasons for adopting these rules continue to exist.

TRD-9902576
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 3, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is 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. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure: 25 TAC §295.11(f)

Severity Level of Violation	First Occurrence	Second Occurrence	Subsequent Occurrence
Minor	$50	$ 75	$100
Serious	$100	$150	$200
Severe	$200	$250	$300
Critical	$300	$400	$500

Figure: 25 TAC §295.12(a)

NOTICE TO EMPLOYEES

The Texas Hazard Communication Act (revised 1993), codified as Chapter 502 of the Texas Health and Safety Code, requires public employers to provide employees with specific information on the hazards of chemicals to which employees may be exposed in the workplace. As required by law, your employer must provide you with certain information and training. A brief summary of the law follows.

HAZARDOUS CHEMICALS

Hazardous chemicals are any products or materials that present any physical or health hazards when used, unless they are exempted under the law. Some examples of more commonly used hazardous chemicals are fuels, cleaning products, solvents, many types of oils, compressed gases, many types of paints, pesticides, herbicides, refrigerants, laboratory chemicals, cement, welding rods, etc.

WORKPLACE CHEMICAL LIST

Employers must develop a list of hazardous chemicals used or stored in the workplace in excess of 55 gallons or 500 pounds. This list shall be updated by the employer as necessary, but at least annually, and be made readily available for employees and their representatives on request.

EMPLOYEE EDUCATION PROGRAM

Employers shall provide training to newly assigned employees before the employees work in a work area containing a hazardous chemical. Covered employees shall receive training from the employer on the hazards of the chemicals and on measures they can take to protect themselves from those hazards. This training shall be repeated as needed, but at least whenever new hazards are introduced into the workplace or new information is received on the chemicals which are already present.

MATERIAL SAFETY DATA SHEETS

Employees who may be exposed to hazardous chemicals shall be informed of the exposure by the employer and shall have ready access to the most current material safety data sheets (MSDSs), which detail physical and health hazards and other pertinent information on those chemicals.

LABELS

Employees shall not be required to work with hazardous chemicals from unlabeled containers, except portable containers for immediate use, the contents of which are known to the user.

EMPLOYEE RIGHTS

Employees have rights to:

- access copies of MSDSs
- information on their chemical exposures
- receive training on chemical hazards
- receive appropriate protective equipment
- file complaints, assist inspectors, or testify against their employer

Employees may not be discharged or discriminated against in any manner for the exercise of any rights provided by this Act. A waiver of employee rights is void; an employer's request for such a waiver is a violation of the Act. Employees may file complaints with the Texas Department of Health at the toll free number provided below.

EMPLOYERS MAY BE SUBJECT TO ADMINISTRATIVE PENALTIES AND CIVIL OR CRIMINAL FINES RANGING FROM $50 TO $100,000 FOR EACH VIOLATION OF THIS ACT.

Further information may be obtained from:

Texas Department of Health
Toxic Substances Control Division
Hazard Communication Branch
1100 West 49th Street
Austin, Texas 78756

1-800-452-2791
(512) 834-6603
Fax: (512) 834-6644

FIGURE 28 TAC SECTION 34.614(a)

Certificate of Registration:	Initial Fee	Renewal Fee (2 years)
Certificate of Registration	$500	$1000
Certificate of Registration – Single Station	$250	$500
Certificate of Registration - Branch Office	$150	$300
Certificate of Registration - Branch Office – Single Station	No registration required	

Licenses:	Initial Fee	Renewal Fee (2 years)
Fire alarm technician license	$100	$200
Fire alarm monitoring technician license	$100	$200
Residential fire alarm superintendent (single station) license	$100	$200
Residential fire alarm superintendent license	$100	$200
Fire alarm planning superintendent license	$100	$200

Other Fees:	Fee
Duplicate or revised certificate or license	$20
Other requested changes to certificates or licenses	$20
Examination fee - (non-refundable/non-transferable)	$20
Reexamination - (non-refundable/non-transferable)	$20
All examination fees are forfeited if the applicant does not appear for the scheduled examination.	

FIGURE 28 TAC SECTION 34.614(e)

Expired 1 day to 90 days:

	Renewal Fee	Late Fee	Total Fee
Certificate	$1,000 (2 years)	$125.00	$1,125.00
Branch office certificate	300 (2 years)	37.50	337.50
Licenses			
(Technician)	200 (2 years)	25.00	225.00
(Residential Fire Alarm Superintendent Single Station)	200 (2 years)	25.00	225.00
(Residential Fire Alarm Superintendent)	200 (2 years)	25.00	225.00
(Planning Superintendent)	200 (2 years)	25.00	225.00

Expired 91 days to 2 years:

	Renewal Fee	Late Fee	Total Fee
Certificate	$1000 (2 years)	$500	$1,500
Certificate – Single Station	500 (2 years)	250	750
Branch office certificate	300 (2 years)	150	450
Licenses			
(Technician)	200 (2 years)	100	300
(Residential Fire Alarm Superintendent Single Station)	200 (2 years)	100	300
(Residential Fire Alarm Superintendent)	200 (2 years)	100	300
(Planning Superintendent)	200 (2 years)	100	300

Figure: 30 TAC §106.494(b)(1)(E)(ii)

Table 494

Stack Height (feet)	Property Line Distance (feet) For 24-hour Operation	Property Line Distance (feet) For *Daytime-only Operation
8 or less	210	150
> 8 and ≤ 12	200	140
> 12 and ≤ 16	180	130
> 16 and ≤ 20	160	110
> than 20	140	90

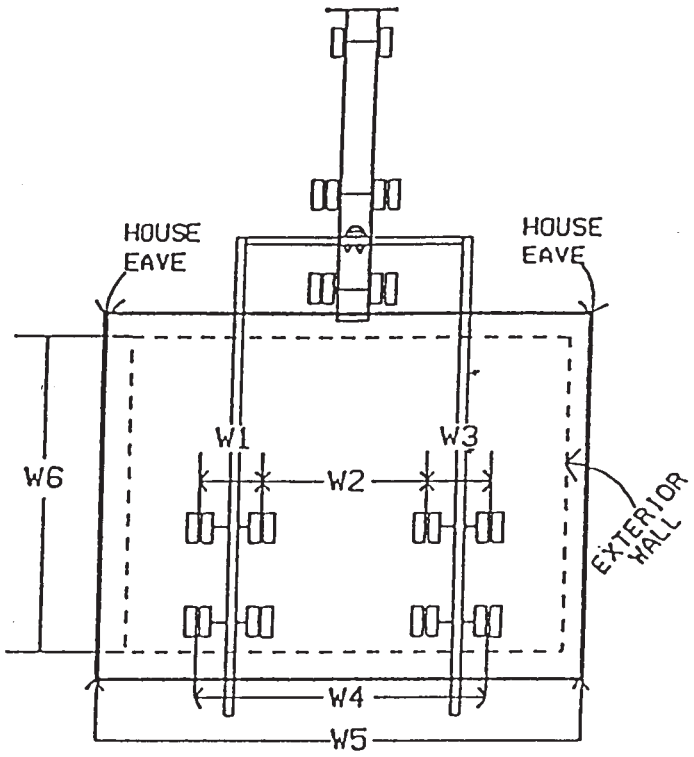
*Sunrise to sunset

Figure: 43 TAC §28.12(e)

APPENDIX A

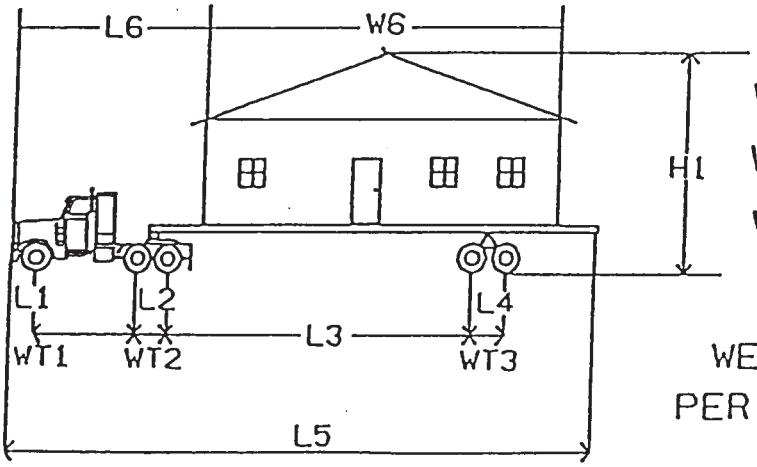
DIAGRAM FOR MOVING OVERWEIGHT HOUSES

PLAN VIEW EXAMPLE



W1=
W2=
W3=
W4=
W5=
W6=

SIDE VIEW EXAMPLE



WT1=
WT2=
WT3=

WEIGHT PER DOLLY =

L1=
L2=

L3=
L4=
H1=

L5=
L6=

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Requests for Proposals

Purpose and Scope.

The Texas Agricultural Finance Authority (the Authority), a public authority within the Texas Department of Agriculture (the Department), is seeking to employ Bond Counsel to assist the Authority in the issuance of bonds and to provide general program assistance when needed under Chapter 44, Chapter 58 and Chapter 59 of the Texas Agriculture Code.

The Authority was created by the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or export businesses in Texas. The Authority can provide financing through instruments including direct loans, loan guaranties, insurance or co-insurance.

Chapter 58 and Chapter 59 of the Agriculture Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. With the anticipated approval of the 76th Legislature, the Authority may issue additional general obligation authority for the provision of financial assistance to the Texas Boll Weevil Eradication Foundation and to act as a conduit for a state agency and/or an institutions of higher education for agricultural related projects. Under Chapter 58 of the Agriculture Code, the Authority is authorized to issue up to $500 million in industrial revenue bonds for agricultural related projects in the State.

The Texas Agricultural Finance Authority Board (the Board) will approve eligible borrowers for financing through direct loans, loan guaranties, loan participation, direct issuance of obligations, or other financial instruments.

Statement of Duties.

The bond counsel's responsibilities will include, but will not be limited to, advice to the Board of the Authority and staff of the Department on the legal ramifications and constraints of the issuance and investment policy; the legality of loan policy proposals and legal aspects of investments and loan policy; the legality of proposed debt structuring techniques; and real and anticipated changes in state and federal law, regulations or public policy and the potential and real impact on existing or anticipated bond issues, investment policy, and loan policy.

With respect to new bond issues, bond counsel, in consultation with the Authority's Financial Advisor and the staff of the Department, will prepare all legal documents required by the Board, Comptroller of Public Accounts, Attorney General, or outside parties; request and obtain approval of the bond issue from the Attorney General, Governor, Bond Review Board and other required authorities; and review all financial models and render opinions on the legality and relevant tax position of the proposed issuance and lending scenario.

Proposal Contents.

Responses to this Request for Proposal this ("RFP") should include, at least, the following: a thorough description of your firm's ability to represent the Authority; a description of your firm's past experience as bond counsel for other state agencies; a designation of the individuals who might be assigned to the work of the authority; examples of similar programs in which your firm has assisted as legal counsel; a quotation of your proposed fee structure based upon the issuance of financing enhanced by the general obligation of the State and/or a stand alone revenue bond issuance; a statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in your firm; affirmation that the firm does not, and shall not during the term of the contract, represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies; and a statement of willingness to comply with policies, directives, and guidelines of the Authority and the Attorney General of the State of Texas.

Statement of Evaluation Process.

Responses to this RFP will be evaluated and ranked according to the information provided, and summarized for the Board's review. The Authority has directed staff to rank the top three proposals and to make a recommendation to the board at the first available meeting. The Authority has previously contracted for outside bond counsel with the law firm of Vinson and Elkins, L.L.P. The Authority intends to continue those services with that firm, unless a better proposal is received. The Authority intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at a fair and reasonable price.

Proposal Requirements.

A duly authorized representative of the firm must execute the submitted response. An unsigned response will not be accepted. Issuance of this RFP In no way constitutes a commitment by the Authority to award a contract, to issue bonds, or to pay for any services incurred either in the preparation of a response to this RFP or for the production of any contract for services. The Authority also reserves the right to make amendments to the qualifications requested by giving written notice to all firms who receive this RFP. The Chair of the Authority has requested that all communications with the Authority concerning this RFP and the selection of Bond Counsel be directed to Robert Kennedy, Deputy Assistant Commissioner for Finance, with the Department, acting as program manager on behalf of the Authority. **Any contact by a submitting firm, its employees or representatives with any Board member of the Authority for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.**

Proposal Submission.

All proposals must be received no later than 5:00 p.m., May 21, 1999. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should **submit one unbound original and ten (10) copies of their proposal to:** Mr. Robert Kennedy, Deputy Assistant Commissioner for Finance, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., RM 1028, Austin, Texas 78701.

Please mark the envelopes containing proposals with the following note in the lower left-hand corner: **IN RESPONSE TO PROPOSAL REQUEST: BOND COUNSEL.** All proposals become the property of the Authority. Proposals must set forth full, accurate and complete information as required by this request. Oral responses, instructions or offers will not be considered. The Authority reserves the right to reject any and all responses.

Term of the Agreement.

The contract term shall be for the period beginning September 1, 1999 through August 31, 2000.

Proposal Modification.

Any response may be modified or withdrawn even after received by the Authority at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of staff of the Department. The Authority reserves the exclusive right to review proposals and make an appropriate selection from such proposals. The Authority is not bound to accept any proposal by virtue of this RFP. **Cost Incurred In Responding.**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by the Authority shall be the sole responsibility of, and shall be borne by, your firm. **Release Of Information And Open Records.**

All proposals shall be deemed, once submitted, to be the property of the Authority. Information submitted in response to this RFP shall not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the Authority completes process and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Texas Open Records Act.

TRD-9902636
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 4, 1999

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PURPOSE.

Pursuant to Chapter 2254, Subchapter B, Government Code, the Texas Agricultural Finance Authority (Authority) seeks proposals in response to this Request for Proposals (RFP) from firms with the qualifications and experience required to provide financial advisory services to the Authority. This RFP is issued for the purpose of selecting a financial advisor for all financing matters as described herein.

The Authority reserves the right to select one or more co-financial advisors from firms that respond to this RFP. The Authority's decision to select a co-financial advisor, if any, will be determined by the evaluation of the responses to the RFP. Please indicate in part 1 of your response whether your firm would like to serve as only a financial advisor, only a co-financial advisor, or either.

BACKGROUND OF THE AUTHORITY.

The Authority was created by the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or exporting businesses in Texas and for providing financial assistance for other rural economic development activities. The Authority is governed by a nine-member Board of Directors (Board), appointed by the Governor with the consent of the State Senate for two-year staggered terms. Employees of the Department of Agriculture are designated by the Commissioner of Agriculture to administer the Authority. The Authority provides financing alternatives through instruments including direct loans, loan guaranties, loan participation, insurance or co-insurance.

Chapter 58 and Chapter 59 of the Agriculture Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. With the anticipated approval of the 76th Legislature, the Authority may issue additional general obligation authority for the provision of financial assistance to the Texas Boll Weevil Eradication Foundation and to act as a conduit for a state agency and/or an institutions of higher education for agricultural related projects. Under Chapter 58 of the Agriculture Code, the Authority is authorized to issue up to $500 million in industrial revenue bonds for agricultural related projects in the State.

The Texas Agricultural Finance Authority Board (the Board) will approve eligible borrowers for financing through direct loans, loan guaranties, loan participation, direct issuance of obligations, or other financial instruments.

SCOPE OF SERVICES.

The financial advisor is to be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds and other obligations, including but not limited to:

devising and recommending to the Board a plan of financing for bonds to be issued, which plan shall include a maturity schedule and other terms and conditions, as well result in the most advantageous terms to the Authority, consistent with a minimum effective interest rate;

determining the timing of the offering and the sizing of the issue;

participating in document preparation and assisting bond counsel in the coordination of the offering;

preparing such information, as necessary, for the rating agencies and upon Authority approval, assisting in the presentation to such agencies; assisting the Authority in maintaining on-going relationships with the credit rating agencies;

participation in POS and OS preparation and delivery of a camera-ready copy to the printer;

advising the Authority concerning the need for credit enhancement and assisting in the negotiations regarding such;

assisting in the approval process of the Bond Review Board and any other agency as necessary to the issuance of the bonds;

assisting in closing details and post-closing duties, including the development of a final report to the Bond Review Board to include a verification of all costs of issuance and preparation of a complete bond transcript;

answering questions or requests for additional information from prospective purchasers;

evaluating any bids submitted for the purchase of the bonds;

advising the Authority with respect to the investment of bonds proceeds and the accounting of arbitrage earnings;

assisting the Authority in providing information to various legislators and other state agencies;

advising the staff of the Authority and the Board of ongoing development in the bond industry as they affect the Authority;

soliciting bids for, contracting with, and paying on behalf of the Authority, fees associated with the printing of bond offering documents, ratings, trustee and paying agent fees and related services when necessary;

monitoring and controlling the costs of fees and expenses incurred in connection with the issuance of the bonds;

monitoring, suggesting and advising the Authority on refunding opportunities, derivatives and other financial products that would help the Authority lower its cost of borrowing; and

all other matters necessary or incidental to the issuance and administration of debt obligations.

In addition, the financial advisor shall advise the Authority on any matters that might have an affect on the Authority or any of its outstanding issues.

The Authority will be responsible for allocating duties and tasks between the Financial Advisor and Co-Financial Advisor, if any, commensurate with level of compensations.

The financial advisor and co-financial advisor, if any, will not be permitted to underwrite any portion of an issue or program for the Authority during the term of employment.

FORM OF RESPONSE.

Overview of the Firm.

Provide a description of the firm, including general experience and history in public finance, date founded, number of offices, location and number of professionals and employees in each office, total number of employees and professionals in the firm, description of specialty practice areas and firm philosophy. Describe structure of firm ownership (e.g., publicly held corporation, partnership, etc.) and any parents, affiliates, or subsidiaries of the firm.

Qualifications.

List the experience since January 1990, of the firm and/or professionals proposed to be assigned to the Authority (see number 6 below also), as financial advisor, financial consultant, or senior manager on a negotiated underwriting for the following types of issuers and issues. If listing experience of a professional while at a different firm, please specify the name of the firm. Please include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Tabular format is acceptable.

By Issuer Type as follows: State of Texas issuers; Other issuers in the State of Texas; Regional authorities and state-level issuers in states other that Texas.

By Issue Type as follows: State level General Obligation Bonds; State Revenue Bonds; Tax Exempt Commercial Paper; Taxable Commercial Paper.

Please select one transaction from the above list that you feel best demonstrates your ability to serve the Authority and describe in detail the financial issues involved in the transaction and your firm's approach to the analysis. (Please limit your discussion to no more than two pages.)

Other Experience.

Please describe your experience with respect to the following topics. Include any specific suggestions or practices that as financial advisor your would recommend for the Authority. The topics are: arbitrage compliance; continuing disclosure compliance; investor relation programs; interest rate swaps and other derivatives.

Bond Sale Pricing.

A. Describe the steps your firm would take as financial advisor to ensure the bidding process on competitive sales and the pricing process on negotiated sales renders the lowest true interest cost for the Authority.

B. What role do you suggest the Authority play in organizing the sales effort of the bonds (i.e., establishing priority of orders, designation rules, etc.)? What techniques would be most effective for the State to achieve its HUB participation goals on competitive and negotiated transactions? What techniques would you employ to evaluate senior and co-manager performance on a specific transaction?

Credit Relations.

Describe your firm's proposed approach to maintaining rating agency relationships for the Authority.

Describe your firm's recommended approach, if any, to developing and maintaining investor relations programs. Address the costs and benefits of such programs and how they relate to continuing disclosure requirements.

Resumes.

Provide brief resumes for those individuals who would be assigned to serve the Authority. Indicate the individuals' years of experience in public finance, any relevant licenses they hold, and how any particular area of expertise would benefit the Authority. Specify who would be assigned as the primary day-to-day contact for the Authority and indicated the role they played in the transactions listed above.

Business Practices.

A. Please describe your firm's previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm, in a co-financial advisor relationship.

Please describe your firm's approach to working with co-financial advisor, including level of effort, and division of duties.

B. Please describe efforts made by your firm to encourage and develop the participation of minorities and women in your firm's provision of financial advisory services or underwriting, if any.

Conflict of Interest.

Please disclose any conflicts of interest. Disclose all contractual or informal business arrangement/agreements, including fee arrangements and consulting agreements between your Firm and the Authority, its staff and/or its Board, or any entity that provides services to the Authority.

References.

Please provide names, addresses, and phone numbers of at least two references.

Fee Structure.

Please provide your fee structure, including if applicable, hourly rates, a per transaction maximum on hourly fees, flat fees, and a per transaction cap on expenses (not to be exceeded without prior approval from the Authority). Fees based on a percentage of the par amount of the bonds or on a per bond basis are discouraged.

TERM OF AGREEMENT.

The contract term is to be for a period beginning with the date of hiring by the Authority to August 31, 2001. The Board retains the right to terminate the contract for any reason and at any time upon the payment of then earned fees and expenses.

PROPOSAL MODIFICATION.

Any proposal may be modified or withdrawn, even after received by the Authority, at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date; however, non-substantive correction or deletions may be made with the approval of the Authority. The Authority also reserves the right to make amendments to the RFP by giving written notice to all firms who receive the RFP and publishing notice thereof in the Texas Register.

TIME SCHEDULE.

Proposals are due no later than **5:00 p.m., June 4,1999**. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should submit one unbound original and ten (10) copies of their proposal to: Mr. Robert Kennedy, Deputy Assistant Commissioner for Finance, **IN RESPONSE TO RFP: FINANCIAL ADVISOR**, Texas Agricultural Finance Authority c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., RM 1028, Austin, Texas 78701.

A duly authorized representative of the firm must execute the submitted RFP response. An unsigned proposal will not be accepted. All proposals become the property of the Authority. Proposals must set forth accurate and complete information as required by this RFP. Oral instruction of offers will not be considered. Contact with Board Members regarding this RFP is expressly prohibited and will result in disqualification of your proposal. Questions regarding this RFP should be submitted, in writing, to Mr. Robert Kennedy, deputy assistant commissioner for finance, at the address listed above or by fax, (512) 475-1762.

The staff designated for the Authority will review the proposals, present the top three proposals and a recommendation to the Authority Board at the first available meeting of the board.

BASIS OF AWARD.

The selection will be based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee.

Firms responding are encouraged to maintain a Texas office staffed with personnel who are responsible for providing financial advisory services to the Authority. By this RFP, however, the Authority has not committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement below require that the financial advisor be employed for any or all of those purposes. The Authority reserves the right to make those decisions after receipt of proposals and the Authority's decision on these matters is final.

The Authority reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

COST INCURRED IN RESPONDING.

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by the Authority shall be the sole responsibility of, and shall be borne by the applicant.

RELEASE OF INFORMATION AND OPEN RECORDS.

All proposals shall be deemed, once submitted, to be the property of the Authority. Information submitted in response to this RFP shall not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the evaluation process is completed by the Authority and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Texas Open Records Act.

TRD-9902637
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 4, 1999

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Office of the Attorney General

Notice of Agreed Final Judgment and Permanent Injunction

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Health & Safety Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Harris County, Texas and the State of Texas acting by and through the Texas Natural Resource Conservation Commission and the Texas Department of Health, being Necessary and Indispensable Parties vs. Brian K. Hinojosa and Rene Hinojosa, Cause Number 98-44950 in the 269th Judicial District, Harris County, Texas.

Nature of Defendant's Operations: The Defendants are the former owners of an apartment complex at 8031 East Mount Houston Road,

Harris County, Texas. This property is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction contains provisions for injunctive relief and civil penalties. The Injunction, among other things, prohibits discharge from the sewage collections system on the site to any location on the property or along the borders of the site. The Injunction also requires the Defendants to furnish the new owner of the apartment complex with a copy of this final judgment. The judgment also contains a requirement that the Defendant pay $2,000.00 in civil penalties, $1,000.00 in attorney fees, and court costs in the amount of $192.00.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9902563
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 30, 1999

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Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent in inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: SGS Control Services, Inc., et al., plaintiffs and counter-defendants, v. Texas Water Commission, defendant and counter-plaintiff, v. Fred Marshall, et al., defendants; Number 438,288; in the 167th Judicial District Court, Travis County, Texas.

Background: The Texas Water Commission, predecessor to the Texas Natural Resource Conservation Commission ("TNRCC"), issued an administrative order identifying the South Texas Solvents State Registry Site ("the Site"), a former gasoline blending plant and solvent recovery facility in Nueces County, as a State Superfund Site. Various parties appealed the order to the District Courts of Travis County. Parties were added and dropped and the appeals were consolidated into the present action. Certain parties agreed to conduct a remedial investigation of the Site. That investigation lead to a new administrative order by the TNRCC, which was agreed to by all of the potentially responsible parties and which is now final and unappealable as to all parties. The potentially responsible parties have completed the remedial action for the Site in accordance with the second order. The TNRCC has approved the completion of the remedial action.

Nature of the Settlement: The case is to be settled by an agreed motion and agreed order for dismissal.

Proposed Settlement: The agreed order for dismissal vacates the first administrative order, leaves the second administrative order as a final and unappealable order, and dismisses all other claims and causes of action.

The Office of the Attorney General will accept written comments relating to the proposed settlement for 30 days from the date of publication of this notice. Copies of the proposed agreed motion for dismissal and agreed order for dismissal may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed agreed motion for dismissal and agreed order for dismissal may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the motion and order, and written comments on same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

TRD-9902628
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 4, 1999

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of April 22, 1999, through April 29, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Shintech Incorporated and S-E Inc.; Location: The project site is located north of the City of Freeport and west of the City of Oyster Creek, along the northeast side of State Highway (SH) 332, just east of Shintech Incorporated, in Brazoria County, Texas; Project No.: 99-0164-F1 Description of Proposed Action: The applicant proposes to fill approximately 78 acres of wetlands, within a 491-acre tract, for the expansion of the existing Shintech facility, as well as for new manufacturing plants and support facilities. The proposed project site is bordered by Chubb Lake to the north, SH 332 to the south, undeveloped Dow Chemical property to the east, and the Shintech manufacturing plant to the west; Type of Application: U.S.A.C.E. permit application #21653 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: The Dow Chemical Company; Location: The project is located south of the City of Oyster Creek, southwest of State Highway (SH) 332, and east of SH 523, behind Schenectady International Incorporated property, in Brazoria County, Texas; Project No.: 99-0165-F1; Description of Proposed Action: The applicant proposes to fill a 280-acre property, 270.5 acres of which is wetland. The proposed work will prepare the site for future industrial and refinery development, similar to that which already exists nearby. The property lies within and amongst other similar Dow Chemical Company developments. A 600-foot-wide pipeline corridor runs in a north-south direction along the eastern side of this property. It comprises approximately 48 acres of the tract and carries over

40 pipelines; Type of Application: U.S.A.C.E. permit application #21652 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Galveston Seawall Joint Venture; Location: 9530 Seawall Boulevard, Galveston, Galveston County, Texas; Project No.: 99-0170-F1; Description of Proposed Action: The applicant proposes to fill approximately 0.54 acres of depressional, and dune swale wetlands, to raise the grade of the site to prepare the site for construction of a 26,120 square foot commercial center. The applicant proposes to place approximately 300 cubic yards of fill dirt into the wetland depressions at the site; Type of Application: U.S.A.C.E. permit application #21560 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Southeast Packing Company; Location: 2200 Harborside Drive, Galveston, Galveston County, Texas; Project No.: 99-0171-F1; Description of Proposed Action: The applicant proposes to construct an addition to the existing piers and docks located behind Fishermans Wharf Restaurant. The site currently has five slips. The proposal will add 27 slips and accommodate approximately 30 boats. The proposal will add 360 feet of walkways (covering 3,960 square feet), 219 feet of finger piers (covering 836 square feet), and a 365-foot by 14-foot breakwater (covering 3,870 square feet). A 1,160 square foot deck is proposed in the southeast corner of the basin to accommodate foot traffic; Type of Application: U.S.A.C.E. permit application #21629 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9902655
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: May 5, 1999

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Comptroller of Public Accounts

Notice of Withdrawal of Request for Proposals

Pursuant to Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts determined on May 4, 1999, that it is in the best interest of the state to withdraw the Request for Proposals for Investment Consultant Services to assist the Comptroller in administering the daily investment activities of funds under the care, custody and control of the Comptroller, excluding the Texas Tomorrow Fund. The RFP may be reissued at a later date.

The anticipated schedule for the RFP was included in the Notice of Request for Proposals published in the February, 19, 1999 issue of the *Texas Register* (24 TexReg 1273).

TRD-9902650
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: May 5, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of May 10, 1999-May 16, 1999 is 18% for Consumer[1]/ Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of May 10, 1999-May 16, 1999 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9902633
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 4, 1999

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Texas Department of Economic Development

Notice of Cancellation of Contract Award

Pursuant to Chapter 2254, Subchapter B of the Texas Government Code, the Texas Department of Economic Development has canceled its RFP for a defense consultant to provide information gathering and monitoring of federal actions affecting Texas military installations. The Notice of Request for Proposals was published in the January 8, 1999, issue of the *Texas Register* (24 TexReg 263).

TRD-9902639
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: May 4, 1999

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Employees Retirement System of Texas

High Yield Bond Advisor Search

The Employees Retirement System of Texas (ERS), in accordance with Tex. Gov't Code, §815.301(c), is conducting a search for a fixed income, high yield bond advisor to assist in the management of $250 to $750 million.

Interested firms should contact Kathy Reissman, Director of Investments, or Larry M. Wood, Fixed Income Portfolio Manager, for a questionnaire. These individuals can be contacted at kreissman@ers.state.tx.us and (512) 867-7368 or lwood@ers.state.tx.us and (512) 867-7406, respectively.

Access to the questionnaire and responses to the questionnaire will only be conducted electronically through a secure electronic-mail

address. Electronic responses are due in the offices of ERS and Callan Associates, Inc., by 3:00 p.m. C.S.T. on June 4, 1999.

Additional information regarding ERS and the High Yield Bond advisor search can be found on the ERS website at www.ers.state.tx.us.

ERS will select an advisor, or advisors, that meet its objectives and qualifications for a High Yield Bond advisor as outlined in the questionnaire.

TRD-9902664
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas

Filed: May 5, 1999

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
EL PASO	OUTPATIENT DIAGNOSTIC NUCLEAR MEDICINE INCORPORATED	L05199	EL PASO	0	04/16/99
MCKINNEY	NUMED IMAGING CENTERS INC	L05250	MCKINNEY	0	04/20/99
ROSENBERG	VISIONS METALS GULF STATES TUBE DIVISION	L05253	ROSENBERG	0	04/16/99
THROUGHOUT TEXAS	DUVAL & ASSOCIATES CONSULTING & CONSTRUCTION CO	L05234	GARLAND	0	04/15/99
THROUGHOUT TEXAS	PRODIGENE INC	L05252	COLLEGE STATION	0	04/22/99
THROUGHOUT TEXAS	SECOR INTERNATIONAL INC	L05258	KATY	0	04/27/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ARLINGTON	RADIOLOGY ASSOCIATES OF TARRANT COUNTY PA	L05109	ARLINGTON	9	04/15/99
AUSTIN	SETON MEDICAL CENTER	L02896	AUSTIN	49	04/20/99
AUSTIN	SETON MEDICAL CENTER	L02896	AUSTIN	50	04/27/99
BEAUMONT	METALFORMS INC	L02261	BEAUMONT	28	04/15/99
BIG SPRINGS	SCENIC MOUTAIN MEDICAL CENTER	L00763	BIG SPRINGS	34	04/29/99
BROWNWOOD	BROWNWOOD REGIONAL HOSPITAL INC	L02322	BROWNWOOD	41	04/22/99
CENTER	CENTER HOSPITAL INC DBA MEMORIAL HOSPITAL OF CENTER	L03608	CENTER	16	04/29/99
CORPUS CHRISTI	RIVERSIDE HOSPITAL INC DBA NORTHWEST REGIONAL HOSPTL	L02977	CORPUS CHRISTI	23	04/15/99
DALLAS	MALLINCRKRODT INC	L03580	DALLAS	34	04/27/99
DALLAS	GAF MATERIALS CORPORATION	L03811	DALLAS	8	04/30/99
DALLAS	TEXAS ONCOLOGY PA DBA SAMMONS CANCER, CENTER	L04878	DALLAS	12	04/22/99
DALLAS	TEXAS CARDIOLOGY CONSULTANTS	L04997	DALLAS	10	04/15/99
DALLAS	TEXAS CARDIOLOGY CONSULTANTS	L04997	DALLAS	11	04/30/99
DENTON	INTERNATIONAL ISOTOPES INC	L05159	DENTON	4	04/16/99
EL PASO	TENET HOSPITALS LIMITED DBA SIERRA MEDICAL CENTER	L02365	EL PASO	36	04/21/99
EL PASO	TENET HOSPITALS LIMITED DBA SIERRA MEDICAL CENTER	L02365	EL PASO	37	04/27/99
EL PASO	COLUMBIA MEDICAL CENTER WEST NUCLEAR MEDICINE	L02715	EL PASO	38	04/27/99
EL PASO	OUTPATIENT DIAGNOSTIC NUCLEAR MEDICINE INCORPORATED	L05199	EL PASO	1	04/22/99
FORT WORTH	ALCON LABORATORIES INC WILLIAM C CONNER RESEARCH CNTR	L01281	FORT WORTH	38	04/15/99
FORT WORTH	SYNCOR INTERNATIONAL CORPORATION	L02905	FORT WORTH	50	04/14/99
GALVESTON	THE UNIVERSITY OF TEXAS MEDICAL BRANCH	L01299	GALVESTON	53	04/15/99
HOUSTON	MEMORIAL HERMANN HOSPITAL SYSTEM	L01168	HOUSTON	52	04/21/99
HOUSTON	WHMC INC WEST HOUSTON MEDICAL CENTER	L02224	HOUSTON	43	04/19/99
HOUSTON	WHMC INC DBA WEST HOUSTON MEDICAL CENTER	L02224	HOUSTON	44	04/29/99
HOUSTON	CYPRESS FAIRBANKS CARDIOLOGY ASSOCIATES	L04353	HOUSTON	11	04/29/99
KATY	KATY MEDICAL CENTER INC DBA COLUMBIA KAY MEDICAL CTR	L03052	KATY	26	04/22/99
KERRVILLE	SID PETERSON MEMORIAL HOSPITAL	L01722	KERRVILLE	26	04/15/99

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
LA GRANGE	FAYETTE MEMORIAL HOSPITAL	L03572	LA GRANGE	9	04/30/99
LUBBOCK	HIGHLAND HEALTH SYSTEM INC DBA HIGHLAND MEDICAL CTR	L02467	LUBBOCK	18	04/15/99

LUFKIN	MEMORIAL MEDICAL CENTER OF EAST TEXAS	L01346	LUFKIN	63	04/22/99
MAURICEVILLE	S & T INTERNATIONAL INC	L03652	MAURICEVILLE	28	04/27/99
MISSOURI CITY	FORT BEND HOSPITAL INC DBA FORT BEND MEDICAL CENTER	L03457	MISSOURI CITY	19	04/20/99
PASADENA	PHILLIPS PETROLEUM COMPANY	L00230	PASADENA	65	04/29/99
PASADENA	GULF COAST CANCER CENTER INC	L05194	PASADENA	1	04/22/99
SAN ANTONIO	SAN ANTONIO COLLEGE	L00745	SAN ANTONIO	17	04/20/99
SAN ANTONIO	TRINITY UNIVERSITY DEPARTMENT OF BIOLOGY	L01668	SAN ANTONIO	28	04/21/99
SAN ANTONIO	CTRC CLINICAL FOUNDATION	L01922	SAN ANTONIO	53	04/28/99
SAN ANTONIO	METHODIST HEALTH CARE SYSTEM OF SAN ANTONIO LTD	L02266	SAN ANTONIO	66	04/27/99
SAN ANTONIO	BAPTIST IMAGING CENTER	L04506	SAN ANTONIO	12	04/20/99
SEYMOUR	BAYLOR COUNTY HOSPITAL DISTRICT DBA SEYMOUR HOSPITAL	L03229	SEYMOUR	12	04/30/99
SULPHUR SPRINGS	M HANNA CONSTRUCTION CO INC	L05032	SULPHUR SPRINGS	3	04/27/99
TEXAS CITY	VALERO REFINING COMPANY-TEXAS	L02578	TEXAS CITY	18	04/27/99
TEXAS CITY	INDUSTRIAL FABRICATORS INC	L04935	TEXAS CITY	9	04/16/99
THROUGHOUT TEXAS	HALLIBURTON ENERGY SERVICES	L00442	HOUSTON	90	04/15/99
THROUGHOUT TEXAS	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	HOUSTON	108	04/29/99
THROUGHOUT TEXAS	MAXIM TECHNOLOGIES INC	L01934	FORT WORTH	59	04/15/99
THROUGHOUT TEXAS	H & G INSPECTION INC	L02181	HOUSTON	127	04/27/99
THROUGHOUT TEXAS	GENERAL WELDING WORKS INC	L02895	HOUSTON	38	04/27/99
THROUGHOUT TEXAS	TRIPLE G X-RAY & TESTING LABS INC	L03136	HUMBLE	25	04/30/99
THROUGHOUT TEXAS	GLOBAL X-RAY & TESTING CORP	L03663	ARANSAS PASS	70	04/21/99
THROUGHOUT TEXAS	REEVES WIRELINE SERVICES INC	L04405	MIDLAND	7	04/15/99
THROUGHOUT TEXAS	PITT-DES MOINES INC	L04502	THE WOODLANDS	20	04/15/99
THROUGHOUT TEXAS	APAC-TEXAS INC TEXAS BITULITHIC DIVISION	L04503	DALLAS	4	04/16/99
THROUGHOUT TEXAS	HI-TECH TESTING SERVICE INC	L05021	LONGVIEW	21	04/15/99
THROUGHOUT TEXAS	SHAW FABRICATORS	L05169	HOUSTON	1	04/30/99
THROUGOUT TEXAS	GLOBAL X-RAY & TESTING CORP	L03663	ARANSAS PASS	69	04/15/99
THROUGOUT TEXAS	M & G INSPECTION & TESTING INCORPORATED	L05220	HOUSTON	3	04/27/99
UVALDE	UVALDE COUNTY HOSPITAL AUTHORITY UVALDE MEMORIAL HSP	L03327	UVALDE	11	04/27/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ALPINE	SUL ROSS STATE UNIVERSITY	L02856	ALPINE	9	04/20/99
CORPUS CHRISTI	EQUISTAR CHEMICALS LP CORPUS CHRISTI PLANT	L02447	CORPUS CHRISTI	13	04/30/99
EL PASO	EL PASO EYE SURGEONS PA	L01954	EL PASO	8	04/20/99
HOUSTON	RICE UNIVERSITY DEPARTMENT OF GEOLOGY & GEOPHYSICS	L04744	HOUSTON	5	04/28/99
SAN ANTONIO	ANDREW J COTTINGHAM JR MD DBA SOUTH TEXAS EYE INSTIT	L04282	SAN ANTONIO	3	04/22/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
DALLAS	CARPENTER MEDICAL CLINIC	L04500	DALLAS	3	04/29/99

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend-ment #	Date of Action
INGLESIDE	GULF COAST INSPECTION INC	L04934	INGLESIDE	0	04/29/99

THE WOODLANDS	PITT-DES MOINES INC	L04502	THE WOODLANDS	0	04/29/99

EXEMPTIONS ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
HOUSTON	TESTMASTERS INC	L03651	HOUSTON	0	04/21/99

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9902654
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 5, 1999

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Downtown Plaza Imaging Center

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Downtown Plaza Imaging Center (registrant-M00610) of Houston for alleged violations of 25 Texas Administrative Code (TAC) §289.230. A total penalty of $12,000 is proposed to be assessed to the registrant.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9902653
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 5, 1999

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Notice of Withdrawal of Request for Proposals

The Texas Department of Health (department), Deputyship for Prevention and Community Health, announces the withdrawal of the request for proposals (RFPs) for a pilot to integrate health care delivery services utilizing fee-for-service funding from the Primary Health Care and Title V Maternal and Child Health Services Programs. The service area consists of Upshur, Van Zandt and Wood Counties.

The Notice of RFP was published in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3238), TRD-9902180.

Department Contact: Carl W. Clark, M.P.H., Contract Management Section, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, Telephone (512) 458- 7111, extension 6705.

TRD-9902627
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 4, 1999

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services adopted an amendment to 40 TAC §98.12. The rule appeared in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3100).

Due to agency error, on page 3103, §98.12(b)(2) should read: "(2) Increase in capacity. The license holder must request an application for increase in capacity from DHS's LTC-R Facility Enrollment Section. DHS's LTC-R Facility Enrollment Section must provide the license holder with the application form, and DHS must notify the local fire marshal and the local health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. The facility must send DHS's LTC-R Facility Enrollment Section a copy of the written notice sent to the local health authority notifying them of the increase in capacity. DHS will approve the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by DHS prior to the issuance of the license covering the increased capacity after inspection by DHS if standards are met.

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Texas Department of Insurance

Insurer Services

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application for admission to the State of Texas by TRANSGUARD INSURANCE COMPANY OF AMERICA, INC., a foreign fire and casualty company. The home office is in Naperville, Illinois.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701.

TRD-9902652
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 5, 1999

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Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Great Northern Insurance Company proposing to use rates for homeowners insurance that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing a rate of -70% below the benchmark for all coverages: HOA, HOB, HOC, HOBT, HOCT, HOCONB, and HOCONC under all classes and territories.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas, 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas, 78701 within 30 days after publication of this notice.

TRD-9902542
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 29, 1999

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The public hearings before the Commissioner of Insurance under Docket Numbers 2407, 2408, and 2409, originally scheduled for June 1, 1999 have been rescheduled to begin Friday, June 11, 1999 at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. The Commissioner of Insurance will consider three petitions: two filed by staff proposing amendments to (1) the Texas Commercial Lines Statistical Plan and (2) the Texas Statistical Plan for Residential Risks, and one petition by the American Insurance Association (AIA) proposing amendments to the Texas Statistical Plan for Residential Risks.

Notice of the original hearings were published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3361, 24 TexReg 3362, and 24 TexReg 3375).

TRD-9902651
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 5, 1999

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Third Party Administrators Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporation in Texas of Menninger Care Systems of Texas, Inc., a domestic third party administrator. The home office is Plano, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas, 78714-9104.

TRD-9902543
Bernice Ross

Deputy Chief Clerk
Texas Department of Insurance
Filed: April 29, 1999

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Texas Lottery Commission

Instant Game Number 157 "Money Maze"

1.0 Name and Style of Game.

A. The name of Instant Game No. 157 is "MONEY MAZE". The play style of the game is a "directional arrows through a maze " play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 157 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 157.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol Legend - The area appearing on the front of the ticket which explains the play symbols that will appear under the latex overprint on the front of the ticket. Each of the legend symbols is printed in symbol font in black ink positive.

D. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: an arrow pointing towards the right, an arrow pointing towards the left, an arrow which points both to the left and to the right, an arrow that points up, an arrow that points down and an octagon shaped stop sign.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Non-winning and high-tier winning tickets will have different combinations of any three of the following letters, excluding the combinations above: E, F, G, H, I, L, N, O, R, S, T, V, W, X All codes from $1 through $24 not used for this game are protected. Other combinations of these letters are to be used for commons and high-tier winners. The letter "Ø" will only be used for the appropriate winning codes and will always have a slash through it.

F. Serial Number - A unique 12 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining eight (8) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $10.00 or $20.00

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $300.

I. High-Tier Prize - A prize of $1,000 or $20,000.

J. Bar Code - A 20 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number and eight (8) digits of the Validation Number and a two (2) digit filler. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (157), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 157-0000001-000.

L. Pack - A pack of "MONEY MAZE" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. Ticket 000 will be on the top page, tickets 001 will be on the next page, and so forth with ticket 124 on the last page. Tickets 000 will alternate showing the front of the ticket and then showing the back of the ticket.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY MAZE" Instant Game No. 157 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY MAZE" Instant Game is determined once the latex on the ticket is scratched off to expose the path that ends with an arrow pointing to a red or yellow triangle showing the amount won on the front of the ticket. A ticket may contain up to three (3) winners if there are three paths which end with an arrow pointing to a red or yellow triangle showing the amount won. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 63 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must appear exactly as shown in the Play Legend;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 63 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 63 Play Symbols must be exactly one of those described in Section 1.2.D of these Game Procedures.

17. Each of the 63 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Adjacent tickets in a pack will not have identical patterns.

B. A path must always end (point) at an "EXIT" (where the arrow does not point to a prize amount), a stop sign, or a prize amount.

C. The "Enter" position will always contain a down arrow.

D. A double headed arrow will never appear in any of the two outside columns of the top row (including the "Enter" position).

E. A square will never be used more than once in the revealed paths (i.e. the revealed paths will never cross each other).

F. There will be no "Up Arrow" on the top row of the maze.

G. There will never be a vertical double headed arrow.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MAZE" Instant Game prize of $2.00, $4.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONEY MAZE" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MAZE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONEY MAZE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONEY MAZE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,000,000 tickets in the Instant Game No. 157. The expected number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners	Chances of Winning
$2.00	2,520,000	1:7.94
$4.00	1,360,000	1:14.71
$6.00	680,000	1:29.41
$10.00	240,000	1:83.33
$20.00	160,000	1:125.00
$30.00	80,000	1:250.00
$60.00	32,000	1:625.00
$100	6,640	1:3,012.05
$300	1,600	1:12,500.00
$1,000	100	1:200,000.00
$20,000	14	1:1,428,571.43

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 Termination of the Instant Game. The Executive Director may, at any time, announce a termination date for the Instant Game No. 157 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 157, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9902663
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 5, 1999

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission proposed new to 30 TAC §§350.1-350.5, 350.71-350.79, and 350.111. The rules appeared in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2241, 2265, 2282).

Due to agency error, on page 2207, §335.348(e), first sentence. "Human health-based protective concentration levels shall be developed and" should be underlined because it is proposed new language.

Due to agency error, on page 2208. The title of the chapter should be "Texas Risk Reduction Program" rather than "Risk Reduction Program Rule".

Due to agency error, on page 2249, §350.4(d)(6). The symbol should be "$^{Air}Soil_{ss\text{-}VP}$" rather than $^{Air}Soil_{ss\text{-}VP}$

Due to agency error, on page 2255, §350.33(i)(4), second line "...surface and subsurface soil PCLs..." should be "...critical surface and subsurface soil PCLs, as applicable,...".

Due to agency error, on page 2256, §350.33(1), the first sentence. The "and" in "...subsections (e)(2) and (f) of this section,..." should be changed to "and/or".

Due to agency error, on page 2256, §350.33(m), the first sentence. The "and" in "...subsections (e)(2) and (f) of this section..." should be change to "and/or".

Due to agency error, on page 2256, §350.33(m), fifth line. The reference to subsection "(i)" should be changed to reference subsection "(j)".

Due to Texas Register error, on page 2268, §350.73(c). A sentence was left out after the "i.e.,". The sentence should read "Unless prior...§350.74(j)(2) of this title...to use a subchronic exposure duration (i.e., <seven years) for a commercial/industrial property, the person shall not use subchronic toxicity factors."

Due to agency error, on page 2269, §350.74(h)(4), sixth line. The rule citation is incomplete. Instead of "§307.6(d)(8)" it should read "§307.6(c)(7) and (d)(8)" citation.

Due to agency error, on page 2276, in §350.76(d)(3), the fourth line. In the phrase "Inhalation Unit Risk Factor...": the unit "g/m^3" should be replaced with "μg/m^3" and the "ö" should be replaced by a division sign "÷".

Due to agency error, on page 2278, §350.77(c)(6), third line. Inside the first parenthesis the symbol "ö" appearing between the word

"quotient" and the number "1" should be a less than or equal to sign "≤".

Due to agency error, on page 2278, §350.77(c)(8), the last line. The symbol "ò" appearing between the number "1" and the word "LOAEL" should be a greater than sign ">".

Due to agency error, on page 2279, §350.79(2)(A), first sentence, "The person shall make a direct comparison between the representative concentrations of COCs as determined by using statistical or geostatistical methods in accordance with this section and the critical PCLs." "This section" is being replaced with "§350.51(l) of this title (relating to Affected Property Assessment)."

Due to agency error, on page 2284, §350.111(c), 11th line. The reference to "§350.74(a)(1)" should be changed to "§350.74(b)(1)".

Due to agency error, on page 2499, Figure: 30 TAC §350.75(b)(1), Soil-to-Groundwater PCL Equation: $_{GW}$Soil. The Ksw equation needs to be added to complete the figure: Figure: 30 TAC §350.75(b)(1).

Due to agency error, on page 2505, Figure: 30 TAC §350.76(c)(3), Equation for Adult Lead Exposure Commercial/Industrial Land Use (Tiers 2 and 3 only). The default for "Individual Geometric Standard Deviation" should be changed from "2.0" to "1.88" and the default for "Baseline Blood Lead Value" should be changed from "2.2" to "1.54".

Due to agency error, on page 2512, Figure: 30 TAC §350.77(b), Tier 1: Exclusion Criteria Checklist. In the definitions section, the definition of "Affected property" should be replaced with "Affected property-The entire area (i.e., on-site and off-site; including all environmental media) which contains releases of chemicals of concern at concentrations equal to or greater than the assessment level applicable for the land use (i.e., residential or commercial/industrial)."

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Notice of District Application on the Application for Standby and/or Impact Fees

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 24 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual non-uniform debt service standby fee of up to $55.87 per ESFC or $1,204 per acre and a uniform operations and maintenance standby fee of $12.82 per ESFC or $276 per acre for calendar years 1999, 2000 and 2001, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TNRCC.

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT OF WILLIAMSON COUNTY (The District) has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for authority to levy impact fees of $1,875 per equivalent single family connection for new connections for water service, and $950 per equivalent single family connection for new connections for wastewater service within the service area of Brushy Creek Municipal Utility District. New connections for water and or wastewater service are anticipated in the following: (1) Hillside at Brushy Creek Section Two; (2) Woods of Brushy Creek Section Four; (3) Corners of Brushy Creek Section Two; (4) Cat Hollow A-3, A-4, A-5, C-Commercial Lot 1 Block J, Lots 2-6 Block J, and Lot 81 Block D, Section C Phase 2, Section A Phase 4, Section B, Future Multi-family, and Section C Multifamily; (5) Brushy Creek Village Section Two; (6) Brushy Creek Sections Four and Five; (7) Brushy Creek North Section Three; (8) Meadows of Brushy Creek Phase Six; (9) Beck Tract; (10) Meadows Park; (11) Corners of Brushy Creek; (12) Round Rock Independent School District tract; (13) R.R. 620 tract; (14) Brushy Creek Volunteer Fire Department, and (15) any other undeveloped areas of the District. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC.

The TNRCC may grant a contested case hearing on these applications if a written hearing request is filed within 30 days after the newspaper publication of this notice. The Executive Director may approve the applications unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1 (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902661
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 5, 1999

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 1999.** The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-

3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 1999.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing.**

(1) COMPANY: Rogelio Ibarra dba A-1 Mobile Home Park; DOCKET NUMBER: 1998- 0692-PWS-E; TNRCC IDENTIFICATION NUMBER: 0150204; LOCATION: Bexar County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106 and THSC, §341.033(d) by failing to submit water samples for bacteriological analysis to a laboratory approved by the Texas Department of Health; 30 TAC §290.103(5) by failing to provide public notice of failure to sample for bacteria in the water; and 30 TAC §290.51 by failing to pay the public health safety fees for the 1997 and 1998 sampling periods; PENALTY: $5,625; STAFF ATTORNEY: Mary Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490- 3096.

(2) COMPANY: Alyna Incorporated and Riyaz Nathoo; DOCKET NUMBER: 1998-0942- PST-E; TNRCC IDENTIFICATION NUMBER: 04039; ENFORCEMENT IDENTIFICATION NUMBER: 4966; LOCATION: 9441 County Creek Drive, Houston, Harris County, Texas; TYPE OF FACILITY: retail gasoline dispensing station; RULES VIOLATED: 30 TAC §115.245(1)(C) and THSC, §382.085(b) by failing to test performance criteria within 30 days of the installation of Stage II vapor recovery system; 30 TAC §115.245(2) by failing to conduct annual pressure decay tests; 30 TAC §115.246(6) by failing to document daily Stage II vapor recovery system inspections; 30 TAC §115.244(3) by failing to document monthly Stage II vapor recovery system equipment inspections; and 30 TAC §115.242(3)(K) by failing to maintain Stage II vapor recovery system in proper operating condition by failing to repair or replace two broken pump retractors; PENALTY: $4,375; STAFF ATTORNEY: Lisa Zintsmaster Hernandez, Litigation Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Mike Hansen; DOCKET NUMBER:1998-0542-LII-E; TNRCC IDENTIFICATION NUMBER: 12560; LOCATION: 9240 Lattern Creek Court, Conroe, Montgomery County, Texas; TYPE OF FACILITY: construction and maintenance of irrigation systems; RULES VIOLATED: 30 TAC §344.75 by failing to install a backflow prevention device for a landscape irrigation system; and the Code, §34.007 by installing landscape irrigation systems without a valid certificate of registration; PENALTY: $2,344; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Lowery Petroleum, Incorporated; DOCKET NUMBER: 1998-0676-PST-E; TNRCC IDENTIFICATION NUMBER: 5008; LOCATION: 813 North 77 Sunshine Strip, Harlingen, Cameron County, Texas; TYPE OF FACILITY: retail gasoline service station; RULES VIOLATED: 30 TAC §334.51 by failing to provide proper spill and overfill protection equipment for the underground storage tanks at the facility; PENALTY: $4,500; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425- 6010.

(5) COMPANY: W. C. Richardson; DOCKET NUMBER: 1998-0904-AIR-E; TNRCC IDENTIFICATION NUMBER: OC-0175-K; LOCATION: North Pinoak, Orange, Orange County, Texas; TYPE OF FACILITY: property owner; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b) by conducting unauthorized outdoor burning of trees and brush; PENALTY: $1,250; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-4706; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: John Wilson; DOCKET NUMBER: 1998-0202-OSI-E; OSSF INSTALLER CERTIFICATE NUMBER: 5410; ENFORCEMENT NUMBER: 12210; LOCATION: 5303 Meadow Lane, Pearland, Brazoria County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.58 and THSC, §§366.051(c), 366.054, and 366.055(c) by failing to obtain necessary permitting authority before beginning alterations and to properly notify the authorized agent regarding the OSSF; 30 TAC §§285.31, 285.50(d), 285.58(a)(1), and THSC, §366.004 by failing to alter the OSSF in accordance with TNRCC rules by constructing it within 150 feet from a public well; and 30 TAC § 285.30 by failing to properly perform a proper site evaluation prior to starting alterations on the OSSF; PENALTY: $2,000; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

TRD-9902625
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource conservation Commission
Filed: May 4, 1999

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, l999.** Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC'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 of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 1999.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available

to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing.**

(1) COMPANY: Evans Systems Incorporated; DOCKET NUMBER: 1998-0617-PST-E; TNRCC IDENTIFICATION NUMBER: 0033606; ENFORCEMENT IDENTIFICATION NUMBER: 12421; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §115.245(1) and THSC, §382.085(b) by failing to successfully complete all applicable tests required in the TNRCC Stage II Vapor Recovery Test Procedure Handbook (August 1993) within 30 days of installation, modification, or major system modification of the Stage II equipment; PENALTY: $3,125; STAFF ATTORNEY: M. Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: McCommas Bluff Landfill; OWNER: City of Dallas; DOCKET NUMBER: 1997-0196-MSW-E; TNRCC IDENTIFICATION NUMBER: 62; LOCATION: 5555 Youngblood Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: municipal solid waste (MSW) disposal facility; RULES VIOLATED: 30 TAC §330.133, §330.111, and TNRCC MSW Permit Number 62 by failing to maintain adequate daily cover for waste and depositing waste such that actual landfill elevations were higher than the permitted final contours and to deposit waste in the approved filling sequence and direction in Cell 1, and by failing to construct a waste containment berm around the initial working face in Cell 1; 30 TAC §330.132 by failing to maintain adequate equipment to maintain thorough compaction of waste; and the Code, §26.0291 and §26.358 and THSC, §361.134 by failing to pay outstanding fees; PENALTY: $106,040; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Lonnie R. Goins dba L.R. Septic Tank Service and L.R. Plumbing; DOCKET NUMBER: 1998-0495-SLG-E; TNRCC IDENTIFICATION NUMBER: 20690; LOCATION: 1322 Shenandoah, Comanche, Comanche County, Texas; TYPE OF FACILITY: septic tank pumping service; RULES VIOLATED: 30 TAC §312.142(a) by transporting sludge without a registration as a sludge transporter; PENALTY: $5,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Zeke Holloway and Hill River Country Estates, Incorporation; DOCKET NUMBER: 1998-0515-PWS-E; TNRCC IDENTIFICATION NUMBER: 1330151; ENFORCEMENT IDENTIFICATION NUMBER: 12500; LOCATION: Center Point, Kerr County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106 and THSC, §341.033(d) by failing to submit water samples from the facility for bacteriological analysis to a laboratory approved by the Texas Department of Health for the months of May and June 1997; 30 TAC §290.103(5) by failing to provide public notice for failure to submit bacteriological samples for the months of April, May, June, and September 1997, to take repeat samples for April and September 1997, and to provide public notice for the facility total coliform exceedence in April and September 1997; PENALTY: $1,000; STAFF ATTORNEY: M. Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(5) COMPANY: Leggett and Platt Incorporated, Texas Fibers Division; DOCKET NUMBER: 1997-0480-AIR-E; TNRCC IDENTIFICATION NUMBER: 160039; ENFORCEMENT IDENTIFICATION NUMBER: 11375; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: foam fabrication plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a) by failing to obtain a permit or other TNRCC authorization before constructing and operating a foam fabrication plant; PENALTY: $29,200; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: Joe Phan and Tuyet Nguyen; DOCKET NUMBER: 1996-1421-PST-E; TNRCC IDENTIFICATION NUMBER: 46980; LOCATION: 706 Pasadena Boulevard, Pasadena, Harris County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A) by failing to provide proper release detection equipment for the facility's UST systems, and for the pressurized piping associated with the facility's UST systems; 30 TAC §334.51(b)(2)(A), (B), and (C) by failing to provide proper tight-fill fittings, spill containment equipment, and prevention equipment for the facility's UST systems; and 30 TAC §115.241 by failing to install an approved Stage II vapor recovery system which is certified to reduce the emissions of volatile organic compounds to the atmosphere by at least 95%; PENALTY: $16,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: North Hunt Water Supply Corporation; DOCKET NUMBER: 1998-0500- PWS-E; TNRCC IDENTIFICATION NUMBER: 1160039; ENFORCEMENT IDENTIFICATION NUMBER: 6695; LOCATION: near the City of Commerce, Hunt County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) by failing to secure a sanitary easement for its well; 30 TAC §290.42(e)(7) by failing to properly ventilate its chlorination facilities; 30 TAC §290.45(f)(5) by failing to secure a sufficient purchase water contract with the City of Commerce; 30 TAC §290.45(b)(1)(D)(v) by failing to install an emergency power source; 30 TAC §290.45(b)(1)(F) by failing to provide proper service pump capacity; 30 TAC §290.45(b)(1)(D)(iv) by failing to provide proper pressure tank capacity; 30 TAC §290.41(c)(3)(M) by failing to provide a suitable sampling tap on the well discharge line; and 30 TAC §290.43(c)(2) by failing to provide a proper roof hatch on the ground storage tank; PENALTY: $4,613; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239- 3506; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8) COMPANY: Oso Cotton Burrs, Incorporated; DOCKET NUMBER: 1998-0110-AIR-E; TNRCC IDENTIFICATION NUMBER: NE-0333-L; LOCATION: County Road 26A, west of Highway 665, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: cotton burr storage facility; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(a) and (b) by causing, suffering, allowing, or permitting outdoor burning without proper authorization; and 30 TAC §101.4 by discharging one or more air contaminants, or odors, that constituted a nuisance since the odors were or may have tended to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: $13,125; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

TRD-9902624

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource conservation Commission
Filed: May 4, 1999

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Notice of Opportunity to Comment on ShutDown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code (the Code), §26.3475 authorizes the TNRCC to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails by to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. Pursuant to the Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is June 13, l999. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or consideration that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed Shutdown Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 13, l999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in writing.

(1) FACILITY: Diamond Point Texaco; OWNER: Naushad Virania and Al Hadi, Incorporated; DOCKET NUMBER: 1999-0240-PST-E; TNRCC IDENTIFICATION NUMBER: 0020784; LOCATION: 2000 North Valley Mills Drive, Waco, McLennan County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) by failing to monitor the USTs at the facility for releases at a frequency of at least once every month; PENALTY: Shutdown order, STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC-175, (512) 239-2029; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) FACILITY: Imperial Texaco; OWNER: Naushad Virani and Al Hadi, Incorporated; DOCKET NUMBER: 1999-0239-PST-E; TNRCC IDENTIFICATION NUMBER: 0020766; LOCATION: 6201 Imperial Drive, Waco, McLennan County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: Shutdown order; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC-175, (512) 239-2029; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) FACILITY: Randy's Grocery Store; OWNER: ARH Enterprises, Incorporated; DOCKET NUMBER: 1999-0264-PST-E; TNRCC IDENTIFICATION NUMBER: 48968; LOCATION: 4000 Denton Highway, Haltom City, Tarrant, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.49(a) by failing to have installed a method of corrosion protection for the UST systems; and 30 TAC §334.40(d)(1)(B)(ii) by failing to conduct reconciliation of detailed inventory control records at least once each month; PENALTY: Shutdown order; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC-175, (512) 239-4113; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9902626
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource conservation Commission
Filed: May 4, 1999

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Notices of Public Hearings

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 106, concerning Pathological Waste Incinerators.

The commission proposes the amendment to allow a greater range of setbacks from property lines for exempt pathological waste incinerators used at animal feeding operations. Pathological waste incinerators are used as a method of disposal of carcasses at animal feeding operations and are authorized under 30 TAC Chapter 106, Exemptions from Permitting. Section 106.494(E) allows the use of a dual-chambered incinerator with a minimum secondary chamber temperature of 1,400 degrees Fahrenheit and a minimum 1/4-second retention time provided the unit is located 700 feet from the nearest property line. This amendment would establish a range of property-line setbacks down to a minimum of 90 feet based on the stack height of the incinerator and operating hours. Elevated stack height will allow greater dispersal of exhaust from the incinerator and, therefore, a reduced setback. The proposed amendment, which is based on air dispersion modeling, would still insure protection of the property-line concentration standards for particulate matter contained in 30 TAC Chapter 111 and the National Ambient Air Quality Standards.

A public hearing on the proposal will be held June 8, 1999, at 2:00 p.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 14, 1999, and should reference Rule

Log Number 99001-106-AI. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239- 1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9902546
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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Notice is hereby given that pursuant to the requirements of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; Texas Water Code, §5.122, which provides the commission with the authority to delegate to the executive director the commission's authority to act on certain matters; Texas Water Code, §26.303, which directs the commission to adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses; and Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act. The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding the rule for Management of Poultry Carcasses.

The proposed amendments and new section will implement Senate Bill (SB) 1910, relating to Management of Poultry Carcasses, which was passed during the 75th Texas Legislative Session. Senate Bill 1910 added §§26.301, 26.302 and 26.303, Subchapter H, to the Texas Water Code. The amendments and new section will establish requirements for the safe and adequate handling, storage, transportation, processing, and disposal of poultry carcasses.

For the purposes of this rule, a major die-off is proposed to be a mortality rate of 0.3% or more per day of a facility's total poultry inventory. The selection of the 0.3% rate resulted from a recommendation from the Texas Agricultural Extension Service which was based on information that all mortality management systems (incinerators, composters, or freezers) are designed to manage slightly above "normal" daily mortality which, on average, is 0.3% per day.

The proposed rule, if adopted, will supersede any provision of a permit or other authorization previously issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. The authority to supersede the previously authorized ability to bury poultry carcasses on-site is based on the language in SB 1910 which specifically prohibits burial on-site unless there is a major die-off. The commission has already begun to notify those affected permittees of the prohibition in SB 1910. In addition, the prohibition in SB 1910 does not go into effect until March 31, 1999 or the effective date of the commission's rules implementing SB 1910, whichever is later. Permit holders who are affected by the prohibition in SB 1910 will have the time necessary to modify their processes dealing with major poultry die-offs at their facilities.

A public hearing on this proposal will be held June 10, 1999, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be submitted by mail to Bettie Bell, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087; or by fax to (512) 239-4808. All comments must be received by June 14, 1999, and should reference Rule Log No. 97157-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Hector H. Mendieta at (512) 239-6694.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9902567
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 30, 1999

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Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management Facility Permits

For The Period of April 19, 1999 to April 29, 1999

Bell Processing, Inc., 1326 Burkburnett Road, Wichita Falls, Texas, 76304 has applied to amend existing Permit Number MSW-1571 (Proposed Permit Number MSW-1571A) to operate a Type I municipal solid waste management facility to be located approximately 700 feet south of the intersection of Smith Road and Johnson near Iowa Park, Wichita County, Texas. The proposed amended permit will expand the original 53.07 acre facility to 256.49 acres, of which 185.7 acres will comprise the waste footprint. The maximum elevation of the final cover will be at elevation 1236.8 feet mean sea level. The site life is estimated to be 609 years. If the permit is granted, the applicant would be authorized to dispose of: (1) municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, recreational activities, and construction or demolition projects; (2) and certain special wastes in accordance with 30 Texas Administrative Code §330.2 that are properly identified and not specifically prohibited by the permit. The facility would be authorized to operate from 7:00 am to 7:00 pm on Monday through Saturday.

The City of Dumas, P.O. Box 438, Dumas, Moore County, Texas 79029, has applied to amend existing Permit Number MSW-211 (Proposed Permit Number MSW 211-B) for a height increase of the final cover from approximately 10 feet to approximately 75 feet above existing grade. If the permit is granted, the applicant would be authorized to dispose of: (1) municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, recreational activities, and construction or demolition projects; (2) Class II and III nonhazardous industrial solid waste; (3) and special waste that is properly identified. The facility would be authorized to operate from 7 am to 7 pm Monday through Sunday.

The City of Temple; 2 North Main Street; Temple, Texas; 76501 has applied to amend existing Permit Number MSW-692 (Proposed

Permit Number 692-A) for a Type I municipal solid waste landfill facility. The proposed amendment will increase the permitted acreage of the site from 215.052 acres to 269.02 acres and is estimated to initially receive 650 tons of waste per day. If granted, the applicant would be authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, recreational activities, and construction or demolition projects and special waste that are properly identified. The facility would be authorized to operate from 6 A.M. to 6 P.M. Monday through Friday and 7 A.M. through 5 P.M. on Saturday.

The City of Littlefield, P.O. Box 1267, Littlefield, Texas, 79339. has applied for Proposed Permit Number MSW-2274 to authorize a new Type I-AE municipal solid waste landfill facility. The proposed site covers approximately 69.036 acres and is estimated to initially receive 20 tons of waste per year. If granted, the applicant would be authorized to dispose of: municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, recreational activities, construction or demolition projects, and special waste that are properly identified. The facility would be authorized to operate from 7:00 a.m. to 7:00 p.m. Monday.

If you wish to request a public hearing, you must submit your request in writing. You must state: (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1 (800) 687-4040.

TRD-9902658
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 5, 1999

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Notice of Temporary Water Rights Applications

ASCENSION RESORTS, LTD. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit to divert and use, not to exceed, 180 acre-feet of water within a one year period from Big Sandy Creek, tributary of Sabine River, Sabine River Basin, in Wood County, Texas. Water will be diverted from a point on the creek 0.75 miles west of FM 2869 approximately 14.6 miles southeast of Quitman, Texas at a maximum rate of 2.23 cfs (cubic feet per second) or 1000 gpm (gallons per minute) for recreational use (filling of Whispering Winds Reservoir) in a housing subdivision. Diversion of the requested appropriation will only be authorized when the flow of Big Sandy Creek equals or exceeds 15 cfs (6732 gpm) at U.S.G.S. Gaging Station Number 0819500 at Big Sandy, Texas. The temporary permit, if issued, would be junior to all senior and superior water rights and instream needs.

Pursuant to an upstream water supply contract with the Brazos River Authority, WALTER EXPLORATION, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit to divert and use, not to exceed, 67 acre-feet of water within a one year period from Double Mountain Fork of Brazos River, tributary of Brazos River, Brazos River Basin, in Stonewall County, Texas. Water will be diverted from a point near the US Highway 83 road crossing approximately 10 miles south of Aspermont, Texas at a maximum diversion rate of .089 cfs (cubic feet per second) 40 gpm (gallons per minute) for mining (oil and gas waterflood system) use. The temporary permit, if issued, would be junior to all senior and superior water rights and instream needs.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 24, 1999. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on these applications if a written hearing request is filed by May 24, 1999. The Commission may approve the application unless a written request for a contested case hearing is filed.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Commission will not issue the permit and will forward the application and hearing request for their consideration at a scheduled meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1 (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902659
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 5, 1999

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Notice of Water Rights Applications

The CITY OF BENBROOK, 911 Winscott, P.O. Box 23259, Benbrook, Texas 76126, applicant, seeks a permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to maintain a reservoir on Dutch Branch, tributary of Clear Fork Trinity River, tributary of West Fork Trinity River, tributary of

Trinity River, Trinity River Basin, Tarrant County Texas for in-place recreational use. The reservoir has a normal capacity of 1 acre foot and a surface area of 0.4 acre feet. The reservoir is located approximately 1 mile west of Benbrook, Texas.

STEVEN C. CALLAWAY AND CINDY C. MEYERS, 14903 Liveoak, San Bernard Texas, 77435, applicant(s), seek a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to divert and use 185 acre-feet of water per annum from the San Bernard River, Brazos-Colorado Coastal Basin, to irrigate 112 acres out of a 135 acre tract of land in Wharton. The diversion of water will be at a maximum rate of 1500 gpm (3.34 cfs) directly from the San Bernard River, approximately 5 miles north of the city of Hungerford in Wharton County, Texas.

FARTHER POINT PROPERTY OWNERS ASSOCIATION, C/O Mary W. Carter, Blackburn and Carter, 3131 Eastside, Suite 450, Houston, Texas 77098, applicant, seeks a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to divert 1600 acre-feet of water per annum from the Buffalo Bayou, tributary of the San Jacinto River, San Jacinto Basin for wetland development in a residential subdivision in Harris County, Texas. Diversion of the water will be directly from Buffalo Bayou at a maximum rate of 1000 gpm (2.23 cfs) approximately 7.5 miles west of Houston, Texas.

LEGACY LAKES JOINT VENTURE AND HERITAGE LAKES JOINT VENTURE, 17130 Dallas Parkway, Dallas, Texas 75248, applicants, seek a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to construct seven (7) dams on an unnamed tributary of Stewart Creek, a tributary of the Trinity River, Trinity River Basin and to use one existing dam and reservoir on the same watercourse to impound a total of 194 acre-feet of water for recreational uses in a residential subdivision in Denton County, Texas. The center point of each dam is located approximately 28 miles southeast of Denton, Texas.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of the notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1 (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902660
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 5, 1999

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Texas Department of Protective and Regulatory Services

Request for Proposal Texas Families: Together and Safe Evaluation

Description: The goal of the Texas Families: Together and Safe Program is to: "Coordinate the development of an integrated service system that focuses on the family as a whole, is built in partnership with families, attempts to streamline and coordinate access, is highly collaborative, and responds to the need to strengthen and support all families and to prevent the unnecessary placement of children". The program consists of 15 grantees in communities throughout Texas. Grantees were selected in competitive procurement in 1998. The grantees are implementing service system reform and family support services designed to achieve the broad goal identified above. Each grantee has developed local goals that may differ from the broad goal and has or is implementing an evaluation of its particular program. The research project will answer four basic questions related to this goal: Has the ability of consumers and providers to appropriately utilize family support services increased since the program began service? Has the quality of services increased and the cost of service decreased? Has the service or service system contributed to the stability of the child's environment? Has interagency & community coordination and collaboration improved and increased? This study will involve collection and analysis of data related to the research questions described above. Collection will involve standardized quarterly reports from the grantees, utilizing archival data from existing agency databases, focus groups, surveys, and data individually developed with each grantee. An evaluation plan has been developed identifying both process and outcome evaluation measures and data sources. The successful applicant may develop additional data collection instruments. **The request is issued subject to availability of state and federal appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department.**

Deadlines: All proposals to be considered for funding through this RFP must be received by 4:00 p.m., June 16, 1999. Proposals received by mail after this deadline will be accepted only if mailed via next day mail no later than June 14, 1999. Modifications to the original proposal must also be received prior to the closing date of June 16, 1999.

Contact Person: To obtain a complete copy of the RFP, please contact RAY WORSHAM, Community Initiatives for Program Development, Texas Department of Protective and Regulatory Services (MC E-541), P. O. Box 149030, Austin, TX 78714-9030, 512/438-3362. Please submit inquiries regarding this Request for Proposal in writing no later than June 04, 1999, to the TDPRS designated contact person.

Eligible Applicants: Eligible offerors include private non profit and for-profit corporations, cities, counties, universities, partnerships, and individuals. TDPRS is committed to including Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses, in its purchase of service processes. For information on TDPRS's good faith efforts and other processes pertaining to HUBs, please call the TDPRS Coordinator at 512-832-2046.

Limitations: Funding of the selected proposal will be dependent upon available federal and/or state appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department.

Term: The effective dates of any contract awarded under this RFP will be July 1, 1999, through June 30, 2000.

Evaluation and Selection: An evaluation committee will rank and score the proposals. The evaluation method and criteria will be specified in advance. Considerations are the qualifications and relevant experience of the offeror, and budget information including financial participation of twenty five percent of the total budget (25%).

TRD-9902666
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: May 5, 1999

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Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to Public Utility Commission Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Promotional Rates for Business Customers Agreeing to Subscribe to SWBT Long Distance Message Telecommunications Service (LDMTS) for Their IntraLATA Toll Calls Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20796.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting promotional rates for business customers agreeing to subscribe to SWBT's LDMTS for their intraLATA toll calls. During the promotion period of May 30, 1999 through December 31, 1999, business customers agreeing to twelve- month subscriptions to SWBT LDMTS and its $25 & Dime Promotion can receive a monthly recurring charge of $25, 180 minutes of long distance service and a $ .10 per minute rate after the 180 minutes. SWBT requests an effective date of May 30, 1999. SWBT has provided notification of this LDMTS promotion to the Local Service Providers (LSPs). The LSPs will be provided the wholesale discount rate for this LDMTS promotion.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902597
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Two Promotions Rates for Integrated Pathway Service-Access Advantage Plus Promotion and SBC Frame Advantage Promotion Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20797.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting two promotions for Integrated Pathway Service-Access Advantage Plus Promotion and SBC Frame Advantage Promotion. SWBT requests an effective date of May 18 through August 17, 1999.

The Access Advantage Plus Promotion offers business customers the opportunity to purchase on a three-year Term Pricing Plan (TPP), 10 Integrated Voice Access Lines (IVAL), Caller ID Name and Number for each IVAL subscribed to an Optional Calling Plan and the Integrated Pathway Transport. Under this TPP promotion, the customer will receive a discount as a credit on their monthly bill.

The SBC Frame Advantage Promotion offers Integrated Pathway business customers the opportunity to purchase on a three-year TPP, 56kbps or 128 kbps frame relay service on an Integrated Pathway facility. Under this TPP promotion, a customer will receive a one-time discount in the fifteenth month of the contract as a credit on their monthly bill. The credit for a Frame Advantage 56kbps circuit is $300 and for a 128 kbps circuit is $600.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 20, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902598
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission

Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Application of GTE-Southwest, Inc. to Offer a Waiver of the First Month Recurring Charge for New Residential Customers Ordering Specified Custom Calling/Class Services Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20803.

The Application: GTE-Southwest, Inc. (GTE-SW) has notified the Public Utility Commission of Texas that it is waiving the first month recurring charge for new residential customers ordering specified Custom Calling/CLASS Services. In addition, a $10 rebate is being proposed for new subscribers of the specified Custom Calling/CLASS Services who purchase a Caller ID unit, costs for which will be recovered via below the line (BTL) revenues from Caller ID units sold. GTE-SW requests an effective date of June 1, 1999 through August 31, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902599
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Application of Contel of Texas, Inc. to Offer a Waiver of the First Month Recurring Charge for New Residential Customers (NRC) Ordering Specified Custom Calling/Class Services Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20810.

The Application: Contel of Texas, Inc. (Contel) has notified the Public Utility Commission of Texas that it is waiving the first month recurring charge for new residential customers ordering specified Custom Calling/CLASS Services. In addition, a $10 rebate is being proposed for new subscribers of the specified Custom Calling/CLASS Services who purchase a Caller ID unit, costs for which will be recovered via below the line (BTL) revenues from Caller ID units sold. Contel requests an effective date of June 1, 1999 through August 31, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902600
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Application of GTE Southwest, Inc. for a Waiver of the Special Services Service Charge of $8.00 for Residential Customers Ordering Custom Calling/Class Services Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20811.

The Application: GTE-Southwest, Inc. (GTE) has notified the Public Utility Commission of Texas that it proposing to waive the secondary service order charge of $8.00 for residential customers ordering Custom Calling/CLASS Services during the promotional period of June 3, 1999 through August 31, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by June 1, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902601
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 27, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Application of Contel of Texas, Inc. for a Waiver of the Special Services Service Charge of $6.85 for Residential Customers Ordering Custom Calling/Class Services Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20812.

The Application: Contel of Texas, Inc. (Contel) has notified the Public Utility Commission of Texas that it proposes to waive the special services service charge of $6.85 for residential customers ordering Custom Calling/CLASS Services. Contel requests an effective date of June 3, 1999 through August 31, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by June 1, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902602
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 3, 1999 to introduce new

or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company's Notification to Institute Promotional Rates for Business Customers in Texas, Who Subscribe to Arrangements of 10 or More Caller ID With an Optional Calling Plan Between May 24, 1999 And August 23, 1999 Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20828.

The Application: Southwestern Bell Telephone Company has notified the Public Utility Commission of Texas that it is instituting promotional rates for business customers in Texas, who subscribe to arrangements of 10 or more Caller ID Name and Number with an Optional Calling Plan between May 24, 1999 and August 23, 1999. This promotional offering can only be ordered on a three-year term pricing plan. Business customers newly subscribing to this service arrangement will receive a monthly discount of $6.75 per arrangement, as a credit on their monthly bill and installation charges will be waived.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902635
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 1999

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 29, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of STPCS Joint Venture, LLC for a Service Provider Certificate of Operating Authority, Docket Number 20813 before the Public Utility Commission of Texas.

Applicant intends to provide digital wireless telecommunications services, intraLATA and interLATA communications services, and may provide or resell interexchange and/or international services, including, but not limited to, Caller ID, call waiting, message waiting, call forwarding, three-way conferencing, voicemail, and access to long distance telecommunications networks for the provision of originating and terminating wireless telecommunications traffic.

Applicant's requested SPCOA geographic area includes the boundaries of the following local exchange carriers, including LATA's 540, 542, 566, 568, 564 and 560: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., and any other eligible local exchange carrier.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 19, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902595
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notices of Applications to Amend Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 26, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Texas Utilities Electric Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Limestone, Freestone, Navarro, Ellis and Dallas Counties, Docket Number 20790 before the Public Utility Commission of Texas.

The Application: In Docket Number 20790, Texas Utilities Electric Company (TU Electric) requests approval of 87.4 miles of double-circuit 345-kV transmission line, to be known as the Limestone - Watermill 345-kV line, located in Limestone, Freestone, Navarro, Ellis, and Dallas Counties. TU Electric has received notice from the Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) that the proposed transmission system addition should be made as soon as possible to address existing transfer constraint problems in the south to north ERCOT corridor. The addition has been designated a critical constraint relief project by the ERCOT ISO and has been endorsed by the ERCOT Board. The 345-kV transmission system is the backbone system that moves large amounts of power between different parts of the ERCOT power grid. Today, there are two 345-kV double-circuit lines connecting south Texas to north Texas. The proposed project will complete a third 345-kV double- circuit line from South Central Texas to North Texas, ensuring that bulk power system reliability can be maintained while large south to north transfers are taking place.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902541
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 30, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated. (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Central Power and Light Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Nueces County, Docket Number 20818 before the Public Utility Commission of Texas.

The Application: In Docket Number 20818, Central Power and Light Company (CPL) requests approval of replacing 3.8 miles of existing single-circuit 69-kV transmission line with new, double-circuit 138-kV construction energized at 69-kV. The proposed line, to be known as North Padre Tap - North Padre substation is located within Nueces County. The proposed project will increase the transmission reliability for the North Padre Island substation. Approximately 14 megawatts (MW) of capacity is required to solve the existing needs and 22 MW of capacity is projected to be needed by 2008. This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902603
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to Public Utility Commission Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for McAllen Independent School District (ISD) in McAllen, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for McAllen ISD in McAllen, Texas Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 20795.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an addition to the existing PLEXAR-Custom service for McAllen ISD in McAllen, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the McAllen exchange, and the geographic market for this specific PLEXAR-Custom service is the Brownsville LATA.

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 call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902596
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Notice of Joint Agreement Between Southwestern Bell Telephone Company, et. al. and the Governmental Representatives of the Communities Comprising the San Antonio Calling Area to Provide Optional, Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on March 2, 1999, seeking approval of optional, extended area service (EAS) to the San Antonio calling area, pursuant to P.U.C. Substantive Rule §23.49(b)(8).

Project Title and Number: Joint Agreement of Southwestern Bell Telephone Company, et. al., and Governmental Representatives of the Communities Comprising the San Antonio Calling Area, for Optional Extended Area Service, Docket Number 20581.

The Joint Petition and Agreement: The proposed plan is an optional service to which subscribing Southwestern Bell Telephone Company residence and business local exchange customers within the San Antonio calling area will be able to call all other telephone customers within the San Antonio calling area for a monthly, flat rate.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. Substantive Rule §23.49(b)(8)(C). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public tility Commission Office of Customer Protection Section at (512) 936-7120 by May 19, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9902560
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 30, 1999

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Notice of Petition for Declaratory Order

Notice is given to the public of the filing with the Public Utility Commission of Texas a petition for declaratory order on April 19, 1999. The commission is authorized to issue a declaratory order upon request by a party, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001 and 14.051 (Vernon 1998).

Docket Style and Number: Petition of Pasadena Cogeneration, L.P. for Declaratory Order. Docket Control Number 20760.

The Application: Pasadena Cogeneration, L.P. seeks an order declaring Reliant Energy, Inc. responsible for the cost of 138kV transmission extensions, as well as substation facilities, necessary to interconnect Pasadena Cogeneration, L.P. and Reliant Energy, Inc., under the commission's substantive rules.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than June 8, 1999, the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Consumer Protection at (512) 936- 7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9902634
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 1999

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Public Notices of Interconnection Agreements

On April 27, 1999, Southwestern Bell Telephone Company and Afaneh, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20798. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20798. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 8, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20798.

TRD-9902590
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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On April 27, 1999, Rosebud Cotton Company d/b/a Rosebud Telephone Company and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20805. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20805. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 8, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20805.

TRD-9902591
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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On April 27, 1999, Tipton Construction Company of Texas, Inc. d/b/a Advanced Communicating Techniques and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20806. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20806. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 8, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20806.

TRD-9902592
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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On April 27, 1999, Southwestern Bell Telephone Company and Phonesense, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20807. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring

compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20807. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 8, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20807.

TRD-9902593
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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On April 27, 1999, Southwestern Bell Telephone Company and Bellsouth BSE, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20808. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20808. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public tility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20808.

TRD-9902594
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 1999

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Brazoria County, 111 East Locust, Room 308, Angleton, Texas, 77515-4654, received March 16, 1999, application for grant assistant

in an amount not to exceed $300,000 from the Research and Planning Fund.

Angelina County Water Control and Improvement District, Number 3, Rt. 16, Box 2395, Lufkin, Texas, 75901, received April 2, 1999, application for grant/loan assistance in the total amount of $1,160,000 from the Clean Water State Revolving Fund - Hardship Grants Program for Rural Communities

City of Angleton, 121 South Velasco, Angleton, Texas, 77515, received April 1, 1999, application for financial assistance in the amount of $640,000 from the Clean Water State Revolving Fund.

Ingleside on the Bay, P.O. Drawer "B", Ingleside, Texas, 78362, received March 2, 1999, application for grant assistance in the amount of $2,558,631 from the Economically Distressed Areas Program.

City of Crystal City, 101 East Dimmit Street, Crystal City, Texas, 78839, received February 4, 1999, application for grant assistance in the amount of $556,584 from the Economically Distressed Areas Program.

City of Blossom, 1240 West Front Street, Blossom, Texas, 75416, received March 24, 1999, application for financial assistance in the amount of $275,000 from the Clean Water State Revolving Fund.

Evadale Water Control and Improvement District Number 1, P.O. Box 149, Evadale, Texas, 77615, received March 26, 1999, application for grant/loan assistance in the total amount of $3,100,000 from the Clean Water State Revolving Fund - Hardship Grants Program for Rural Communities.

Greater Texoma Utility Authority, in behalf of the Cities of Collinsville and Ector, 5100 Airport Drive, Denison, Texas, 75020, received March 31, 1999, application for financial assistance in the amount of $450,000 from the Texas Water Development Funds.

Greater Texoma Utility Authority, in behalf of the City of Tom Bean, 5100 Airport Drive, Denison, Texas, 75020, received March 31, 1999, application for financial assistance in the amount of $500,000 from the Clean Water State Revolving Fund.

Harris County Fresh Water Supply District Number 1-A, 2314 Broad Street, P.O. Box 1104, Highlands, Texas, 77562, received April 1, 1999, application for financial assistance in the amount of $800,000 from the Texas Water Development Funds.

Harris County Municipal Utility District Number 44, 404 West Lewis, Conroe, Texas, 77305, received March 26, 1999, application for financial assistance in the amount of $3,400,000 from the Texas Water Development Funds.

City of Houston, P.O. Box 1562, Houston, Texas, 77251, received March 29, 1999, application for financial assistance in the amount of $6,130,000 from the Clean Water State Revolving Fund.

City of Honey Grove, Texas, 633 North 6th Street, Honey Grove, Texas, 75446, received March 31, 1999, application for financial assistance in the amount of $1,000,000 from the Clean Water State Revolving Fund.

Louetta Road Municipal Utility District, 5223 LaCreek, Spring, Texas, 77379, received April 1, 1999, application for financial assistance in the amount of $700,000 from the Texas Water Development Funds.

Montgomery Water Control and Improvement District Number 1, P.O. Box 7690, The Woodlands, Texas, 77387-7690, received April 15, 1999, application for financial assistance in the amount of $1,890,000 from the Texas Water Development Funds.

City of Richmond, 402 Morton, Richmond, Texas, 77338, received March 31, 1999, application for financial assistance in the amount of $4,400,000 from the Clean Water State Revolving Fund.

Upper Trinity Regional Water District, 396 West Main, Suite 102, Lewisville, Texas, 75067, received March 2, 1999, application for financial assistance in the amount of $17,165,000 from the State Participation Account.

Garza Underground Water Conservation District, West Main Street, Post, Texas, 79356, received March 24, 1999, application for grant assistance in the amount of $6,000 from the Agricultural Conservation Grants to Districts Program.

El Paso Water Control and Improvement District Number 1, 294 Candelaria, El Paso, Texas, 79907-5599, received March 31, 1999, application for grant assistance in the amount of $5,318 from the Agricultural Conservation Grants to Districts Program.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

TRD-9902649
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: May 5, 1999

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Correction of Error

The Texas Water Development Board adopted an amendment to 31 TAC §357.4, concerning Regional Water Planning Guidelines and adopted new 31 TAC §§363.801–363.811, concerning the Groundwater District Loan Program. The rules appeared in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3207).

Due to Texas Register error, the effective date was shown as April 18, 1999, instead of April 28, 1999.

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Texas Worker's Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals and representatives of public health care facilities and other entities to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the new Standards and Procedures for the Medical Advisory Committee. Each member must be knowledgeable and qualified regarding work-related injuries and diseases.

The majority of these positions are filled, but the terms of the current members will expire in August of 1999. Current members may be reappointed or new members may be appointed.

Commissioners for the Texas Workers' Compensation appoint the Medical Advisory Committee members, which is composed of 16 primary and 16 alternate members representing health care providers, employees, employers and the public.

The purpose and tasks of the Medical Advisory Commission are outlined in the Texas Workers' Compensation Act, §413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies and guidelines.

The Medical Advisory Committee meets approximately once every six weeks. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings for the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee openings include:

Primary Members

Doctor of Medicine

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Dentist

Pharmacist

Occupational Therapist

General Public Representative, Rep. 1

Alternate Members

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Occupational Therapist

Dentist

Employee Representative

For an application, call Juanita Salinas at (512) 707-5888 or Ruth Richardson at (512) 440-3518.

TRD-9902629
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 4, 1999

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Texas Workforce Commission

Correction to Request for Proposals, Literacy Training

In the May 7, 1999, issue of the *Texas Register*, the Texas Workforce Commission (Commission) published a notice to solicit proposals to provide literacy skills training to dislocated workers whose primary language is Spanish. This notice is to provide revised dates for that Request for Proposals.

A. PROPOSAL DESCRIPTION

The. These workers reside in the border regions of Texas and are often illiterate in Spanish, as well as in English. It is the requirement of this Request for Proposal (RFP) that successful bidders will offer literacy training in El Paso and/or Laredo and/or other cities bordering Mexico where workers have been laid off due to the exit of the garment industry or similar jobs with few transferable work skills. The Commission is soliciting proposals from bidders who have-(1) expertise in training individuals in English as a Second Language skills (ESL) (2) experience in training limited English speakers in skill sets that will lead to employment and re-employment, and (3) who are capable of delivering training in multi-geographic locations.

B. AUTHORIZATION OF FUNDING

The funds are State General Revenue funds and are authorized under the State Fiscal Year 1998-99 Appropriations Bill.

C. AVAILABLE FUNDING

Expenditures will be reimbursed, pursuant to a contract, on a cost reimbursement basis subject to successful performance during the course of the contract. The total amount of funding available through this grant is $204,934.00. The Commission will consider funding multiple projects with this grant.

D. SERVICES TO BE PROVIDED

The Commission requests that bidders submit innovative and resourceful products that will enhance the employability prospects for persons who lack proficiency in Spanish and/or English. Successful applicants should have a proven record of success in teaching English as a Second Language to the targeted population.

The Commission is also interested in assisting workers in returning to employment as soon as possible. Curricula that include English as a Second Language, basic skills and/or occupational skills taught in a contextual learning approach would also be of interest to the Commission and highly rated.

The Commission encourages partnerships that will benefit American workers and that will build the capacity to deliver services to this population of workers or similarly situated workers, after this project is over, e.g., a curriculum or other product that can be used by other groups after this contract expires. All projects must result in products that provide for the replication of successful program efforts.

E. PROJECT SCHEDULE

Application submission deadline: June 1, 1999

Project start date: June 15, 1999

Project progress report: June 30, 1999

Project end date: August 31, 1999

Close out report due date: September 30, 1999

F. SCORING CRITERIA

Criteria:

Demonstrated experience of the bidder: 10 Points

Quality and comprehensiveness of proposed program, curriculum, or other products: 20 Points

Innovation of proposed program: 25 Points

Replicability/transferability of programs: 10 Points

Timely: 5 Points

Feasibility: 10 Points

Cost reasonableness: 10 Points

Capability: 10 Points

Total: 100 Points

Historically-Underutilized Business (HUB): 5 Points

Maximum Points Available: 105 Points

G. FUNDING RESTRICTIONS

The basis of payment for this contract shall be reimbursement of allowable costs subject to measurable and successful performance of the project. Prior permission must be secured from the Commission before any part of the project can be subcontracted and/or changes made to the Statement of Work

H. APPLICANT'S OBLIGATIONS REGARDING DOCUMENTATION OF USE OF FUNDS

Applicants must be willing to agree to maintain documentation evidencing time spent on the project tasks, and their use of the contract funds. Such documentation must be available for review and inspection at all times during the term of the contract. Applicants must be willing to agree to maintain those records according to State and Federal guidelines and contract terms.

I. LENGTH OF CONTRACT

The contract period will begin approximately June 15, 1999, or as soon as negotiations can be mutually completed and a contract can be executed. The contract will end August 31, 1999.

J. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be reviewed and evaluated by both outside staff and Commission staff based upon the criteria noted in Section E above. TWC anticipates completing the selection and notifying applicants of their application status the week of June 8, 1999. The selection process will be based upon proposal scores and geographic location. Negotiations will take place immediately after selection. A designated person, authorized by the slected applicant organization to make budget and /or programmatic decision, must be readily available to respond to requested revision between June 10-11, 1999. If a designated person is not readily available to promptly respond to requested revision, the grant will not be awarded to the applicant.

Negotiation will be conducted by TWC as deemed necessary. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendment to contracts when TWC deems such variance and/or amendment are in the best interest of the State of Texas.

K. DUE DATE, TIME, LOCATION, AND AGENCY CONTRACT

The deadline for receipt and consideration of proposal submissions for this grant is 4:30 PM. Central Daylight Time, June 1, 1999. The Commission must receive all responses, regardless of method of delivery, no later than the specified time. Facsimile copies will not be accepted. For further information and to request an application packet, contact Bill Turner at 512/936-3203.

L. TWC's OBLIGATIONS

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds. If adequate funds are not available to make payments under this contract, TWC shall terminate this RFP and will not be liable for failure to make payment to applicants under the RFP.

TRD-9902665
J. Randel Hill
General Counsel
Texas Workforce Commission
Filed: May 5, 1999

♦ ♦ ♦

Wagner-Peyser Funding Allocation for Employment Service Activities

The Wagner-Peyser Act, 29 U.S.C., Section 49, et seq., establishes a formula for distributing funds to states for employment service activities. Under this formula, Texas will receive $51,000,748 for Program Year 1999, beginning July 1, 1999, and ending June 30, 2000. Ninety percent of this amount must be used for basic labor exchange services under Section 7(a) of the Wagner-Peyser Act; ten percent will be reserved for use at the Governor's discretion within legislatively designated parameters under Section 7(b).

Texas Labor Code Title 4, Subtitle B, designates the Texas Workforce Commission as the state agency to administer activities funded by the Wagner-Peyser Act. The state herein presents the method proposed for distributing resources under Section 7(a) of the Wagner-Peyser Act.

The allotment received at the state level is divided in accordance with House Bill 1863 (Chapter 655, 74th Legislature, 1995): 20% for state level operations and 80% for local operations. The funds for local operations are distributed based on the federal allocation formula using two factors. Two-thirds is allocated on the basis of the relative number of individuals in the civilian labor force residing in the area as compared to the total number of individuals in the civilian labor force in the state. One-third is allocated on the basis of the relative number of unemployed individuals residing in the area as compared to the total number of unemployed individuals in the state.

Comments in regard to the distribution of the Wagner-Peyser funds should be submitted in writing to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778-0001.

TRD-9902662
J. Randel Hill
General Counsel
Texas Workforce Commission
Filed: May 5, 1999

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