TEXAS REGISTER

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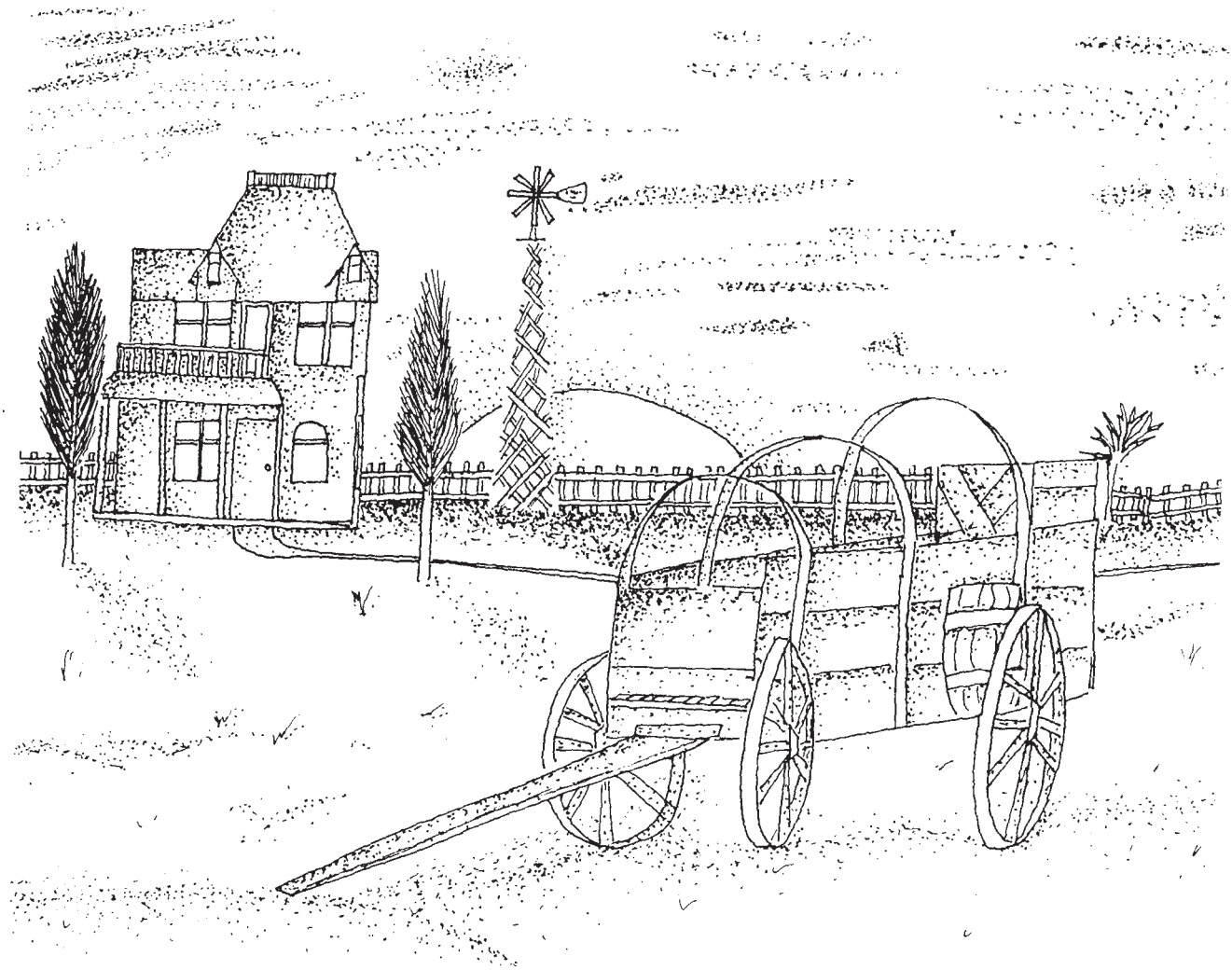

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Artist: *Natilie Hodges*

9th Grade

Rockwall 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.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

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

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RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

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-0100 (RQ–0032). The Honorable Joe Warner Bell, Trinity County Attorney, P.O. Box 979, Groveton, Texas, 75845, concerning whether a county commissioner in his or her capacity as ex officio road commissioner or the commissioner's employees may purchase auto parts from a corporation in which the commissioner owns a substantial interest.

Summary. Under sections 252.005 and 252.006 of the Transportation Code, a county commissioner, in his or her capacity as precinct road commissioner, may not purchase or authorize a purchase by precinct employees from an auto-parts corporation. The commissioner or a member of the commissioner's road crew may pick up goods from the corporation, however, if the commissioners court has pre- approved or subsequently will consider the purchase. In accordance with section 171.004 of the Local Government Code, if the commissioner has a substantial interest in a purchase from the auto-parts corporation, he or she must disclose that interest and abstain from participating in the matter when it comes before the full commissioners court.

JC-0101(RQ-0030). The Honorable Jose R. Rodriguez, El Paso County Attorney, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas, 79901, concerning constitutionality of an 1891 special law that purported to disincorporate the City of San Elizario.

Summary. An 1891 special act of the legislature that repealed the legislature's previous incorporation of the City of San Elizario does not contravene either section 56 or section 57 of article III of the Texas Constitution.

TRD-9905585
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 1, 1999

♦ ♦ ♦

Request for Opinion

RQ-0102. Requested by The Honorable Chris Harris, Chair, Committee on Administration, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711-2068, concerning whether an individual who has received a tax abatement is eligible to serve as a member of the city council that granted the abatement, and related questions (Request Number 0102-JC) Briefs requested by September 30, l999.

TRD-9905584
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 1, 1999

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-462. A former employee of a regulatory agency has asked whether he may perform work for a private employer on a project funded by the regulatory agency. The project is similar to a project that the agency considered but did not fund while the requestor worked for the agency.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-9905553
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: September 1, 1999

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Opinions

EAO-417. Whether a former elected county officeholder may use surplus political contributions to make a donation to a county appraisal district. (AOR-460)

Summary

A former elected county officeholder may use surplus political contributions to pay expenses incurred in connection with duties or activities as a member of the board of a political subdivision.

EAO-418. Application of the campaign finance law to a district judge who is running for justice of a court of appeals. (AOR-461)

Summary

A district judge may use political contributions raised in connection with his candidacy for district judge to make expenditures in connection with a candidacy for justice of a court of appeals.

The restrictions in Election Code §253.1611 do not apply to transfers between a judicial candidate or officeholder and a specific-purpose political committee supporting the candidate or officeholder. Nor do the restrictions apply to transfers between two specific-purpose political committees supporting the same individual as a candidate or officeholder.

A district judge who has filed a campaign treasurer appointment with the Ethics Commission is required to file reports of contributions and expenditures with the Ethics Commission and is not required to file with the local filing authority.

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

TRD-9905516
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: August 30, 1999

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. 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 43. TRANSPORTATION

Part 1. TEXAS DEPARTMENT OF TRANSPORTATION

Chapter 30. AVIATION

Subchapter E. REGULATION OF AIRCRAFT ON WATER

43 TAC §§30.401-30.405

The Texas Department of Transportation adopts on an emergency basis new §§30.401-30.405, concerning regulation of aircraft on water.

House Bill 1620, 76th Legislature, 1999, enacted Transportation Code, Chapter 26. House Bill 1620 provides that a governmental entity that owns, controls, or has jurisdiction over a navigable body of water may not, in an area in which motorized boats are permitted, prohibit the takeoff, landing, or operation of an aquatic aircraft, or regulate or require a permit or fee for the operation of an aquatic aircraft, without approval of the Texas Department of Transportation. New §§30.401-30.405 implement and administer the department's responsibilities under Chapter 26.

The Texas Transportation Commission finds that an imminent peril to the public safety, and a requirement of state law, require adoption of §§30.401-30.405 on fewer than 30 days' notice. House Bill 1620 is effective September 1, 1999. Various governmental entities have regulations that were in effect prior to that date. In order to allow these entities to continue to regulate the takeoff, landing, or operation of aquatic aircraft for the purpose of protecting the safety of users of certain bodies of water, it is necessary to adopt the new sections on an emergency basis. This action will enable the department to approve these pre-existing regulations at the earliest practicable date, thereby continuing the effect of those regulations that the department determines are justified in the interest of safety.

Section 30.401 describes the purpose for the regulation of aquatic aircraft operations on water.

Section 30.402 provides definitions for words and terms in this subchapter.

Section 30.403 describes the application procedures for governmental entities applying to the department for approval of a prohibition or limitation of aquatic aircraft operations on waters within their jurisdiction. The information required is necessary to enable the department to evaluate the approval criteria described under §30.404.

Section 30.404 provides that the commission will, as provided by Transportation Code, Chapter 26, approve the proposed prohibition or limitation by order if it determines that safety concerns justify the prohibition or limitation. In making this determination, the commission will consider various criteria prescribed by statute. The section also provides that the commission will consider the recommendation of the executive director and, to ensure comprehensive consideration of all safety-related factors, any other factors that relate to the safe operation of aquatic aircraft, such as migratory waterfowl patterns, seasonal hunting, fishing, and tourism.

To comply with House Bill 1620 and to ensure proper notice to all interested parties, §30.405 provides that the commission will publish notice of the approval of a prohibition or limitation in the Texas Register, and requires the governmental entity to publish the approved prohibition or limitation in a local daily newspaper and notify the Federal Aviation Administration.

These sections are adopted on an emergency basis 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 more specifically, House Bill 1620, which enacted Transportation Code, Chapter 26, requiring the department to adopt rules for the regulation of aircraft on water.

§30.401. Purpose.

Transportation Code, Chapter 26 provides that a governmental entity that owns, controls, or has jurisdiction over a navigable body of water may not, in an area in which motorized boats are permitted, prohibit the takeoff, landing, or operation of an aquatic aircraft, or regulate or require a permit or fee for the operation of an aquatic aircraft without the approval of the Texas Department of Transportation. This subchapter implements and administers the department's responsibilities under Chapter 26.

§30.402. Definitions.

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

(1) Aquatic aircraft - A seaplane, floatplane, or similar aircraft that is capable of taking off and landing on water.

(2) Commission - The Texas Transportation Commission.

(3) Department - The Texas Department of Transportation.

(4) Executive director - The executive director of the Texas Department of Transportation or the director's designee.

(5) Motorized boat - Any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

(6) Navigable body of water - A body of water available for public use that has the capability of use by motorized boats. This term does not include a navigable body of water that the federal government owns, controls, or has jurisdiction over.

§30.403. Application.

(a) To secure approval for a prohibition or limitation under this subchapter, a governmental entity must file an application with the executive director. The application shall be in a form prescribed by the department and must be accompanied by the following information:

(1) type of prohibition or limitation requested (specific area, times, permit fees etc.);

(2) specific safety concerns (wires or cables above the water or on the surface, unusual types or numbers of boats, etc.);

(3) the depth of water and any known obstacles under the surface;

(4) interests of homeowners located on or near the body of water;

(5) any other factors such as migratory waterfowl patterns, seasonal hunting, fishing, and tourism; and

(6) any other documentation that the executive director determines is necessary to assist the commission in evaluating the approval criteria described in §30.404(a) of this title (relating to Commission Action).

(b) The executive director will investigate and analyze each application to develop a recommendation to the commission based on the criteria described in §30.404(a) of this title.

§30.404. Commission Action.

(a) The commission will approve the proposed prohibition or limitation if it determines that safety concerns justify the prohibition or limitation. In making a determination, the commission will consider:

(1) the recommendation of the executive director;

(2) the topography of the body of water or specified area;

(3) the depth of the water and any obstacles that are under the water;

(4) the amount of boat or individual traffic on the body of water or in the specified area;

(5) the interests of persons owning homes that are located on or around the body of water; and

(6) any other factors that relate to the safe operation of aquatic aircraft, such as migratory waterfowl patterns, seasonal hunting, fishing, and tourism.

(b) The commission will approve or disapprove the request by written order; and, if disapproved, the order will state the reasons for disapproval.

§30.405. Notice.

(a) If the commission approves a prohibition or limitation under §30.404 of this title (relating to Commission Action):

(1) the department will publish notice of the approval in the Texas Register; and

(2) the governmental entity shall publish the prohibition or regulation in a local daily newspaper and notify the Federal Aviation Administration.

(b) The prohibition or limitation shall become effective on the date of publication under subsection (a)(2) of this section.

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

TRD-9905490
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 1, 1999
Expiration date: December 30, 1999
For further information, please call: (512) 463–8630

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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 1. ADMINISTRATION

Part 5. GENERAL SERVICES COMMISSION

Chapter 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

Subchapter A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §§126.1-126.3

The General Services Commission proposes the amendments to Title 1, T.A.C. Chapter 126, Subchapter A, §§126.1, 126.2 and 126.3 concerning the State Surplus and Salvage Property Program. The amendments will bring the rules into compliance with S.B. 1105, H.B. 2840, H.B. 3226 and S.B. 1451, 76th Leg. (1999) which relate to the disposal of state surplus data processing equipment through the Texas Department of Criminal Justice and expanding the usage of state surplus to certain Assistance Organizations.

Dan Bremer, Director of the Surplus Property Program, has determined for the first five year period the rules are in effect, there will be no adverse effect to state or local government as a result of enforcing these rules.

Dan Bremer, Director of the Surplus Property Program, further determines that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of enforcing these rules will be cost savings resulting from the repair or refurbishment of surplus or salvage data processing equipment by the Texas Department of Criminal Justice, and the participation of certain assistance organizations in the reutilization process of State surplus property thereby serving the best interest of the Texas taxpayer. There will be no effect on small or large businesses and/or persons.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the Texas Register.

The amendments are proposed under the authority of the Texas Government Code, Title 10, Subtitle D. Chapter 2175, Subchapter A, Section 2175.001 and Subchapter C, Section 2175.126 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following code is affected by these rules: Texas Government Code, Section 497.011 and Texas Government Code, Title 10, Subtitle D, Chapter 2175, §§2175.001, 2175.126, 2175.302 and 2175.304.

§126.1. Definitions.

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

(1) Assistance organization–

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and distributes edible but unmarketable food to agencies that feed needy families and individuals; and

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development.

(D) a group, including a faith-based group, that enters into a financial or nonfinancial agreement with a health or human services agency to provide services to that agency's clients.

(2) Data processing equipment - Equipment as defined in §2054.003(3)(A) of the Texas Government Code.

(3) [~~(2)~~] Political subdivision–Each political subdivision of the state and volunteer fire departments.

(4) [~~(3)~~] Property–Personal property, not including real property or any interest in real property. Personal property affixed to real property may be sold as surplus or salvage property if its removal and disposition is to carry out a lawful objective.

(5) [~~(4)~~] Salvage property–Any personal property which through use, time, or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(6) [~~(5)~~] State agency– For purpose of disposing of property, a [~~Any~~] department, commission, board, office or other agency as defined in Texas Government Code, Title 10, Subtitle D, §2151.002, but excluding those agencies described in §§2175.301, 2175.302, and 2175.304, [~~§2175.301 and 2175.302~~]. For purposes of acquiring property under these rules, the term "state agency" shall include all agencies defined in Texas Government Code, Title 10, Subtitle D, 2151.002. and shall additionally include the Texas Civil Air Patrol.

(7) [~~(6)~~] Surplus Property–Any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new, but possesses some usefulness for the purpose for which it was intended or for some other purpose.

§126.2. Disposition of Surplus and Salvage Property to State Agencies, Political Subdivisions and Assistance Organizations.

(a) General. All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property in a form prescribed by the commission. The commission shall, in turn, provide this information to other state agencies, political subdivisions, and assistance organizations.

(b) Dissemination of Information. A monthly listing of currently available surplus or salvage property shall be made available electronically. The commission will additionally maintain a mailing list, renewable annually, of political subdivisions and assistance organizations who have requested a printed copy of the monthly surplus and salvage property listing. The commission may charge an amount which shall not exceed the actual costs incurred by the commission in maintaining the mail list and in producing and mailing the information on surplus and salvage property.

(c) Offering surplus or salvage property to state agencies, political subdivisions and assistance organizations.

(1) For the first 30 days following dissemination of the monthly surplus listing, the notifying or reporting agency shall establish a price, if any. The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of 30 days shall be entitled to the property; provided, however, first priority shall be given to a state agency in the event that a competing equivalent request is received from a political subdivision or assistance organization. Two or more requests shall be considered "competing and equivalent" for purposes of this rule if each meets the price established by the notifying or reporting state agency on the same business day within the 30 day period following dissemination of the monthly surplus listing.

(2) If a transfer is made to a state agency, the participating agencies shall report the transaction to the comptroller as provided by law and the comptroller's State Property Accounting System. The comptroller shall then debit and credit the proper appropriations within the systems maintained by the comptroller.

(3) A political subdivision or assistance organization acquiring surplus property from a state agency must in conjunction with the state agency complete a "Certificate of Acquisition". A political subdivision or assistance organization must certify its qualification and an assistance organization must additionally provide documentation as required. "Certificate of Acquisition" is to be retained by agency and documentation of the transaction is to be entered into the Comptroller's State Property Accounting System.

(4) [~~(3)~~] If a transfer or acquisition of the property is not arranged within 30 days after the dissemination of the surplus list as provided in subsection (b) of this section, the commission shall with the exception of data processing equipment dispose of the surplus or salvage to the public in accordance with §126.3 of this title (relating to Disposition of Surplus and Salvage Property to the Public).

(5) Data processing equipment from state agencies, institutions and agencies of higher education, and eleemosynary institutions if not disposed of under Subchapter C of Chapter 2175, Texas Government Code or other law, shall be transferred to the Industries Division of the Texas Department of Criminal Justice.

§126.3. Disposition of Surplus and Salvage Property to the Public.

(a) General. If no state agency, political subdivision, or assistance organization desires to receive any property reported as surplus or salvage, the commission may dispose of the property with the exception of data processing equipment by sealed bids or auction, or delegate to the state agency having possession of the property the authority to sell the property by sealed bids or auction.

(b) Mailing list of bidders. The commission will maintain a mailing list of companies or individuals who have applied to bid on surplus or salvage property. Names may be deleted from the mailing list for: failure to bid, failure to make payment, or failure to remove awarded items. A bidder who has been removed from the bidders list for failure to pay for or remove surplus property many not be reinstated until a written request has been presented to and approved by the Program Administrator of the Surplus Property Programs.

(c) Purchaser Fee. The commission or the agency shall assess and collect from the purchaser a fee over and above the proceeds from the sale of the property to recover the costs associated with the sale of the property. The fee shall be reviewed annually and shall be at least 2.0% but not more than 12% of sale proceeds.

(d) Sealed bids. Sealed bids will be handled in accordance with §113.5 of this title (relating to Bid Submission, Bid Opening, and Tabulation).

(1) If the value of any property or lot of property, either surplus or salvage, is estimated to be worth more than $5,000 of resale value, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity in which the property is located.

(2) When a bid deposit is required, the deposit must be in the amount specified in the bid invitation. Only the following will be considered as meeting the bid deposit requirements: a cashier's check, a certified check, a money order, or cash in the amount specified in the bid invitation. Failure to include a bid deposit in the proper amount will automatically disqualify a bid.

(3) The commission will notify the successful bidder or bidders, on a sealed bid sale of surplus or salvage property, that an award has been made to them and specify a period of time for payment. In the event that a successful bidder fails to make payment within the specified time, the commission may retain the bid deposit and consider it forfeited. Furthermore the bidder forfeits his rights to the property and ownership of the property remains with the state.

(4) When a successful bidder has paid the full amount due for the purchase of surplus or salvage property obtained through a sealed bid sale, the commission shall notify both the successful bidder and the agency holding the title of the surplus or salvage and authorize the transfer of possession. In the case of vehicles or other

items which require title transfer, it shall be the responsibility of the agency holding title to complete the transfer of title to the successful bidder. In the event a bidder pays for the property but fails to remove the property within the time specified, the bidder forfeits his rights to the property and ownership of the property reverts to the state.

(e) Auctions. Surplus or salvage sold through the auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of the commission that the purchaser has in good faith complied with the conditions of the sale. In the case of vehicles or other items carrying titles, the agency holding the original title shall be responsible for the transfer to the successful bidder. In the event that a successful bidder fails to make payment within the specified time, the bidder forfeits his rights to the property and ownership of the property remains with the state. In the event a bidder pays for the property but fails to remove the property within the time specified, the bidder forfeits his rights to the property and ownership of the property reverts to the state.

(f) Delegation of authority to state agency. If the commission determines that it is in the best interest of the state for an agency to dispose of its own surplus or salvage property to the public, it may authorize the agency to do so; however, an agency authorized to sell its own property to the public shall always seek competitive bids. The agency shall follow procedures provided by the commission at the time the delegation is granted and shall provide a report of the proceeds by assigned sale number no later than September 10 of each year for the prior fiscal year.

(g) Firearms. The purchaser of a surplus firearm must be a licensed firearms dealer.

(h) Rejection of bids. The state reserves the right to reject any bid or part of a bid, or waive minor technicalities.

(i) No resale value. If the commission or agency advertises surplus or salvage property for sale and receives no bids, or if items declared surplus or salvage by an agency have, in the judgment of the agency, no resale value, the agency may delete and dispose of the property in a manner to best serve the interest of the state.

(j) Delegation of deletion authority to the state agencies. The commission hereby delegates to the agency the authority to delete surplus or salvage property on the State Property Accounting System after disposition in accordance with these rules.

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 August 26, 1999.

TRD-9905443
Judy Ponder
General Counsel
General Services Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 463-3960

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Part 9. STATE AIRCRAFT POOLING BOARD

Chapter 181. GENERAL PROVISIONS

1 TAC §181.12

The State Aircraft Pooling Board proposes new §181.12 concerning certain contracts that the board may enter into at the request of a state agency. The only contracts affected by the rule are contracts with state agencies under which the board will provide aircraft fuel, storage or maintenance services for noncommercial aircraft that are temporarily being used on state business but that are not owned, leased, or operated by the state.

Jerry Daniels, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Daniels has also determined that for the first five year period the rule is in effect the public benefit anticipated as a result of administering the rule will be to make it more efficient for state agencies to provide officials and employees with required ground services for noncommercial aircraft being used on official state business. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted within 30 days of this publication to Jerry Daniels, State Aircraft Pooling Board, 10335 Golf Course Road, Austin, Texas 78719, (512) 936-8900.

The new rule is proposed under Texas Government Code, §2205.004, which provides the board with authority to contract with a state or federal governmental agency or a political subdivision to provide aircraft fuel or to provide aircraft maintenance services.

Texas Government Code, §2205.044, is affected by the proposed new rule.

§181.12. Certain Fuel and Maintenance Contracts.

(a) In this section:

(1) "Officer" includes a member of a board or a member of the legislature.

(2) "State agency" has the meaning assigned by Texas Government Code, §2205.002.

(b) This section applies only to contracts entered into between the board and a state agency under which the board will provide aircraft fuel, storage, or maintenance services for noncommercial aircraft that are temporarily being used on state agency business but that are owned, leased, or operated by the state.

(c) At the request of a state agency, the board may enter into a contract with the agency under which the board will provide aircraft fuel, storage, or maintenance services as available for noncommercial aircraft described by subsection (b).

(d) The state agency will be responsible under the contract for paying the board's rates and charges for fuel and services. The rates and charges will be determined in the same manner that rates and charges are determined under §181.8 of this title.

(e) The state agency must list as part of the contract and in contract amendments the officers and employees of the agency who are authorized to bring noncommercial aircraft to the facilities of the board for fueling, storage, or maintenance services under the contract. The authorized officer or employee of the agency must certify in writing to the board that the aircraft is currently being used in connection with state agency business.

(f) With the agreement of the comptroller, the board my also enter into an agreement with the state agency and the comptroller under which the board, to the extent appropriate, will accept all or part of the travel reimbursement for transportation by personal aircraft payable by the state to an officer or employee of the state agency as full or partial payment for fuel and services provided. Under the agreement, the state agency remains responsible for paying the amount of the board's rates and charges to the extend that they exceed the amount of the travel reimbursement transferred to the board's account under the agreement.

(g) The board may require other provisions in the contract as required by law or by practical considerations.

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 August 26, 1999.

TRD-9905439
Jerald A. Daniels
Executive Director
State Aircraft Pooling Board
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-8900

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Chapter 183. RULEMAKING PROCEDURE

1 TAC §§183.2-183.4

The State Aircraft Pooling Board proposes amendments to §§183.2-183.4 concerning rulemaking procedure. The amendments are being proposed in order to clarify and update legal references in the rules of the Board.

Jerry Daniels, Executive Director, has determined that for the first five year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Daniels has also determined that for the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to make the rules easier to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposals may be submitted within 30 days of this publication to Jerry Daniels, State Aircraft Pooling Board, 10335 Golf Course Road, Austin, Texas 78719, (512) 936-8900.

The amendments are proposed under Texas Government Code Title 10, Chapter 2205, §2205.010, which provides the Board the authority to adopt rules for conducting business.

There are no other statutes, articles or codes that will be affected by these proposed amendments.

§183.2. Adoption, Amendment, or Repeal of Rules.

All adoptions, amendments, or repeal of rules must be in compliance with the provisions of the *Texas Register* and Administrative Code (V.T.C.A., Government Code, Chapter 2001) [~~Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a)~~] and related legislation. The board may use informal conferences [~~conference~~] and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. The board may appoint advisory committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking.

§183.3. Petition for Adoption of Rules.

Any interested person may petition the board requesting the amendment, adoption, or repeal of a rule. Such petition must be in writing and signed by the person or persons requesting the amendment, adoption, or repeal. A petition will be deemed to be filed only when a signed copy for each board member is received at the office of the board, together with any fee required by statute or agency rule. A petition may be in any legible form, but must contain at least the following information:

(1) the full name, complete mailing address, and telephone number of the person or persons on whose behalf the petition is filed;

(2) the section [~~category~~] number and title under which it is proposed that the action be taken. If the request is to amend or repeal an existing rule, the existing rule must be identified by number and title;

(3) an explanation of the proposed rule, or an explanation of the amendment or reason for repeal if an amendment or repeal is being requested. The explanation should include any relevant background information necessary for [~~to~~] an understanding of the rule, and must include a statement of any foreseeable effects of the requested action should that action be taken;

(4) a statement of the statutory or other authority under which the requested action may be taken.

§183.4. Petition Decision by Board.

Within 30 [~~60~~] days after the next board meeting after submission of a petition requesting the adoption of a rule, the board shall [~~must~~] either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with §183.2 of this title (relating to Adoption, Amendment, or Repeal of Rules).

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 August 26, 1999.

TRD-9905440
Jerald A. Daniels
Executive Director
State Aircraft Pooling Board
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-8900

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1 TAC §183.5

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

The State Aircraft Pooling Board proposes the repeal of §183.5 concerning effective date. The repeal is being proposed because the reason for the rule no longer exists.

Jerry Daniels, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Daniels has also determined that for the first five years the repeal is in effect the public is not affected. There will be no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted within 30 days of this publication to Jerry Daniels, State Aircraft Pooling Board, 10335 Golf Course Road, Austin, Texas 78719, (512) 936-8900.

The repeal is proposed under Texas Government Code Title 10, Chapter 2205, §2205.010, which provides the Board the authority to adopt rules for conducting business.

There are no other statutes, articles or codes that will be affected by this proposed repeal.

§183.5. Effective Date.

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 August 26, 1999.

TRD-9905441
Jerald A. Daniels
Executive Director
State Aircraft Pooling Board
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-8900

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Part 12. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 251. REGIONAL PLANS–STANDARDS

1 TAC §251.11

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §251.11, concerning the establishment of a formal monitoring process to ensure compliance with applicable law, rules, polices and procedures. The new section is proposed to allow for improved methods of program monitoring and compliance with Commission policy and to meet the recommendations made by the State Auditor's Office in July 1998 that the ACSEC establish a formal monitoring process for service providers and that comprehensive contract monitoring standards, guidance, and training to the regional councils be developed.

James D. Goerke, Executive Director, has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Goerke has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be improved methods for program monitoring through established comprehensive contract monitoring standards to be used statewide. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

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

The new section is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, and 771.059; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards.

No other statutes, articles or codes are affected by the proposed new rule.

§251.11. Monitoring Policies and Procedures.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in this section, unless the context and use of the word or terms clearly indicates otherwise:

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

(2) 9-1-1 Equipment–Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(3) 9-1-1 Governmental Entity–The 9-1-1 provider as defined in Texas Health and Safety Code, Chapter 771.

(4) 9-1-1 Governmental Entity Jurisdiction–As defined in applicable law, Texas Health and Safety Code, Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(5) Advisory Commission on State Emergency Communications (ACSEC)–Also referred to as the Commission.

(6) Applicable Law–As defined in the Memorandum of Understanding (MOU), Article 2: Compliance with Applicable Law. Includes, but is not limited to, the State Administration of Emergency Communications Act, Chapter 771, Texas Health and Safety Code; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant Management Standards, Title 1, §§5.151-5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules".

(7) Interlocal Agreement–A contract executed between local governments, Regional Planning Commissions, or other state political subdivisions, to perform administrative functions or provide services, such as 9-1-1 telecommunications, cooperatively among themselves.

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

(9) Memorandum of Understanding (MOU)–An agreement executed between the Regional Planning Commission (RPC) and the ACSEC that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

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

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

(12) Strategic Plans–Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of §771.056(d), the ACSEC shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, §771.051, the ACSEC shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The ACSEC shall examine and approve or disapprove regional plans submitted by the state's 24 regional planning commissions (RPCs) as provided by §771.056. Per the MOU, the Commission reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs for compliance with applicable law, rules, policies and procedures. Monitoring activities shall provide ACSEC with the information and data necessary to best assist RPCs and Local Government in implementing and strengthening the 9-1-1 system in Texas.

(1) Monitoring Activity - The ACSEC shall monitor, at least annually, each RPC to assess the agency's administrative, fiscal, contractual, procurement, inventory, local monitoring, and program activities for compliance with applicable laws, rules, policies and procedures; and, effectiveness in implementing E9-1-1 service in its jurisdiction. The ACSEC shall develop procedures and guidelines by which to conduct all monitoring activities. State monitoring shall include the following:

(A) Evaluation of RPC policies and procedures for program quality and outcomes to ensure compliance with the (MOU), as well as the objectives and standards set forth in all ACSEC Rules, Policies and Procedures, and especially relating to the rules contained in this chapter;

(B) Determination of whether the RPC has demonstrated substantial compliance with oversight requirements, including:

(i) compliance with applicable provisions of the state's Uniform Grant Management Standards (UGMS);

(ii) competitive procurement procedures and documentation;

(iii) contract administration systems to ensure receipt of contracted deliverables;

(iv) ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds;

(v) maintenance of a current inventory of all 9-1-1 equipment;

(vi) maintenance of adequate and accurate fiscal records and documentation;

(vii) execution of interlocal agreements between RPC and participating local governments relating to the planning, development, operation, and provision of 9-1-1 service and the use of 9-1-1 funds, per the MOU, Article 4, Standard Interlocal Agreements with Local Governments.

(C) Examination of RPC 9-1-1 funds expended against the strategic plan component budgets and any limitations therein according to applicable law and rules.

(2) Monitoring Report and Response–The ACSEC will prepare a written report that describes the findings, and any possible violations, discovered during a monitoring review. ACSEC will complete a written monitoring report within 30 days of the conclusion of the initial monitoring activities, and will provide the RPC a copy of the report upon completion. The RPC will have opportunity to respond as outlined in subparagraphs (A)-(F) of this paragraph.

(A) The RPC shall provide written response to the monitoring report within 30 days of receipt of the report. The response should be provided or approved by the RPC Executive Director and/or the Executive Committee, according to RPC authority and internal procedures.

(B) The report and response will be presented to the Commission at its next regularly scheduled meeting. ACSEC Executive Director will also provide the Commission with written determinations and recommendations as to suggested corrective actions or disallowed costs that are established by precedent, policy or rule. If Executive Director concurs with RPC's response, he shall state his concurrence in the report to the Commission.

(C) The Commission may act to accept the Executive Director's recommendation and/or RPC response. The Commission will convey its acceptance of responses, resolutions or recommendations in writing to the RPC within 5 working days of any such action.

(D) The Commission may delay action pending requests for additional information or investigation, and any follow up actions deemed necessary for resolution. Any such requests shall be made in writing to the RPC within 5 working days. The RPC shall have 15 working days in which to provide additional information requested by the Commission. ACSEC Executive Director will present any additional information to the Commission at its next regularly scheduled meeting in conjunction with appropriate staff review and determination. Final resolution of monitoring findings shall be communicated to the RPC within 5 working days.

(E) The Commission may disallow specific expenditures of 9-1-1 funds, and may direct the RPC to repay the 9-1-1 fund of any disallowed expenditure. The ACSEC shall communicate any such disallowance to the RPC within 5 working days of Commission action.

(F) The RPC may appeal a decision to disallow expenditures by writing to the Executive Director of ACSEC. A review board will make recommendations to the ACSEC Executive Director for approval, disapproval, or approval with modifications, of monitoring exceptions. ACSEC will send the final written determination by the Executive Director to the RPC within 30 calendar days of the decision. Unless other repayment plans are made, the RPC must refund all funds due after a final determination is made by the Executive Director. Failure to comply with this provision will subject the RPC to the provisions of paragraph (5) of this subsection.

(3) Disallowance and Repayment–The RPC shall reimburse the 9-1-1 fund for any 9-1-1 surcharge funds and service fees (9-1-1 funds) expended by the RPC in noncompliance with applicable

law and rules. Such reimbursement shall be made in accordance with the procedure established in subparagraphs (A)-(E) of this paragraph.

(A) The RPC shall provide a written proposal to the Commission for repayment within 30 days of notification of disallowance of any 9-1-1 fund expenditures. Repayment to the 9-1-1 fund shall be completed within a reasonable length of time as established by the Commission, not to exceed 5 years.

(B) The RPC shall provide detail, in writing, of its efforts to recover 9-1-1 funds from its participating local governments and/or vendors, in compliance with the MOU, Section 2.4.

(C) The repayment plan shall be reviewed and approved by the RPC Executive Committee, or Board, prior to being submitted to the ACSEC.

(D) Upon receipt of the RPC repayment plan, ACSEC staff shall present the plan and staff recommendations to the Commission at its next regularly scheduled meeting.

(E) The Commission may accept or reject any repayment plan proposal. In either case, the RPC shall be notified of the Commission's action with 5 working days. In the case of rejection, this paragraph shall be repeated until resolution is accomplished.

(4) Monitoring of Repayment–ACSEC staff shall closely monitor repayment of any disallowed fees through review of Financial Status Reports, submitted quarterly, to the ACSEC. Any discrepancies or irregularities shall be reported to the ACSEC internal auditor and reported to the Commission.

(5) Repeated Problems or Findings and Sanctions–If subsequent annual monitoring review reveals repeated findings that have not been corrected from a prior year's monitoring report, the RPC shall be deemed to be in continued violation. In accordance with State law, the Commission may consider designating another administrative entity if it is determined that a continued violation by an RPC constitutes willful disregard of applicable law and rules, gross negligence, or failure to observe accepted standards of administration.

(c) RPC Monitoring of Interlocal Agreements and Performance–Per MOU, Article 4. Standard Interlocal Agreement with Local Governments, each RPC shall execute an agreement between itself and each of its participating local governments and/or PSAPs in order to establish responsibilities for implementation of 9-1-1 service, the use of 9-1-1 funds, and adherence to applicable law and rules. The RPC shall monitor, at least annually, the performance on these agreements with each of its local governmental entities.

(1) Local Monitoring Plan Development–Each RPC shall develop its own local-level monitoring plan that shall be incorporated into its 9-1-1 Strategic Plan. Local monitoring plans shall include, but are not limited to, the following listed in subparagraphs (A)-(B) of this paragraph:

(A) a schedule or timetable for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs and subcontractors;

(B) annual reviews of all subcontracts, especially addressing and/or addressing maintenance contracts.

(2) Compliance with MOU Stipulations–The RPC shall monitor each interlocal contract for performance of contract deliverables, which shall include the stipulations contained in the MOU, Article 4, *Standard Interlocal Agreements with Local Governments*.

(3) Documentation–Local monitoring activities, findings, recommendations and responses shall be documented in writing and retained for at least 5 years.

(4) Reporting Procedures–The RPC shall establish reporting procedures to convey the monitoring data to the RPC Executive Director, Executive Committee and the ACSEC.

(5) Reports to the ACSEC–The ACSEC shall require, at a minimum, the following documentation and information listed in subparagraphs (A)-(C) of this paragraph.

(A) Certification or other assurance that interlocal agreements have been executed between the RPC and each of its performing Local Governments. Such certification shall be communicated to the ACSEC within the RPC's biannual strategic plan submission, or upon the Commission's request.

(B) Local Monitoring Plans shall be submitted to the ACSEC in conjunction with the regularly scheduled biannual 9-1-1 Strategic Plan submission. Revisions to any such document shall be submitted to the ACSEC in writing as they occur.

(C) Local monitoring findings shall be submitted to the ACSEC as they are completed and approved by the RPC Executive Director, according to the local schedule, and shall be submitted in conjunction to regular ACSEC performance reporting schedules. ACSEC shall exercise its right to conduct monitoring activities as a result of the local monitoring reports.

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 August 23, 1999.

TRD-9905343
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 305-6933

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TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 1. GENERAL PROCEDURES

Subchapter A. GENERAL RULES OF PRACTICE

4 TAC §1.41

The Texas Department of Agriculture (the department) proposes new §1.41, concerning private real property rights affected by governmental action. The new section is proposed to establish guidelines by which the department will determine if private property rights are affected by actions taken by the agency, in accordance with the Government Code, Chapter 2007, and guidelines established by the Office of the Attorney General under that section, and to establish general categories of agency actions designated as not impacting private property rights.

Kathryn Reed, General Counsel, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications to state or local governments as a result of administration or enforcement of the new section.

Ms. Reed has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated will be that the agency will have a uniform procedure for evaluating the impact of its actions on private real property. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section, as proposed.

Comments on the proposal may be submitted to Kathryn Reed, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §12.016 which provides the department with the authority to adopt rules to implement the Texas Agriculture Code; and the Texas Government Code, Chapter 2007, which establishes guidelines for governmental action with regard to private real property.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12, 71 and 74.

§1.41. Private Real Property Rights Affected by Governmental Action.

(a) Purpose. The purpose of this section is to establish procedures whereby the Texas Department of Agriculture (the department) determines if private real property rights are affected by governmental action taken by the department or the commissioner of agriculture.

(b) Categorical Determination. Categorical determinations that no private real property interests are affected by the proposed governmental action obviates need for further compliance with the Private Real Property Preservation Act, Government Code, Chapter 2007 (the Act). The following activities and programs, and policies or regulations promulgated to implement them do not affect private real property interests:

(1) Activities related to personnel management;

(2) Activities related to purchase of goods and services;

(3) Activities related to the general administrative practice and procedures of the agency;

(4) Requirements or activities relating to the implementation of the agency's promotional marketing or financial assistance programs;

(5) Requirements related to hearings and appeals;

(6) Activities related to the issuance of licenses as part of the agency's farmers market certification program;

(7) Activities related to the department's operation of its livestock export facilities;

(8) Activities related to the implementation of the agency's grant programs; and

(9) Activities related to the implementation of the following agency regulatory programs:

(A) Agri-Systems Program, including organic certification, and plant quality programs;

(B) Cooperative Inspection Program conducted jointly with United States Department of Agriculture for the inspection of fresh fruits, vegetables, nuts and peanuts;

(C) Commodity Programs including the Agricultural Protective Act, Aquaculture, Cooperative Marketing Association, Commodity Warehouse, Egg Quality, and Piece Rate programs;

(D) Weights and Measures programs including the Fuel Quality and Public Weigher programs;

(E) Seed programs including the Seed Quality, Seed and Plant Certification and Seed Arbitration programs; and

(F) Pesticide programs including the Pesticide Applicator Licensing and Pesticide Product Registration programs, Worker Protection program, Certification and Training program, and Risk Assessment, Toxicology and Endangered Species programs.

(c) Guide for Evaluating Proposed Governmental Actions. The following governmental actions are covered under the Act:

(1) actions involving adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) actions imposing a physical invasion or requiring a dedication or exaction of private real property;

(3) action that involves the enforcement of an action listed in paragraphs (1) and (2) of this subsection, whether the enforcement of the action is accomplished through the use of permitting, citations, orders, judicial, or quasi- judicial proceedings, or other similar means.

(d) Making a No Private Real Property Impact (No PRPI) Determination. If it is determined that there are no private real property interests impacted by a specific governmental action, the need for any further compliance with the Act is obviated.

(1) A No PRPI determination is determined by answering the following question: Does the covered governmental action result in a burden on private real property as that term is defined in the Act?

(2) Whether the governmental action results in a burden on private real property is determined by the answers to the following questions.

(A) Will the action involve a physical seizure or occupation of private real property?

(B) Will the action involve a regulation of private real property or of activities occurring on private real property?

(C) Will the action deny a fundamental right of ownership? That is, will it diminish or destroy the right of a private property owner to exclude others from the property, to possess it, or dispose of it?

(D) Will the value of private real property that is the subject of the action be reduced by 25% or more as a result of the action?

(E) Will the action deprive the owner of all economically viable uses of the property?

(3) If the answer to each of the questions posed in subparagraphs (2)(A)-(E) of this subsection is NO, there is a No PRPI determination, and no further action pursuant to the Act is needed for the action. If the answer to any of the questions posed is YES, a Taking Impact Assessment is required.

(e) Taking Impact Assessment (TIA).

(1) Prior to Completion of TIA. Before a TIA is completed, it should be determined by the procedure established by subsections (b)-(c) of this section that:

(A) the contemplated governmental action does not fall within the categorical determinations for which no TIA is required;

(B) the contemplated governmental action does not fall within the exceptions to the Act; and

(C) there may be an impact on private real property interests.

(2) Elements of the TIA. The specific elements that must be evaluated when proposing to undertake a governmental action that requires a TIA include the following:

(A) the specific purpose of the proposed action and whether and how the proposed action substantially advances its stated purpose; and

(B) the burdens imposed on private real property; and

(C) the benefits to society resulting from the proposed use of private real property; and

(D) reasonable alternative actions that could accomplish the specified purpose, including a comparison, evaluation, or explanation of the following:

(i) how an alternative action would further the specified purpose; and

(ii) whether an alternative action would constitute a taking; and

(E) whether engaging in the proposed governmental action will constitute a "taking" as determined by answering the following questions.

(i) Is there a "taking" under the United States Constitution?

(ii) Is there a "taking" under the Texas Constitution?

(iii) Is there a "taking" under the Act (25% diminution in value or property subject of the governmental action)?

(f) A TIA prepared under this section is public information.

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

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

TRD-9905500
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

Part 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Chapter 23. GENERAL

10 TAC §§23.1-23.22

The Texas Department of Housing and Community Affairs (Department) proposes the repeal of §§23.1 - 23.22 concerning General Provisions. The sections are proposed to be repealed in order to discard outdated and unnecessary rules as well as comply with §167, Article IX, of the General Appropriations Act.

Ms. Daisy A. Stiner, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted to Anne O. Paddock, Deputy General Counsel, P.O. Box 13941, Austin, Texas, 78711-3941, within thirty (30) days of the date of this publication.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, and §167, Article IX, of the General Appropriations Act.

The Texas Administrative Code, Title 10, will be affected by this proposed repeal. The Texas Government Code, Chapter 2306, will not be affected by this proposed repeal.

§23.1. Submission of Documents.
§23.2. Effective Time of Notice.
§23.3. Computation of Time.
§23.4. Notice of Hearings.
§23.5. Copy of Notice to Lieutenant Governor and Speaker.
§23.6. Material Available for Inspection.
§23.7. Mailing of Notice.
§23.8. Hearing Examiner.
§23.9. Testimony.
§23.10. Conduct and Decorum.
§23.11. Appearance.
§23.12. Failure to Appear.
§23.13. Affidavit by Representative.
§23.14. Attorney of Record.
§23.15. Lead Counsel.
§23.16. Motions.
§23.17. Subpoenas and Depositions.
§23.18. Oral Presentation.
§23.19. Exhibits.
§23.20. Final Decisions.
§23.21. Motions for Rehearing.
§23.22. Reporter and Transcript.

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 August 27, 1999.

TRD-9905445
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 475-3726

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.52 relating to Reliability and Continuity of Service, a new §25.53 relating to Emergency Operations Plans, and an amendment to §25.81 relating to Service Quality Reports. The proposed amendments will revise the rules to be consistent with Senate Bill 7, 76th Legislature, Regular Session (1999), passed in May 1999. Project Number 21076 has been assigned to this proceeding. Copies of the proposed rule and amendments may be obtained in Central Records and on the commission's web page at http://www.puc.state.tx.us/rulemake/21076/21076.htm.

Proposed additions to §25.52 will require electric utilities to maintain adequately trained and experienced personnel throughout its service area, and prohibit electric utilities from neglecting any local neighborhoods or geographic areas, with regard to system reliability. The proposed amendments to §25.52 will also revise the method of evaluating distribution-feeder performance to be consistent with the recent legislation.

Subsection (f) of §25.52 relating to emergency operations plans is proposed for deletion from this section and is proposed, with formatting and filing deadline changes, as new §25.53. This will facilitate the amendment of the new section in a subsequent rulemaking to reflect the relationships between the customer, the retail electric provider (REP), and the transmission and distribution utility (TDU). Finally, the amendment to §25.81 will require electric utilities to file Service Quality Reports annually instead of semi-annually.

This rulemaking project initially considered amendments to §25.22 of this title (relating to Request for Service), to revise the response times for customer service installations and line extensions. Due to the need for this rule to reflect the relationships between the customer, the REP, and the TDU, amendments to §25.22 will also be considered in a subsequent rulemaking project.

Mel Eckhoff, Engineering Specialist, Electric Industry Analysis, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. Mr. Eckhoff has also determined that for each year of the first five years the proposed sections are in effect there will be no adverse affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022. There will be no adverse effect on small businesses or micro-businesses as a result of enforcing these sections. Mr. Eckhoff has also determined that there will be no additional economic costs to persons who are required to comply with these sections as proposed.

Mr. Eckhoff has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be to ensure a high level of service quality and reliability for consumers of electricity.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Wednesday, October 27, 1999, at 9:30 a.m.

The commission staff held a workshop on this rulemaking on August 10, 1999, and discussed the proposed amendments with interested parties. Comments from the workshop were considered and are reflected in these proposed amendments.

Interested parties are encouraged to provide comments on any relevant issues related to the proposed amendments to these rules. Additionally, as a result of discussions at the workshop, the commission requests that interested parties address the two questions that follow.

Under the authority granted the commission in the Public Utility Regulatory Act (PURA) §38.005(c), the commission shall require electric utilities to maintain adequately trained and experienced personnel to maintain reliability. The commission proposes to amend §25.52 by adding subsection (b)(4), which requires utilities to "maintain adequately trained and experienced personnel throughout its service area." Can an electric utility satisfy the statutory requirements to "maintain adequately trained and experienced personnel throughout its service area" through the use of professional contractors or must all "personnel" be employees of the electric utility?

PURA §38.005(b) and §25.52(f)(2)(A) and (B) of the proposed amendment indicate that the commission will evaluate the performance of distribution feeders "for any two consecutive reporting years." Which are the initial two consecutive reporting years that the commission should evaluate; 1998 and 1999, 1999 and 2000, 2000 and 2001, or other?

Comments on the proposed amendments and new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. All comments should refer to Project Number 21076. When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples, which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts. The commission invites specific comments regarding the costs associated with,

and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section.

Subchapter C. QUALITY OF SERVICE

16 TAC §25.52, §25.53

This amendment and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provide the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §38.005 which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.151, 14.153, 31.001, 32.001, 37.151, 38.001, 38.002, 38.005, 38.021, 38.022, 38.071, and 39.101.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities as defined by the Public Utility Regulatory Act (PURA) §31.002(6) and all transmission and distribution utilities as defined by PURA §31.002(19) [~~providing distribution or transmission service in Texas~~]. The term "utility" as used in this section shall mean an electric utility and/or a transmission and distribution utility.

(b) General.

(1)-(3) (No change.)

(4) Each utility shall maintain adequately trained and experienced personnel throughout its service area so that the utility is able to fully and adequately comply with the service quality and reliability standards.

(5) With regard to system reliability, no utility shall neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas.

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

(e) Notice of significant interruptions.

(1) Initial notice. A [~~An electric~~] utility shall notify the commission, in a method prescribed by the commission, as soon as reasonably possible after it has determined that a [~~an~~] significant interruption has occurred. The initial notice shall include the general location of the significant interruption, the approximate number of customers affected, the cause if known, the time of the event, and the estimated time of full restoration. The initial notice shall also include the name and telephone number of the utility contact person, and shall indicate whether local authorities and media are aware of the event. If the duration of the significant interruption is greater than 24 hours, the utility shall update this information daily and file a summary report.

(2) (No change.)

~~[(f) Emergency Operations Plan. By December 31, 1998, each utility shall file with the commission a general description of its emergency operations plan. Each utility shall update its plan by filing a revised description that clearly indicates any changes in the plan at least 30 days before such changes take effect. A general description of the plan shall also be made available at the utility's main office for inspection by the public. A complete copy of the plan shall be made available at the utility's main office for inspection by the commission or its staff upon request. Each electric utility's emergency plan must include, but need not be limited to, the following:~~]

~~[(1) A registry of critical loads directly served by the utility. This registry shall be updated as necessary but not less often than annually. The description filed with the commission shall include the location of the registry, how the utility ensures that it is maintaining an accurate registry, how the utility will provide assistance to critical load customers in the event of an unplanned outage, how the utility intends to communicate with the critical load customers, and how the utility is training its staff with respect to serving critical customers and loads.~~]

~~[(2) A communications plan that describes the procedures for contacting the media and customers and critical loads directly served by the utility as soon as reasonably possible either before or at the onset of an electrical emergency. The communications plan should also address how the utility's telephone system and complaint handling procedures will be augmented during an emergency. Utilities should make every reasonable effort to solicit help from cogenerators and independent power producers during times of generation shortages to prevent interruptions in service;~~]

~~[(3) curtailment priorities and procedures for shedding load and rotating black-outs;~~]

~~[(4) priorities for restoration of service;~~]

~~[(5) a summary of power plant weatherization plans and procedures;~~]

~~[(6) a summary of the utility's alternative fuel and storage capacity;~~]

~~[(7) a draft of the utility's "Year-2000" contingency plan and mitigation strategies for dealing with potential failures caused by computers that are not year 2000 ready or year 2000 compliant shall be filed by December 31, 1998. A final version shall be filed no later than June 30, 1999. This plan shall identify potentially vulnerable systems and business processes and prioritize them. The plan shall also include the utility's plans for backups for its customers' critical loads and processes, and report estimated costs for contingency operations.~~]

(f) [~~(g)~~] System reliability. Reliability standards shall apply to each [~~electric~~] utility, and shall be limited to the Texas jurisdiction. [~~The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems.~~] A "reporting year" is the 12-month period beginning January 1 [~~May 1st~~] and ending December 31 [~~April 30th~~] of each year.

(1) System-wide standards. The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. Interim standards shall be established for the 24-month period ending December 31 [~~April 30~~], 1999. The interim standards shall be the system-wide average of the 1998 and the 1999 reporting years for each reliability index. The interim standards will be adjusted based on the 36-month period ending December 31 [~~April 30~~], 2000. The resulting standards will be the average of the three reporting years 1998, 1999, and 2000.

(A)-(B) (No change.)

(2) Distribution feeder performance [~~standards~~]. The commission will evaluate the performance of distribution feeders with ten or more customers beginning in the year 2000. [~~Standards shall be established for the 24-month period ending April 30, 1999. The standards shall be average of the 1998 and the 1999 reporting years for each index at the value represented by the 10% of the distribution feeders with the highest values.~~]

(A) Each utility shall maintain and operate its distribution system so that no distribution feeder with more than ten customers sustains a SAIDI or SAIFI value for a reporting year that is among the highest (worst) 10% of that utility's feeders for any two consecutive reporting years. [~~SAIFI. Each utility shall maintain and operate its electric distribution system so that 92% of the distribution feeders meet or exceed the SAIFI standard for the 2000 reporting year. For the 2001 reporting year and thereafter, 96% of the distribution feeders shall meet or exceed the SAIFI standard.~~]

(B) Each utility shall maintain and operate its distribution system so that no distribution feeder with more than ten customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years. [~~SAIDI. Each utility shall maintain and operate its electric distribution system so that 92% of the distribution feeders meet or exceed the SAIDI standard for the 2000 reporting year. For the 2001 reporting year and thereafter, 96% of the distribution feeders shall meet or exceed the SAIDI standard.~~]

~~[(C) Each utility shall manage its distribution feeders so that no distribution feeder shall sustain 12-month SAIDI or SAIFI values that are among the highest (worst) 2.0% of that utility's feeders for two or more consecutive reporting years. Distribution feeder performance shall comply with this provision no later than April 30, 2000.]~~

§25.53. Emergency Operations Plan.

(a) Filing requirements. By December 31, 2000, each utility shall file with the commission a general description of its emergency operations plan. Each utility shall update its plan by filing a revised description that clearly indicates any changes in the plan at least 30 days before such changes take effect.

(b) Copy available for inspection. A general description of the plan shall also be made available at the utility's main office for inspection by the public. A complete copy of the plan shall be made available at the utility's main office for inspection by the commission or its staff upon request.

(c) Information to be included in the plan. Each utility's emergency plan must include, but need not be limited to, the following:

(1) A registry of critical loads directly served by the utility. This registry shall be updated as necessary but not less often than annually. The description filed with the commission shall include the location of the registry, how the utility ensures that it is maintaining an accurate registry, how the utility will provide assistance to critical load customers in the event of an unplanned outage, how the utility intends to communicate with the critical load customers, and how the utility is training its staff with respect to serving critical customers and loads.

(2) A communications plan that describes the procedures for contacting the media, customers and critical loads directly served by the utility as soon as reasonably possible either before or at the onset of an electrical emergency. The communications plan should also address how the utility's telephone system and complaint handling procedures will be augmented during an emergency. Utilities should make every reasonable effort to solicit help from cogenerators and independent power producers during times of generation shortages to prevent interruptions in service;

(3) curtailment priorities and procedures for shedding load and rotating black-outs;

(4) priorities for restoration of service;

(5) a summary of power plant weatherization plans and procedures;

(6) a summary of the utility's alternative fuel and storage capacity;

(7) A final version of the utility's "Year-2000" contingency plan and mitigation strategies for dealing with potential failures caused by computers that are not year 2000 ready or year 2000 compliant shall be filed by June 30, 1999. This plan shall identify potentially vulnerable systems and business processes and prioritize them. The plan shall also include the utility's plans for backups for its customers' critical loads and processes, and report estimated costs for contingency operations.

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 August 30, 1999.

TRD-9905461
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-7308

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.81

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provide the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §38.005 which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.151, 14.153, 31.001, 32.001, 37.151, 38.001, 38.002, 38.005, 38.021, 38.022, 38.071, and 39.101.

§25.81. Service Quality Reports.

Service quality reports shall be submitted [~~semi-~~] annually no later than February 14 of each year on a form prescribed by the commission.

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

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

TRD-9905462
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-7308

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Subchapter Q. UNBUNDLING AND MARKET POWER

Division 1. UNBUNDLING

16 TAC §§25.341-25.346

The Public Utility Commission of Texas (commission) proposes new §25.341, relating to Definitions; new §25.342, relating to Electric Business Separation; new §25.343, relating to Competitive Energy Services; new §25.344, relating to Cost Separation Proceedings; new §25.345, relating to Recovery of Stranded Costs Through Competition Transition Charge; and new §25.346, relating to Separation of Electric Utility Metering and Billing Costs and Activities. These sections will be located in new Subchapter Q of this title (relating to Unbundling and Market Power). Project Number 21083 has been assigned to this proceeding.

Project Number 21083, *Cost Unbundling and Separation of Utility Business Activities, Including Separation of Competitive Energy Services and Distributive Generation* was established July 7, 1999. Informal task force meetings and workshops with commission staff and interested parties were conducted during July and August.

Senate Bill 7, which amends several sections of the Public Utility Regulatory Act (Vernon 1999) (PURA) was passed by the 76th Texas Legislature and is effective September 1, 1999, Act of May 27, 1999, 76th Legislature, Regular Session (1999) (SB 7). The Legislature determined that the production and sale of electricity is not a monopoly warranting regulation of rates, operations, and services and that the public interest in competitive electric markets requires that, except for transmission and distribution (T&D) services and for the recovery of stranded costs, electric services and their prices should be determined by customer choices and the normal forces of competition. The Legislature enacted PURA Chapter 39 to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry.

The electric industry will be in a period of transition to competition until January 1, 2002, when each electric utility is required by PURA §39.051 to separate its business activities from one another into the following units: a power generation company, a retail electric provider (REP), and a transmission and distribution company. This separation may be accomplished through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company, or through the sale of assets to a third party. On or before September 1, 2000, each electric utility shall separate from its regulated utility activities its customer energy services business activities that are already widely available in the competitive market. By January 10, 2000, utilities are required to file with the commission plans describing how they intend to unbundle their business activities in a manner that provides for a separation of personnel, information flow, functions, and operations. On or before April 1, 2000, each electric utility shall file proposed tariffs for its proposed transmission and distribution utility (T&D utility) pursuant to PURA §39.201. Electric utilities are allowed to recovery all of their net, verifiable, nonmitigable stranded costs incurred in purchasing power and providing electric generation service pursuant to PURA §39.251 through §39.265.

In proposing these rules relating to the unbundling of regulated and non-regulated activities, the commission has four objectives. First, the commission seeks to implement on January 1, 2002, a competitive retail electric market that allows each retail customer to choose the customer's provider of electricity and that encourages full and fair competition among all providers of electricity. Second, the commission will allow utilities with uneconomic generation-related assets and purchased power contracts to recover the reasonable excess costs over market (ECOM) of those assets and purchased power contracts. Third, the commission desires to protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice. Fourth, the commission seeks to prohibit practices between regulated and competitive activities that may unreasonably restrict, impair, or reduce the level of competition during the transitional separation of personnel, information flow, functions, and operations, and after a competitive market is established.

Proposed §25.341 provides definitions for new terms used in Subchapter Q.

Proposed §25.342 implements PURA §39.051 by prescribing the manner by which electric utilities should separate their business into different components.

Proposed §25.343 implements PURA §39.051(a) by prescribing the manner by which an electric utility must separate its competitive energy services.

Proposed §25.344 implements PURA §39.201 by prescribing the manner by which the utility should separate its costs and prepare its transmission and distribution tariffs.

Proposed §25.345 specifies the manner by which utilities with stranded cost may recover stranded costs through the use of a competitive transition charge. The section provides the means for allocating and collecting stranded costs from the utility customers.

Proposed §25.346 implements PURA §39.107 and specifies the billing and metering services an electric utility may offer and the manner in which it may offer such services.

The commission seeks any comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rules.

In addition, the commission requests that interested parties specifically address the following issues:

1. Does the provision in PURA §39.252 that stranded costs be allocated "in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design" require that the specific numeric allocators or only the methodology for the allocator be used for the purposes of allocating ECOM among customer classes?

2. Is the allocation of stranded costs to classes pursuant to PURA §39.252 meant to fix each classes share of ECOM, or is the allocation meant to be used to design a fixed competition transition charge (CTC) charge for each class? In other words, as any given customer class experiences load growth, should the benefits of that growth be retained within the class in the form of a declining CTC charge or more rapid collection, or should those benefits be spread over the entire system?

3. If the allocation of stranded costs is fixed to one or more classes, what is the best method to account for potential

migration of commercial, industrial, and non-firm customers between classes, to on-site generation, or out of the utility's service territory? For example, if migration concerns can be mitigated through the consolidation of some classes, how should existing classes be combined for the purposes of stranded cost collection? Should customers who remain in classes that experience large amounts of out-migration be protected from having to bear increasing responsibility for that class's stranded costs?

4. How should the existing rates and riders be consolidated for the purposes of transmission and distribution charges?

5. What rate design for non-bypassable charges facilitates simple billing to retail electric providers while also preserving a reasonable "shopping credit" under the price-to-beat?

6. What level of interaction should the transmission and distribution utility have with the end-use customer? For example, should end-use customers be able to contract and be billed for transmission and/or distribution services, directly from the T&D utility, or should all procurement of T&D service be through the customer's REP? Additionally, are there services for which the T&D utility should directly bill the end-use customer, and if so, does the T&D utility therefore need to retain a customer collections function?

7. After customer choice is introduced should a T&D utility be able to provide an energy service that is capable of being provided by a competitor if it is not widely available?

8. Are there any circumstances, such as reliability concerns, under which an electric utility should be able to provide a widely available energy service after September 1, 2000?

9. If the commission allows utilities to petition to provide energy services that could be provided by a competitor but are not yet widely available, should the permission to provide these services be for an express period of time?

10. After September 1, 2000, should an electric utility or a transmission and distribution utility be permitted to engage in economic development and community support activities? If so, should there be limitations on what they can do? Should the cost of engaging in such activities be recoverable from ratepayers?

11. What, if any, bright line standard(s) could the commission incorporate in the rule to delineate the education, advertising, and economic development and community support activities that an electric utility or a transmission or distribution utility can do after September 1, 2000?

12. Should either an electric utility or a transmission and distribution utility be able to provide street lighting after September 1, 2000? If so, should there be any limitation on the provision of such service or specific terms or conditions under which the utility is allowed to provide such service? If an electric utility or a transmission and distribution utility should not be allowed to provide street lighting in total, is there some portion of the service that they should be allowed to provide?

13. What advanced metering services and equipment, if any, should be included within the definition of competitive energy services as defined in the proposed rules?

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Kit Pevoto, assistant director, Office of Regulatory Affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of the enforcing or administering the sections.

Ms. Pevoto also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing these sections will be improved regulatory oversight of electric utilities and enhanced competition in the provision of energy-related services. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections.

It is anticipated that there will be no economic costs incurred by persons who are required to comply with the new sections as proposed beyond those costs caused by the underlying statutes that these new sections implement. The costs caused by the underlying statute incurred are likely to vary from utility to utility, and are difficult to ascertain. The benefits accruing from implementation of the statute by these proposed sections, however, are expected to outweigh these costs.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Tuesday, October 19, 1999, at 9:00 a.m.

Comments on the proposed new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas, 78711-3326, within 25 days after publication. Reply comments may be submitted within 35 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 21083.

These sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1999) (PURA), and Act of May 27, 1999, 76th Legislature, Regular Session (1999), Senate Bill 7, §39 (to be codified at Texas Utilities Code Annotated §§39.001- 39.265) (SB 7), §§11.002(a), 14.001, 14.002, 14.151, 14.154, 38.021, 38.022, 39.001, 39.051, 39.107, 39.157, 39.201, and 39.251 through 39.265. Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the commission to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce

rules reasonably required in the exercise of its powers and jurisdiction. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility. Section 14.154 grants the commission limited authority over the utility's affiliates, with respect to their transactions with the utility. Section 38.021 requires that utilities not grant an unreasonable preference to or impose an unreasonable disadvantage on different persons in the same classification. Section 38.022 requires that utilities not discriminate against competitors or engage in practices that restrict or impair competition in the electric market. Section 39.001 states the legislative policy and purpose for a competitive electric power industry. Section 39.051 requires that each electric utility unbundle personnel, information flow, functions, and operations into a power generation company, a retail electric provider, and a transmission and distribution company. Section 39.107 grants the commission authority to adopt provisions regarding the metering and billing services. Section 39.157 grants the commission authority to take actions to address market power and adopt rules and enforcement procedures to govern transactions or activities between utilities and their affiliates. Section 39.201 requires each electric utility to file, on or before, April 1, 2000, proposed tariffs for its proposed transmission and distribution utility. Sections 39.251 through 39.265 grant the commission authority to allow electric utilities to recover stranded costs through a competition transition charge.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 14.151, 14.154, 38.021, 38.022, 39.001, 39.051, 39.107, 39.157, 39.201, and 39.251- 39.265.

§25.341. Definitions.

The following words and terms, when used in Division I of this subchapter (relating to Unbundling and Market Power), shall have the following meanings, unless the context clearly indicates otherwise:

(1) Above market purchased power costs–Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected utilities–A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with the Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by the Public Utility Regulatory Act (PURA) §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) this state or an agency of this state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(3) Advanced metering–Includes any metering equipment or service not included and performed by the transmission and distribution utility as defined by paragraph (26) of this section.

(4) Additional billing services–Includes any services related to PURA §39.107(e) or other retail billing system services not included in the list of transmission and distribution utility billing services under this section.

(5) Competition transition charge (CTC)–Any nonbypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(6) Competitive energy services–Customer energy services business activities which are capable of being provided on a competitive basis in the retail market. Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to:

(A) energy-consuming, customer-premise equipment;

(B) the provision of energy efficiency and control of dispatchable load management services;

(C) the provision of technical assistance relating to any customer-premises process or device that consumes electricity, including energy audits;

(D) customer or facility specific energy efficiency, energy conservation, power quality and reliability equipment and related diagnostic services;

(E) the provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;

(F) customer-premises transformation equipment, power-generation equipment and related services;

(G) the provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including electrical pulse service;

(H) communications services related to any energy service not essential for the retail sale of electricity;

(I) home and property security services;

(J) non-roadway, outdoor security lighting;

(K) building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;

(L) hedging and risk management services;

(M) propane and other energy-based services;

(N) retail marketing, selling, demonstration, and merchant activities;

(O) facilities operations and management;

(P) controls and other premises energy management systems, environmental control systems, and related services;

(Q) premise energy or fuel storage facilities;

(R) performance contracting (commercial, institutional and industrial);

(S) indoor air quality products (including, but not limited to air filtration, electronic and electrostatic filters, and humidifiers);

(T) duct sealing and duct cleaning;

(U) air balancing;

(V) customer education, including school programs and community education activities except for those commission-approved education programs specific to transmission and distribution that do not benefit the utility's affiliate(s);

(W) advertising, except for commission-approved safety advertising specific to transmission and distribution that do not benefit the utility's affiliate(s);

(X) economic development and community affairs except for commission- approved programs specific to transmission and distribution that do not benefit the utility's affiliate(s);

(Y) other activities identified by the commission.

(7) Discretionary service–Service that is related to, but not essential to, the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third party facilities.

(8) Distribution–For purposes of §25.344(g)(2)(C) of this title (relating to Cost Separation Proceedings), distribution relates to system and discretionary services associated with facilities below 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third party electric grid facilities, to the point of interconnection with a retail customer or other third party facilities, and related processes necessary to perform such transformation and movement. Distribution does not include activities related to transmission and distribution utility billing services, additional billing services, transmission and distribution utility metering services, and transmission and distribution customer services as defined by this section.

(9) Electronic data interchange–The computer application to computer application exchange of business information in a standard format.

(10) Energy service–As defined in §25.223 of this title (relating to Unbundling of Energy Service).

(11) Existing purchased power contract–A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(12) Generation–For purpose of §25.344(g)(2)(A), generation includes assets, activities and processes necessary and related to the production of electricity for sale. Generation begins with the acquisition of fuels and their conversion to electricity and ends where the generation company's facilities tie into the facilities of the transmission and distribution system.

(13) Generation assets–All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(14) Market value–For non-nuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(15) Power generation company–A person that:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(16) Purchased power market value–The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(17) Retail electric provider–A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(18) Retail stranded costs–Part of net stranded cost associated with the provision of retail service.

(19) Standard meter–The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to render an end-use customer's charges for transmission and distribution service.

(20) Stranded costs–The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial

Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(21) System service–Service that is essential to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third party facility. System services include, but are not limited to, the following:

(A) the regulation and control of electricity in the transmission and distribution system;

(B) planning, design, construction, operation, maintenance, repair, retirement, or replacement of transmission and distribution facilities, equipment, and protective devices;

(C) transmission and distribution system voltage and power continuity;

(D) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner;

(E) commission-approved public education and safety communication programs specific to transmission and distribution;

(F) transmission and distribution utility standard metering and billing services as defined by this section;

(G) specific commission-approved administration of market neutral programs of incentives for energy efficiency programs, and;

(H) line safety, including tree trimming.

(22) Transmission–For purposes of §25.344(g)(2)(B) of this title, transmission relates to system and discretionary services associated with facilities at or above 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third party electric grid facilities, to the point of interconnection with distribution, retail customer or other third party facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering system services, and transmission and distribution utility customer services as defined by this section.

(23) Transmission and distribution utility–A person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under PURA §39.152, but does not include a municipally owned utility or an electric cooperative.

(24) Transmission and distribution utility billing system services–Services related to the production and remittance of a bill to a retail electric provider for the transmission and distribution charges applicable to the retail electric provider's customers as prescribed by PURA §39.107(d), and billing for wholesale transmission service to entities that qualify for such service. Transmission and distribution utility billing system services may include, but are not limited to, the following:

(A) generation of billing charges by application of rates to customer's meter readings, as applicable;

(B) presentation of charges to retail electric providers for the actual services provided and the rendering of bills;

(C) extension of credit to and collection of payments from retail electric providers;

(D) disbursement of funds collected;

(E) customer account data management;

(F) customer care and call center activities related to billing inquiries by retail electric providers;

(G) administrative activities necessary to maintain a retail electric provider billing account;

(H) an operating billing system, and;

(I) error investigation and resolution.

(25) Transmission and distribution utility customer service–For purposes of §25.344(g)(2)(G) of this title, transmission and distribution customer service relates to system and discretionary services associated with the utility's energy efficiency programs, demand-side management programs, public safety advertising, tariff administration, and any other customer services.

(26) Transmission and distribution utility metering system services–Services that relate to the installation, maintenance, and polling of an end-use customer's standard meter. Transmission and distribution utility metering system services may include, but are not limited to, the following:

(A) ownership of standard meter equipment and meter parts;

(B) storage of standard meters and meter parts not in service;

(C) measurement or estimation of the electricity consumed or demanded by a retail electric consumer during a specified period limited to the customer usage necessary for the rendering of a monthly electric bill;

(D) meter calibration and testing;

(E) meter reading, including non-interval, interval, and remote meter reading;

(F) individual customer outage detection and usage monitoring;

(G) theft detection and prevention;

(H) customer account maintenance;

(I) installation or removal of metering equipment;

(J) an operating metering system, and;

(K) error investigation and re-reads.

§25.342. Electric Business Separation.

(a) Purpose. The purpose of this section is to identify the competitive electric industry business activities that must be separated from the regulated transmission and distribution utility and performed by a power generation company (PGC), a retail electric provider (REP), or some other business unit pursuant to the Public Utility

Regulatory Act (PURA) §39.051. This section establishes procedures for the separation of such business activities.

(b) Application. This section shall apply to affected utilities.

(c) Compliance and timing.

(1) Electric utilities must file a business separation plan on or before January 10, 2000, pursuant to PURA §39.051(e).

(2) Notwithstanding any other provision in this section, an electric utility not subject to this section until the expiration of the exemption set forth in PURA §39.102(c), must file a business separation plan on or before 260 days prior to the expiration of the exemption. Notwithstanding any other provision in this section, on or before the expiration of the exemption set forth in PURA §39.102(c), such an electric utility shall separate from its regulated utility activities its customer energy services business activities and shall separate its business activities from one another into the three units described in subsection (d)(2) of this section.

(3) Upon review of the filing, the commission shall adopt the electric utility's plan for business separation, adopt the plan with changes, or reject the plan and require the electric utility to file a new plan.

(d) Business separation.

(1) An electric utility may not offer competitive energy services after September 1, 2000, however, an electric utility may petition the commission pursuant to §25.343(d) of this title (relating to Competitive Energy Services) for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a competitive energy service.

(2) Not later than January 1, 2002, each electric utility shall separate its business activities, and related costs, into the following units: Power generation company; retail electric provider; and transmission and distribution utility company. An electric utility may accomplish this separation either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission utility and distribution utility companies.

(3) Each electric utility, subject to PURA §39.157(d), shall comply with this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with PURA §39.157(d) and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(4) All transfers of assets and liabilities to separate affiliated or nonaffiliated companies, a power generation company, retail electric provider, or a transmission and distribution utility company during the initial business separation process shall be recorded at book value.

(e) Business separation plans. On or before January 10, 2000, each electric utility, subject to PURA §39.051(e), shall file a business separation plan with the commission according to a commission approved Business Separation Plan Filing Package (BSP-FP).

(1) The business separation plan shall include, but shall not be limited to, the following:

(A) A description of the financial and legal aspects of the business separation, the functional and operational separations, physical separation, information systems separation, asset transfers during the initial unbundling, separation of books and records, and compliance with §25.272 of this title both during and after the transition period.

(B) A description of all services provided by the corporate support services company, as well as any corporate support services provided by another separate affiliate including pricing methodologies.

(C) A proposed internal code of conduct that addresses the requirements in §25.272 of this title and the spirit and intent of PURA §39.157. The internal code of conduct shall address each provision of §25.272 of this title, and shall provide detailed rules and procedures, including employee training, enforcement, and provisions for penalties for violations of the internal code of conduct.

(D) A description of each competitive energy service provided within Texas by the electric utility, including a detailed plan for completely and fully separating these competitive energy services on or before September 1, 2000, as set forth in §25.343 of this title.

(E) Descriptions of all system services, discretionary services, other services and competitive energy services to be provided within Texas by the transmission and distribution utility.

(2) To the extent that not all of the detailed information required to be filed on January 10, 2000 is available, the electric utility shall provide a firm schedule for supplemental filings. The commission shall approve only portions of the business separation plan for which complete information is provided.

(3) An electric utility may request protection of its alleged confidential information.

(f) Separation of transmission and distribution utility services.

(1) Classification of services. Each service offered or potentially offered by a transmission and distribution utility shall be classified as one of the following:.

(A) System service. The costs associated with providing system service are system-wide costs which are borne by all transmission and distribution customers.

(B) Discretionary service.

(i) The cost associated with each discretionary service is customer- specific and should be borne only by the transmission and distribution customer who purchases the discretionary service.

(ii) Each discretionary service shall be provided by the transmission and distribution utility pursuant to a commission-approved embedded cost-based tariff.

(iii) The costs associated with providing discretionary services are tracked separately from costs associated providing system services.

(C) Petitioned service. Service in which a petition to provide a specific competitive energy service has been granted by the commission pursuant to §25.343(d)(1) of this title.

(D) Other service.

(i) The offering of any other services shall be limited to those services which:

(I) maximize the value of existing transmission and distribution system service facilities; and

(II) are provided using existing personnel and facilities that are essential to the provision of transmission and distribution system services.

(ii) If the transmission and distribution utility offers a service under clause

(i) of this subparagraph, the transmission and distribution utility shall:

(I) track the costs and revenues for each service separately;

(II) offer the service on a non-discriminatory-basis, and if appropriate, pursuant to a commission-approved tariff, and;

(III) credit all revenues received from the offering of this service during the test year after known and measurable adjustments are made to lower the revenue requirement of the transmission and distribution utility on which the rates are based.

(2) Competitive energy services. A transmission and distribution utility shall not provide competitive energy services as defined by §25.341(6) of this title (relating to Definitions) except as permitted pursuant to §25.343(d)(1) of this title.

§25.343. Competitive Energy Services.

(a) Purpose. The purpose of this section is to identify all competitive energy services which are not to be provided by affected utilities after September 1, 2000.

(b) Application. This section applies to electric utilities as defined by the Public Utility Regulatory Act (PURA) §31.002(6) and transmission and distribution utilities as defined by PURA §31.002(19) that provide service in Texas. This section does not apply to municipally owned utilities or electric cooperatives. This section shall not apply to an electric utility under PURA §39.102(c).

(c) Competitive energy service separation. Affected utilities shall not provide competitive energy services after September 1, 2000.

(d) Petitions to provide competitive energy services.

(1) If a utility finds that a service which is otherwise a competitive energy service, is not available to customers in an area, the utility may petition the commission to provide that service to that area on an unbundled tariffed basis. The utility has the burden to prove to the commission that the service is not widely available in that area due to market barriers outside of the utility's and the commission's control to correct. When a petition under this subsection is granted, the utility shall provide the specific service pursuant to a fully embedded cost-based tariff. The costs associated with providing this service shall be tracked separately from other transmission and distribution utility costs.

(2) An affected person or the Office of Regulatory Affairs may also petition the commission to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service.

(e) Filing. Affected utilities shall file descriptions of each competitive energy service provided by the utility as part of their business separation plans filed pursuant to §25.342 of this title (relating to Electric Business Separation). The business separation plans shall include a detailed plan for completely and fully separating competitive energy services.

§25.344. Cost Separation Proceedings.

(a) Purpose. The purpose of this section is to establish the procedure by which affected utilities will comply with the Public Utility Regulatory Act (PURA) §39.201.

(b) Application. This section shall apply to all utilities subject to PURA §39.201.

(c) Compliance and timing.

(1) All electric utilities must file a cost separation case under this section on or before April 1, 2000 according to a unbundled cost of service rate filing package (UCOS-RFP) approved by the commission. Each electric utility shall, in its cost separation filing, file proposed tariffs for its proposed transmission and distribution utility. The tariffs shall include supporting cost data for the determination of the utility's non-bypassable delivery charges, which shall be the sum of transmission charges, distribution charges, municipal franchise charges, decommissioning charges (if any), a competition transition charge (if any), and a system benefit fund fee.

(2) Notwithstanding any other provision in this section, an electric utility not subject to this section until the expiration of the exemption set forth in PURA §39.102(c), must file its cost separation case on or before 170 days prior to the expiration of the exemption.

(d) Test year. A historic test year shall be used to determine a forecast test year, defined as follows:

(1) Historic year - for utilities filing a cost separation case on or before April 1, 2000, the historic year shall be the 12-month period ended September 30, 1999. For a utility filing a cost separation case after April 1, 2000, the historic year shall be a 12-month period deemed reasonable by the commission.

(2) Forecast year - for utilities filing a cost separation case on or before April 1, 2000, the forecast year shall be the 12-month period ended December 31, 2002. For a utility filing a cost separation case after April 1, 2000, the forecast year shall be a 12-month period deemed reasonable by the commission.

(e) Rate of return. Each electric utility shall file a rate of return that is based on its weighted average cost of capital as determined by one of the alternative methods indicated in the UCOS-RFP approved by the commission.

(f) System benefit fund fee.

(1) The system benefit fund fee will be established by the commission as described in PURA §39.903(b).

(2) Each utility shall identify the historic year costs associated with a reduced rate for low-income customers, targeted energy efficiency programs for low-income customers, customer education programs, and the school funding loss mechanism to allow school districts to recover property tax revenues lost due to electric utility restructuring. Total costs will be reported in the unbundled cost of service studies as a separate line item (or subaccount) in each account where such costs occur. In the forecasting process, historic year costs shall be adjusted to account for future recovery of costs for these expenses through the system benefit fee rather than rates.

(3) System benefit fund costs shall include costs for the following:

(A) A low income rate for firm service which is lower than the regular residential rate and which is exclusively made available to customers whose household income is not more than 125% of the federal poverty guidelines and/or customers who receive food stamps from the Texas Department of Human Services or

medical assistance from a state agency administering a part of the medical assistance program.

(B) Low-income energy efficiency programs administered by the Texas Department of Housing and Community Affairs in coordination with existing weatherization programs.

(C) Customer education programs developed pursuant to PURA §39.902.

(D) Estimates of the amount of property tax payments that will be lost by school districts statewide because of electric utility restructuring.

(E) Any other item allowed by law.

(g) Separation of affiliate costs and functional cost separation.

(1) Affiliate costs.

(A) Separation of affiliate costs. The affiliate schedules accompanying the UCOS-RFP shall provide sufficient detail to enable the commission to evaluate the necessity and reasonableness of the affiliate expenses and the "no higher than" cost provisions of PURA §36.058 (relating to Consideration of Payment to Affiliate); §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and §25.273 of this title (relating to Contracts Between Electric Utilities and Their Affiliates). The schedules shall provide the net total amount of affiliate expense requested for each of the historic and forecast years. This information shall be provided by class of items for all affiliate transactions between the transmission and distribution utility and its affiliates including the affiliated power generation company and the affiliated retail electric provider.

(B) Affiliated service company. If there is an affiliated service company providing support to the regulated transmission and distribution utility and the other affiliates, then the UCOS-RFP shall include the transactions between the service company, the regulated transmission and distribution utility, the power generation company, the retail electric provider, and all the other affiliates pursuant to PURA §14.154. The UCOS-RFP shall include detailed information on allocation formulas as defined by the reporting schedules.

(C) Compliance with affiliate rules. The affiliate transactions reported in the UCOS-RFP shall comply with the code of conduct rules as promulgated in §§25.84 of this title (relating to Annual Reporting of Affiliate Transactions for Electric Utilities), 25.272 of this title, and 25.273 of this title.

(2) Functional cost separation. All electric utilities shall separate their costs into eight categories, relating to the following functions, as defined by §25.341 of this title (relating to Definitions):

(A) generation;

(B) transmission;

(C) distribution;

(D) transmission and distribution utility metering system services;

(E) transmission and distribution utility billing system services;

(F) additional billing services;

(G) transmission and distribution utility customer service; and

(H) competitive energy service.

(3) Method of cost separation. Costs shall be assigned to the eight functions using the following three-tier process. No common costs will be assigned to regulated functions by default. If the utility cannot meet its burden of proof, the costs in question will be assigned to competitive functions.

(A) For each Federal Energy Regulatory Commission (FERC) account, costs shall be directly assigned to functions to the extent possible, and all relevant workpapers provided.

(B) The utility shall provide detailed workpapers documenting the nature of any costs that cannot be directly assigned. For adequately documented costs, the utility may derive an account-specific allocator based on the directly assigned costs. The utility must justify the allocation of common costs to regulated functions, and must present evidence to support any such allocation.

(C) If adequately documented costs remain for which no direct assignment or account-specific allocation is possible, the appropriate functionalization factor prescribed in the UCOS-RFP may be used. These functionalization factors should only be used as a last resort. If a utility deems an allocator other than the allocator prescribed in these instructions to be necessary, the utility shall provide a detailed justification for the chosen allocator.

(h) Jurisdiction and Texas retail class allocation. Allocation of the transmission and distribution system services revenue requirement to the existing rate classes shall be based on forecasted 2002 test year load data. Costs related to other functions may be allocated based on a test year ending September 30, 1999.

(1) Jurisdictional allocation. Functionalized total company costs for the forecast year shall be allocated to Texas retail jurisdiction. Jurisdictional allocators shall be based on either the methodology approved the Federal Energy Regulatory Commission (FERC), or the methodology used in the last commission-approved cost of service study.

(2) Texas retail class allocation. Total Texas retail jurisdiction costs for each of the eight categories shall be allocated among existing rate classes. Consolidation of classes shall be done only during rate design process.

(A) Transmission revenue requirement (system services). Electric Reliability Council of Texas (ERCOT) utilities shall allocate the total transmission revenue requirement based on the average of the four coincident peaks for each existing rate class at the time of ERCOT peak, if that data is available. If that data is not available, the utility may use the average of the four coincident peaks for each existing rate class at the time of the company (as a wires company) system peak. Non-ERCOT utilities shall allocate transmission revenue requirement based on either FERC approved methodology or the methodology approved in the last commission approved cost of service study.

(B) Distribution revenue requirement (system services). Costs purely related to demand or customers shall be allocated based on the methodology used in last cost of service study unless approved otherwise by the commission. Other costs shall be allocated based on allocators analogous to those used during the functionalization process, or appropriate cost-causation principles.

(C) Generation costs. Total generation costs shall be allocated to the existing rate classes based on the methodology approved to allocate generation costs in the last cost of service study.

(D) Retail electric provider costs. Total costs of services which will be provided by the retail electric provider as approved in the business separation plan shall be allocated among

classes based on the allocators used in the last approved cost of service study.

(E) Decommissioning costs. Costs associated with nuclear decommissioning obligations shall be allocated based on the methodology used in the last cost of service study unless otherwise approved by the commission. Total costs shall be reported in the unbundled cost of service studies as a separate line item (or subaccount) in each account where such costs occur.

(i) Determination of ERCOT and Non-ERCOT transmission costs.

(1) ERCOT transmission costs.

(A) The transmission cost of service for an electric utility in ERCOT shall be as described in §25.192(b) of this title (relating to Transmission Service Rates).

(B) The UCOS-RFP adopted by the commission for the cost separation filings by the electric utilities under this section will provide additional details concerning the electric utility costs that may be included in the ERCOT annual transmission costs.

(C) Any redirection of transmission depreciation expense to production by a electric utility in ERCOT pursuant to PURA §39.256 should not affect the utility's wholesale transmission cost of service that is used for the purposes of determination of ERCOT postage stamp rate.

(2) Non-ERCOT transmission costs. For an electric utility in Texas operating outside ERCOT, the utility's open access transmission tariff approved by FERC will be used to determine the utility's transmission cost and rates in Texas.

(j) Rate design. Utilities may consolidate existing rate classes into the minimum number of classes needed to recognize differences in usage of the transmission and distribution systems. Class consolidation shall not materially disadvantage any customer class.

§25.345. Recovery of Stranded Costs Through Competition Transition Charge (CTC).

(a) Purpose. The purpose of this section is to establish the rules, regulations and procedures by which affected utilities will comply with Public Utility Regulatory Act (PURA), Chapter 39, Subchapter F relating to Recovery of Stranded Costs Through Competition Transition Charge and PURA §39.201, relating to Cost of Service Tariffs and Charges, in order to establish a competition transition charge (CTC) as a non-bypassable charge.

(b) Application. This section shall apply to all electric utilities as defined in PURA §31.002 who have stranded costs as described in PURA §39.251.

(c) Definitions. As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) New on-site generation–Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility, or

(B) A project supported by substantially complete filings for all necessary site- specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(2) Eligible generation–Any electric generation facility that falls into one or more of the following categories:

(A) A fully operational qualifying facility that lawfully served a retail customer's load before September 1, 2001, and for which substantially complete filings were made on or before December 31, 1999, for all necessary site- specific environmental permits under the rules of the TNRCC in effect at the time of filing;

(B) An on-site power production facility with a rated capacity of ten megawatts or less;

(C) Any generation facility that lawfully served a retail customer's actual load which is capable of lawfully delivering power to the site without use of utility distribution or transmission facilities and which is not new on-site generation including but not limited to facilities described in subparagraphs (A) and (B) of this paragraph.

(d) Right to recover stranded costs. An electric utility is allowed to recover all of its net, verifiable, nonmitigable stranded costs incurred in purchasing power and providing electric generation service. Recovery of retail stranded costs by an electric utility shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999. A retail customer may not avoid stranded cost recovery charges by switching to on-site generation except as provided by subsection (i) of this section. In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility after May 1, 1999.

(e) Recovery of stranded cost from wholesale customers. Nothing in this section shall alter the rights of utilities to recover wholesale stranded costs from wholesale customers. If the utility decides not to recover stranded costs from the wholesale customers, retail customers shall not be adversely affected by this decision.

(f) Quantification of stranded costs. An electric utility seeking to recover its stranded costs shall submit the necessary information in compliance with the unbundled cost of service rate filing package (UCOS-RFP) approved by the commission. An electric utility may protect its alleged confidential information.

(g) Recovery of stranded costs through securitization. An electric utility, which seeks to recover regulatory assets and stranded costs through securitization financing pursuant to PURA, Chapter 39, Subchapter G shall request a separate competition transition charge for that purpose.

(1) An electric utility which seeks to securitize its regulatory assets or stranded costs pursuant to PURA §39.201(i)(1) shall file an application using the commission-approved form.

(2) An electric utility may seek to securitize its regulatory assets under PURA §39.201(i) any time after September 1, 1999.

(3) An electric utility which seeks to securitize its stranded costs under PURA §39.201(i) must obtain a determination by the commission of its revised estimate of stranded costs prior to submitting its application.

(4) The amount of regulatory assets eligible for securitization as determined by the commission in a proceeding pursuant to §39.201(i)(1) shall be considered in the quantification of stranded costs in subsection (f) of this section.

(h) Allocation of stranded costs. Allocation of stranded costs and calculation of CTC per customer class shall be part of the cost separation proceedings as defined in §25.344 of this title (relating to

Cost Separation Proceedings). The utility shall submit information in accordance with the instructions contained in UCOS-RFP approved by the commission.

(1) Jurisdictional allocation. Costs shall be allocated to the Texas retail jurisdiction in accordance with the jurisdictional allocation methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(2) Allocation among Texas customer classes. Stranded costs shall be allocated in the following manner.

(A) Any capital costs incurred by an electric utility to improve air quality under PURA §39.263 or §39.264 that are included in a utility's invested capital in accordance with those sections shall be allocated among customer classes as follows: 50% of those costs shall be allocated in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design; and the remainder shall be allocated on the basis of the energy consumption of the customer classes.

(B) All other retail stranded costs shall be allocated among retail customer classes in the following manner:

(i) The allocation to the residential class shall be determined by allocating to all customer classes 50% of the stranded costs in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design and allocating the remainder of the stranded costs on the basis of the energy consumption of the classes.

(ii) After the allocation to the residential class required by clause (i) of this subparagraph has been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design. Non-firm industrial customers shall be allocated stranded costs equal to 150% of the amount allocated to that class.

(iii) After the allocation to the residential class required by clause (i) of this subparagraph and the allocation to the nonfirm industrial class required by clause (ii) of this subparagraph have been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(iv) Notwithstanding any other provision of this section, to the extent that the total retail stranded costs, including regulatory assets, of investor-owned utilities exceed $5 billion on a statewide basis, any stranded costs in excess of $5 billion shall be allocated among retail customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(v) The energy consumption of the customer classes used in subparagraph (A) of this paragraph and clause (i) of this subparagraph shall be based on the relevant class characteristics as of May 1, 1999, adjusted for normal weather conditions.

(i) Applicability of CTC to customers receiving power from new on-site generation or eligible generation. A retail customer receiving power from new on-site generation or eligible generation to serve its internal electrical requirements may not avoid payment of stranded costs except as provided in this subsection. A customer's responsibility for payment of stranded costs shall be determined as follows:

(1) No CTC. A retail customer whose actual load is lawfully served by eligible generation and who does not receive any electrical service that requires the delivery of power through the facilities of a transmission and distribution utility is not responsible for payment of any stranded cost charges.

(2) CTC for eligible generation. A retail customer whose actual load is lawfully served by eligible generation who also receives electrical service that requires the delivery of power through the facilities of a transmission and distribution utility shall be responsible for payment of stranded cost charges based solely on the services that are actually provided by the transmission and distribution utility, if any, to the customer after the eligible generation facility became fully operational, such as delivery of supplemental, standby, or backup service. Such charges may not include any costs associated with the service that the customer was receiving from the electric utility or its affiliated transmission and distribution utility under their tariffs before the operation of the eligible generation. A customer who changes the type of service it receives from the electric utility or its affiliated transmission and distribution utility after the customer commences taking energy from eligible generation will pay stranded cost charges associated with the service it is actually receiving from the transmission and distribution utility.

(3) CTC for new on-site generation. A retail customer who commences taking power from new on-site generation that represents a material reduction in the customer's use of energy delivered through the utility's facilities shall be responsible for payment of stranded cost charges that are calculated by multiplying the output of the new on-site generation utilized to meet the internal electrical requirements of the customer each month by the sum of the applicable stranded cost charges in effect for that month. The applicable CTC for such customer shall be the CTC associated with the service that the customer was receiving from the electric utility prior to switching to new on-site generation. These stranded cost charges shall be paid in addition to the stranded cost charges applicable to energy actually delivered to the customer through the transmission and distribution utility's facilities. A customer who commences taking power from new on-site generation that does not represent a material reduction in the customer's use of energy delivered through the transmission and distribution utility's facilities shall pay the CTC calculated as set forth in paragraph (2) of this subsection for that portion of the customer's load served by the new on-site generation.

(4) Material reduction. For purposes of this subsection, a material reduction shall be a reduction of 12.5% or more of the retail customer's use of energy delivered through the utility's transmission and distribution facilities. The reduction shall be calculated by comparing the customer's monthly use of energy attributable to new on-site generation to the customer's average monthly use of energy delivered through the utility's facilities for the 12-month period immediately preceding the date on which the customer commenced taking energy from the new on-site generation.

(5) Multiple on-site power production facilities. A retail customer may designate any number of on-site power production facilities located on a single site as eligible generation under subsection (c)(2)(B) of this section as long as the sum of rated capacities of such facilities does not exceed ten megawatts.

(6) Reporting requirements. Persons owning or operating new on-site generation or eligible on-site generation shall submit the information required by §25.105 of this title (relating to Registration

and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities). Those persons shall also comply with procedures and reporting requirements described in the transmission and distribution utility's tariffs related to the assignment and collection of the CTC from eligible and new on-site generation and any other commission rule or regulation related to the implementation of this section.

(j) Collection and rate design of CTC charges. These charges shall be billed to a customer's retail electric provider. The CTC shall recover the amount of stranded costs as defined in PURA, Chapter 39, Subchapter F that are reasonably projected to exist on the last day of the freeze period. Utilities may consolidate existing rate classes into the minimum number of classes needed to sufficiently recognize differences in usage of the underlying generation assets. Customers shall be classified into no fewer than the following classes: Residential, Commercial, Firm Industrial, Non-firm, Standby and Maintenance. No customer classes shall be materially disadvantaged by class consolidation.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) Purpose. The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.

(b) Application. This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002. This section shall not apply to an electric utility under PURA §39.102(c).

(c) Separation of transmission and distribution utility billing system service costs.

(1) Transmission and distribution billing system services shall include costs related to the billing services described in §25.341(24) of this title (relating to Definitions).

(2) Charges for transmission and distribution services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).

(d) Separation of transmission and distribution utility billing system service activities.

(1) Transmission and distribution utility billing system services as described in §25.341(24) of this title shall be provided by the transmission and distribution utility.

(2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).

(3) All additional billing services shall be provided on an unbundled discretionary basis pursuant to a commission-approved embedded cost-based tariff.

(4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) Uncollectibles and Customer Deposits.

(1) The retail electric provider is responsible for retail customer uncollectibles and deposits.

(2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the competitive energy services function, as defined in §25.344(g)(2)(H) of this title.

(f) Separation of transmission and distribution utility metering system service costs. Transmission and distribution utility metering system services shall include costs related to the metering services described in §25.341(26) of this title.

(g) Separation of transmission and distribution utility metering system service activities.

(1) Metering services before the introduction of customer choice.

(A) Affected utilities shall continue to provide metering services pursuant to commission rules and regulations.

(B) An affected utility shall charge the end-use customer the incremental cost for the replacement of an end-use customer's meter with an advanced meter provided by the customer's utility.

(2) Metering services on and after the introduction of customer choice until metering services become competitive. On the introduction of customer choice in a service area, metering services as described by §25.341(26) of this title for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice.

(A) Standard meter.

(i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by PURA §39.107(a) and PURA §39.107(b).

(ii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter provided by the transmission and distribution utility.

(iii) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary for the calculation of transmission and distribution charges in accordance with that end-use customer's transmission and distribution rate schedule.

(iv) Nothing in this section shall preclude the continued use of meters in service at the effective date of this section.

(B) Meter reading. Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of reading the end-use customer's meter in addition to the transmission and distribution utility.

(C) End-use customer meters. Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment on the customer-premise side of the standard meter.

(D) Advanced metering services.

(i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title (relating to Competitive Energy Services).

(ii) All advanced metering services and related costs shall be borne by the retail electric provider.

(iii) Without authorization from the retail electric provider, the transmission and distribution utility shall not use any advanced metering data except as prescribed by subparagraph (A)(iii) of this paragraph.

(iv) Any installation of metering equipment on the transmission and distribution utility's meter or on the transmission and distribution utility's side of the meter must be performed by transmission and distribution personnel or by contractors working for the transmission and distribution utility and under its supervision.

(v) For services relating to clause (iv) of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non-discriminatory and made pursuant to a commission-approved embedded cost based tariff.

(vi) Any metering equipment shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).

(h) Competitive energy services.

(1) Nothing in this section is intended to affect the provision of competitive energy services, including those which require access to the customer's meter.

(2) An affected utility shall not provide any service that is deemed a competitive energy service under §25.341(6) of this title.

(i) Electronic data interchange.

(1) Standards. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission.

(2) Settlement. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission.

(3) Costs. Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection. 11

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 August 30, 1999.

TRD-9905457
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-7308

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Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION

16 TAC §§26.21, 26.23, 26.24, 26.27-26.29

The Public Utility Commission of Texas (the commission) proposes amendments to §26.21 relating to General Provisions of Customer Service and Protection Rules; §26.23 relating to Refusal of Service; §26.24 relating to Credit Requirements and Deposits; §26.27 relating to Bill Payment and Adjustments; §26.28 relating to Suspension or Disconnection of Service; and §26.29 relating to Prepaid Local Telephone Service (PLTS). The proposed rule amendments will implement the provisions of Senate Bill 86 (SB), 76th Legislature (1999), Public Utility Regulatory Act (PURA) §55.012, and Senate Bill 560, 76th Legislature (1999) PURA §55.013, *Limitations on Discontinuance of Basic Local Telecommunications Service.* Project Number 21030 has been assigned to this proceeding.

PURA §55.012 and §55.013 provisions: (1) prohibit discontinuance of basic local service for nonpayment of long distance charges, (2) require that payment first be applied to local service, (3) require that the commission adopt and implement rules that require a local service provider to offer and implement toll blocking to limit long distance charges after nonpayment for long distance service, and that allow disconnection of local service for fraudulent activity, and (4) provide the commission authority to establish a maximum price that an incumbent local exchange company may charge a long distance service provider for toll blocking.

To assist in implementing PURA §55.012 and §55.013, the commission held a workshop with all interested parties at the commission's offices on July 19, 1999. Additionally, the commission requested written comments from all interested parties regarding this rulemaking. The commission carefully considered all written and verbal comments in developing these proposed amendments. The proposed amendments:

1. Identify specific portions of the customer service and protection rules that apply to all providers of basic local telephone service (not just dominant carriers).

2. Prohibit refusal of basic local telephone service to residential applicants for failure to pay long distance charges.

3. Prohibit including long distance charges in determining the deposit amount for residential applicants and customers.

4. Require that partial payments first be allocated to basic local telephone service.

5. Allow disconnection of basic local telephone service for avoiding a toll block initiated due to the nonpayment of long distance charges.

6. Allow disconnection of telephone service due to fraudulent activities.

7. Prohibit disconnection of basic local telephone service to a residential customer for failure to pay long distance charges.

8. Require that the disconnection notice state the specific amount owed for basic local telephone service.

9. Provide that if services are bundled, the stand-alone basic local telephone service rate shall be used to determine the amount required to avoid disconnection of basic local telephone service.

10. Allow toll blocking of residential applicants for failure to establish credit and of residential customers for failure to pay long distance charges.

11. Require toll blocking of a residential customer at the request and expense of the long distance carrier due to the nonpayment of long distance charges and establish a maximum one-time installation charge of $10.00 and monthly charge of $1.50 for toll blocking.

12. Require toll blocking be applied in a nondiscriminatory manner and, where technically capable, allow access to toll-free numbers.

13. Require notice to be given to toll blocked customers.

14. Require that the Prepaid Local Telephone Service (PLTS) notice include the customer's option to receive basic local telephone service without entering PLTS if the customer does not owe for basic local telephone service charges.

Several issues surfaced at the July 19, 1999 workshop and are discussed below.

Scope of Implementation

Most telecommunications industry representatives recommended limiting the rulemaking to the specific language in PURA §55.012 and §55.013. In their view, the rulemaking should address only disconnection of existing customers and not refusal of service for applicants or deposit requirements. However, the purpose of PURA §55.012 and §55.013 was to sever the link between basic local service and long distance service and to make basic local service more readily accessible. Thus, including applicants and deposits in the rulemaking is consistent with the provisions in PURA §55.012 and §55.013.

Jurisdiction

Some parties indicated that some of the areas contemplated in the rulemaking such as refusal of service and deposit provisions should apply only to incumbent local exchange companies (ILECs) and not competitive local exchange companies (CLECs). The commission does have jurisdiction over CLECs in these matters. First of all, PURA §55.012 and §55.013 clearly apply to all providers of basic local telephone service. Second, the commission was granted jurisdiction in Senate Bill 86, 76th Legislature (1999) PURA §17.004(b), to adopt rules for minimum service standards for all certificated telecommunications utilities relating to customer deposits and extension of credit and termination of service.

Impact on Prepaid Local Telephone Service (PLTS)

There was agreement at the workshop that the commission should continue PLTS. However, with the implementation of PURA §55.012 and §55.013 in these proposed amendments, PLTS appears to have very limited applicability. PLTS provides customers with an outstanding balance for local service with the option to continue receiving local service by entering into a deferred payment plan under PLTS. PURA §55.012 and §55.013 do not specifically provide this option, but they do not preclude it either. The commission requests specific comments as to continuing the PLTS rule or amending other rules to permit repealing PLTS without sacrificing current customer protections.

Toll Blocking

Toll blocking capabilities vary among individual local exchange companies (LECs) and interexchange carriers (IXCs). The proposed amendments allow flexibility in the type of toll blocking used by a LEC, but require that application of toll blocking be accomplished in a reasonable, nonprejudicial, nondiscriminatory manner, and, where technically feasible, allow access to toll-free numbers.

PURA §55.012(d) and §55.013(d) require the commission to adopt a maximum price that a LEC may charge a long distance service provider to initiate toll blocking. The proposed amendment to §26.28(j)(2) sets a maximum $10 nonrecurring installation charge and a maximum $1.50 monthly charge for toll blocking. These proposed rates, taken from the retail tariff of a major Texas LEC, strike a balance between the long distance provider's interest in a minimal monthly charge and the LEC's interest in recovering notice expenses through a nonrecurring charge.

PURA §55.012(c) and §55.013(c) require the commission to adopt and implement rules not later than January 1, 2000. PURA §55.013(e) requires providers of basic local telephone service to comply with the requirements of PURA §55.013 not later than March 1, 2000.

FISCAL NOTE

Mr. John S. Capitano, Jr., Senior Investigator, Office of Customer protection, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COST NOTE

Mr. Capitano has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the establishment of rights and responsibilities for both telecommunications utilities and customers regarding providing and receiving basic local telephone service. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There may be anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on October 18, 1999, at 9:30 a.m.

COMMENTS

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted by October 18, 1999. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to revise the proposed amendments or adopt the proposed amendments as published. All comments should refer to Project Number 21030.

STATUTORY AUTHORITY

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and under Senate Bill 86, 76th Legislature (1999) PURA §55.012 and Senate Bill 560, 76th Legislature (1999) PURA §55.013.

Cross-Index to Statutes: Public Utility Regulatory Act §§14.002, 55.012, and 55.013.

§26.21. General Provisions of Customer Service and Protection Rules.

(a) Application.

(1) Unless the context clearly indicates otherwise, in this subchapter the terms "utility" and "public utility," as they relate to telecommunications utilities, shall refer to dominant carriers.

(2) The following sections apply to all providers of basic local telephone service who shall comply with the requirements by March 1, 2000:

(A) Section 26.23(a)(5) and (c)(5) of this title (relating to Refusal of Service).

(B) Section 26.24(f)(1) and (f)(3) of this title (relating to Credit Requirements and Deposits).

(C) Section 26.27(j) of this title (relating to Bill Payment and Adjustments).

(D) Section 26.28(b)(1), (b)(6), (c)(3), (d)(5), (h)(6), (i), and (j) of this title (relating to Suspension or Disconnection of Service).

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

§26.23. Refusal of Service.

(a) Acceptable reasons to refuse service. A utility may refuse to serve an applicant until the applicant complies with state and municipal regulations and the utility's rules and regulations on file with the commission or for any of the reasons identified below.

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

(5) For indebtedness. Except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service), service may be refused, if the applicant owes a debt to any utility for the same kind of service as that applied for, including long distance charges for nonresidential applicants where a provider of basic local telephone service [~~local exchange carrier~~] bills those charges to the customer pursuant to its tariffs. If the applicant's indebtedness is in dispute, the applicant shall be provided service upon complying with the deposit requirement in §26.24 of this title (relating to Credit Requirements and Deposits). Payment of long distance charges shall not be a condition of local exchange service for residential applicants [~~if federal authority prohibits payment of long distance charges as a condition for local service, or prohibits disconnection of local service for failure to pay long distance charges~~].

(6) (No change.)

(b) (No change.)

(c) Insufficient grounds for refusal to serve. The following are not sufficient cause for refusal of service to an applicant:

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

(3) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service; [~~and~~]

(4) failure to pay the bill of another customer at the same address except where the change in identity is made to avoid or evade payment of a utility bill; and[~~.~~]

(5) failure of a residential applicant to pay for long distance charges.

§26.24. Credit Requirements and Deposits.

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

(f) Amount of deposit.

(1) The total of all deposits shall not exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service). The estimated annual billings may include charges that are in a utility's tariffs including long distance charges for nonresidential applicants and customers only where the provider of basic local telephone service [~~local exchange carrier~~] bills those charges to the customer pursuant to its tariffs. [~~Such charges shall not be included in calculating the deposit amount if federal authority so prohibits, or prohibits long distance charges as a condition for local service or as a reason for disconnection of local exchange service.~~]

(2) (No change.)

(3) Estimated billings to determine the deposit amount shall not include long distance charges for residential applicants and customers.

(g)-(m) (No change.)

§26.27. Bill Payment and Adjustments.

(a)-(i) (No change.)

(j) Partial payments. Payment shall first be allocated to basic local telephone service.

§26.28. Suspension or Disconnection of Service.

(a) (No change.)

(b) Suspension or disconnection with notice. Utility service may be suspended or disconnected after proper notice, for any of these reasons:

(1) failure to pay a bill for charges that are in a utility's tariffs including long distance charges for nonresidential customers only where the provider of basic local telephone service [~~local exchange carrier~~] bills those charges to the customer pursuant to its tariffs or make deferred payment arrangements by the date of suspension or disconnection;

(2)-(3) (No change.)

(4) failure to pay a deposit as required by §26.24 of this title (relating to Credit Requirements and Deposits); [~~or~~]

(5) failure of the guarantor to pay the amount guaranteed, when the utility has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment; or[~~.~~]

(6) avoidance of toll blocking by incurring long distance charges after toll blocking was implemented by the utility due to nonpayment of long distance charges.

(c) Suspension or disconnection without notice. Utility service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:

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

(3) where there are instances of tampering with the utility company's equipment, [~~or~~] evidence of theft of service, or other acts to defraud the utility.

(d) Suspension or disconnection prohibited. Utility service may not be suspended or disconnected for any of these reasons:

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

(3) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service; [~~or~~]

(4) failure to pay disputed charges until a determination is made on the accuracy of the charges; or[~~.~~]

(5) failure of a residential customer to pay long distance charges.

(e)-(g) (No change.)

(h) Suspension and disconnection notices. Any suspension or disconnection notice issued by a utility to a customer must:

(1) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a utility's authorized payment agency is considered payment to the utility;[~~.~~]

(2) be a separate mailing or hand delivery with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;[~~.~~]

(3) have a suspension or disconnection date that is not a holiday or weekend day, not less than ten days after the notice is issued;[~~.~~]

(4) be in English and Spanish;[~~.~~]

(5) for residential customers, indicate the specific amount owed for basic local telephone service required to maintain basic local telephone service; and

(6) [~~(5)~~] include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the utility for more information.

(i) Residential customer payment allocations. Payment allocations related to basic local telephone service suspension or disconnection are as follows:

(1) Payments shall first be allocated to basic local telephone service.

(2) If services are bundled, the rate of basic local telephone service shall be the utility's charge for stand-alone basic local telephone service.

(j) Toll blocking.

(1) Utility initiated. The utility may toll block:

(A) a residential applicant for failure to establish credit; or

(B) a residential customer for the nonpayment of long distance charges.

(2) Long distance carrier initiated. The utility shall toll block a residential customer at the request and expense of a long distance carrier due to the nonpayment of long distance charges. The utility shall not charge the long distance carrier more than $10.00 for one-time installation nor more than $1.50 per month for toll blocking.

(3) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(4) Nondiscriminatory application. The utility shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(5) Notice requirement. The utility shall notify the customer within 24 hours of initiating toll blocking.

§26.29. Prepaid Local Telephone Service (PLTS).

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

(c) Requirements for notifying customers about PLTS. A DCTU shall provide notice to its customers about PLTS as required by this subsection.

(1) (No change.)

(2) Content of notice. The notice provided by a DCTU offering PLTS shall be reviewed in the DCTU's compliance filing and shall notify customers of the rates, terms, and conditions of PLTS, as described in subsection (e) of this section, including:

(A)-(G) (No change.)

(H) if a customer is disconnected for violation of the terms and conditions of the PLTS plan, that customer does not have the right to receive PLTS from that DCTU again; [~~and~~]

(I) the customer's responsibility to subscribe to PLTS within a certain time period in order to defer service restoration or connection charges as described in subsection (e)(1)(B) of this section; and [~~.~~]

(J) the customer's option to receive basic local telephone service without entering PLTS if the customer does not owe for basic local telephone charges.

(d) (No change.)

(e) Rates, terms, and conditions of PLTS. A DCTU shall offer PLTS under the following terms and conditions:

(1)-(3) (No change.)

(4) Deferred payment plan under PLTS. As a condition of subscribing to PLTS, the DCTU may require an applicant to enter into a deferred payment plan for any outstanding debt owed to the DCTU for basic local [~~basic~~] telephone service. The DCTU shall not require an applicant to enter into a deferred payment plan to pay any outstanding debt for any services that the customer cannot use under PLTS including long distance services. If the DCTU is unable to determine the amount of outstanding debt, the DCTU shall not require an applicant to enter into a deferred payment plan.

(A)-(B) (No change.)

(5)-(6) (No change.)

(f)-(j) (No change.)

(k) Tariff compliance. A DCTU subject to this section shall file tariffs in compliance with this section, and pursuant to §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) [~~§23.24 of this title (relating to Form and Filing of Tariffs)~~].

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 August 27, 1999.

TRD-9905451
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-7308

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Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

16 TAC §26.463

The Public Utility Commission of Texas (commission) proposes new §26.463 relating to Calculation and Reporting of a Municipality's Base Amount. The proposed new rule implements the provisions of House Bill 1777, 76th Legislature, Regular Session (1999) (HB 1777), which authorizes the commission to determine a uniform method for calculating municipal franchise compensation paid by certificated telecommunications providers (CTPs). The proposed new rule is part of a series of rules that will be adopted by the commission to implement HB 1777. Project Number 20935 has been assigned to this proceeding.

FISCAL NOTE

D. Diane Parker, Senior Attorney, Office of Policy Development and Elango Rajagopal, Senior Policy Analyst, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect, there may be fiscal implications to local governments as a result of enforcing or administering the section. The costs are attributable to standardizing the way municipalities are compensated for the use of the public right-of-way. Further, costs will vary between municipalities due to the diversity of existing telecommunications franchises and the methods by which municipalities currently obtain compensation from CTPs. Ms. Parker and Mr. Rajagopal do not anticipate any fiscal implications to the state government.

PUBLIC BENEFIT/COST NOTE

Ms. Parker and Mr. Rajagopal have determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be a uniform method of compensating municipalities for the use of the public right-of-way by certificated telecommunications providers. This uniformity will promote competition for local telephone service in Texas by ensuring that certificated telecommunications providers do not obtain a competitive advantage or disadvantage in their ability to obtain use of a public right-of-way within a municipality. There is no anticipated effect on small businesses or micro-businesses as a result of enforcing this section.

Ms. Parker and Mr. Rajagopal have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

In proposing this section, the commission's objective is to establish a method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is nondiscriminatory; (3) is competitively neutral; (4) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; (5) provides fair and reasonable compensation for the use of a public right-of-way; and (6) is consistent with state and federal law.

COMMENTS

The commission seeks any comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rule. In particular, the commission invites comments regarding the proposed definition of "other compensation" defined in subsection (c)(6) of this section. Specifically, the commission is interested in learning whether the proposed definition provides clarity and whether it is consistent with the intent of HB 1777. In addition, the commission requests comments on whether the term "special assessments," as referred to in subsection (c)(1) of this section, is an understood term-of-art, or whether it should be defined in the rule. Parties proposing to define the term in the rule are requested to submit a definition for "special assessments" that is consistent with the provisions of HB 1777. Further, the commission seeks comments on whether using each municipality's historically-utilized accounting methodology and fiscal year in determining the base amount is preferable to using a single commission- prescribed accounting methodology (cash or modified accrual with or without normalization). In responding to this question, parties are requested to address whether the 1998 base amounts should be normalized. Finally, the commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 20 days after publication. All comments should refer to Project Number 20935. The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, October 5, 1999, at 9:30 a.m.

STATUTORY AUTHORITY

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This proposed rule is also authorized by House Bill 1777, 76th Legislature, Regular Session (1999) which amends the Local Government Code by adding §283.055, which provides that not later than March 1, 1999, the commission shall establish rates per access line by category for the use of a public right- of-way by certificated telecommunications providers in each municipality, and the statewide average of those rates. The rates when applied to the total number of access lines by category in the municipality shall be equal to the base amount.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Local Government Code §283.055.

§26.463. Calculation and Reporting of a Municipality's Base Amount.

(a) Purpose. This section establishes a uniform method for determining a municipality's base amount and calculating the value of in-kind services provided to a municipality under an existing franchise agreement or ordinance by certificated telecommunications providers (CTPs), and sets forth relevant reporting requirements.

(b) Application. This section applies to all municipalities in the State of Texas.

(c) Definitions. The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Base amount - The total amount of revenue received from CTPs, during calendar year 1998, by the municipality in franchise, license, permit, application, excavation, inspection, and other fees, directly related to the use of a public right-of-way within the boundaries of the municipality, including all newly annexed areas. The base amount does not include pole rental fees, special assessments, and taxes of any kind, including ad valorem or sales and use taxes, or other compensation not related to the use of a public right-of-way.

(2) Certificated telecommunications provider (CTP) - A person who has been issued a certificate of convenience and necessity (CCN), certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) by the commission to offer local exchange telephone service.

(3) Customer - An end-use customer.

(4) In-kind services and facilities - Services or facilities provided to a municipality by a CTP during calendar year 1998, below cost or at no cost as part of a franchise agreement or ordinance.

(5) Litigating municipality - A municipality that was involved in litigation relating to franchise fees with one or more certificated telecommunication providers during any part of calendar year 1998.

(6) Other compensation - Compensation paid to a municipality not related to the use of a public right-of-way. It shall include, but is not limited to, fees paid to the municipality to obtain access to municipally-owned poles, ducts, conduits, buildings, and other facilities.

(7) Public right-of-way - The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

(8) Similarly sized municipality - A municipality with a population that is within 20% of the population of another municipality in the same or adjacent county, as of the date of the most recent census.

(d) Determination of a municipality's base amount. A municipality's base amount shall consist of the sum of all applicable revenue received from CTPs, the value of in-kind services, and the value of any applicable escalation provisions in existing franchise agreements and ordinances, unless a municipality's base amount is determined under subsection (f) or (g) of this section.

(1) Revenue received. Revenue received is defined as payments received and recorded by the municipality in calendar year 1998, using the cash basis of accounting. Adjustments may be made to the 1998 recorded amounts only for unusual or extraordinary events other than normal billing/payment lag. Adjustments should be made, for example, to normalize the base amount to reflect exactly 12 months of payments from each CTP which was using the right-of-way on December 31, 1998. Any proposed adjustments must be fully explained and justified in the municipality's initial reporting prescribed in subsection (i) of this section.

(2) Escalation provisions. The value of escalation provisions received by the municipality during calendar 1999 and the first calendar quarter of 2000, specifically prescribed in applicable agreements or ordinances, effective or adopted by January 12, 1999, shall be added to the base amount calculated pursuant to paragraph (1) of this subsection.

(3) In-kind services. In-kind services or facilities provided to municipalities by CTPs shall be valued at 1.0% of the base amount unless a municipality demonstrates to the commission that the services or facilities received by the municipality had a greater value in calendar year 1998. Municipalities requesting in-kind compensation above 1.0% of the base amount shall make a request consistent with subsections (e) and (j) of this section.

(e) Valuation of additional in-kind compensation. Municipalities may provide evidence that the total value of in-kind services or facilities received from CTPs in calendar year 1998 exceeded the in-kind threshold of 1.0% of the municipality's base amount. The municipality's request to exceed the threshold must be consistent with this subsection and meet the filing requirements of subsection (j) of this section.

(1) Telecommunications equipment. The municipality shall compute the annual depreciated expense of each piece of equipment it received as in- kind compensation, in calendar year 1998. The rate of depreciation and net salvage shall be the weighted-average depreciation rate and net salvage of the two largest incumbent local exchange companies in the State of Texas. The weighting shall be determined by the access line count reported by the individual carriers in the earnings report filed at the commission under Project Number 20469, *1998 Telecommunication Utilities Annual Earnings Report pursuant to Subst. R. §26.73(b)*. The rates of depreciation to be used include those approved by the Federal Communications Commission.

(2) Dark fiber. Where a municipality had the option to use the CTP's dark fiber as in-kind compensation in calendar 1998, the municipality shall value the fiber only to the extent it utilized them in calendar 1998. The valuation shall be based on the methods prescribed in paragraph (4) of this subsection. Where a CTP permanently transferred ownership of the dark fiber to the municipality as in-kind compensation in calendar 1998, the fiber shall be valued for its entire length using the methods prescribed in paragraph (1) of this subsection.

(3) Poles, ducts, and conduits. Where a municipality had the option to use the CTP's poles, ducts, and conduits as part of its in-kind compensation, it shall value those facilities only to the extent it utilized them during calendar 1998. The valuation shall be based upon reasonable annual rental fees charged or paid by other utilities for similar facilities.

(4) Telecommunications service. The municipality shall compute the weighted- average retail price of each relevant telecommunications service it received as in-kind compensation in calendar year 1998. The retail price shall be the price charged by the two largest incumbent local exchange companies in the State of Texas. The weighting shall be determined by the access line count reported by the individual carriers in the earnings report filed at the commission under Project Number 20469, *1998 Telecommunication Utilities Annual Earnings Report pursuant to Subst. R. §26.73(b).* If the ser-

vice was offered at a discounted price, the in-kind value for that service shall be the difference between the weighted- average retail price and the discounted price.

(5) All other facilities and services. The municipality shall seek bids for all other in-kind goods and services to determine the true market value. The bid-seeking process shall be consistent with the methods the municipality uses for other purchases.

(f) Base amount for a small municipality. A small municipality is considered to be a municipality located within a county with a population of less than 25,000 on December 31, 1998. Where a municipality is located in more than one county, the larger of the populations shall apply. The base amount for a small municipality, or a municipality that either did not have an effective franchise agreement or ordinance on January 12, 1999, or was not in existence on that date, shall, at the election of the governing body of the municipality, be equal to one of the following amounts:

(1) An amount not greater than the statewide average fee per line for each category of access line of the CTP with the greatest number of access lines in that municipality, multiplied by the total number of access lines in each category located within the boundaries of the municipality on December 31, 1998, for a municipality in existence on that date, or on the date of incorporation for a municipality incorporated after that date;

(2) An amount not greater than the base amount determined for a similarly sized municipality in the same or an adjacent county in which the CTP with the greatest number of access lines in the municipality is the same for each municipality. The similarly sized municipality must have computed its base amount using methods other than this paragraph; or

(3) The total amount of revenue received by the municipality in franchise, license, permit, and application fees from all CTPs in calendar year 1998, consistent with the accounting methodology prescribed under subsection (d)(1) of this section.

(g) Base amount for litigating municipality. The base amount for a litigating municipality that not later than December 1, 1999, repeals any ordinance subject to dispute in the litigation, voluntarily dismisses with prejudice any claims in the litigation for compensation, and agrees to waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999, is, at the municipality's election, equal to one of the following amounts:

(1) An amount not to exceed the state average access line rate on a per category basis for the CTP with the greatest number of access lines in that municipality multiplied by the total number of access lines located within the boundaries of the municipality on December 31, 1998, including any newly annexed areas; or

(2) An amount not to exceed 21% of the total sales and use tax revenue received by the municipality pursuant to Texas Tax Code, Chapter 321. The sales and use tax revenue will be based on the calendar year 1998 report of taxes collected, as issued by the State Comptroller for a municipality. The amount does not include sales and use taxes collected under:

(A) Texas Transportation Code, Chapters 451, 452, 453, or 454 for a mass transit authority;

(B) the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), for a 4A or 4B Development Corporation;

(C) Texas Local Government Code, Chapters 334 and 335; and

(D) Texas Tax Code, Chapters 321, 322, and 323, for a special district, including health service, crime control, hospital, and emergency service districts.

(h) Books and records. Subject to review by the commission, a municipality shall maintain books and records relating to compensation received pursuant to Texas Local Government Code, Chapter 283, separate from compensation received from other sources. In accordance with generally accepted accounting principles (GAAP) and consistent with state and federal guidelines, a municipality shall record all monetary transactions with its CTP(s), whether direct or indirect, in a manner which allows for easy identification and reporting of transactions which have occurred with each individual CTP.

(i) Reporting procedures and requirements.

(1) Who shall file. The record keeping, reporting and filing requirements listed in this section shall apply to all municipalities in the State of Texas.

(2) Unless otherwise specified, periodic reporting shall be consistent with this subsection and subsection (m) of this section.

(A) Initial reporting. A municipality shall file its base amount using the commission-approved *Form for Calculating Right-of-way Compensation* (FCRC), or the commission-approved *Program for Calculating Right-of-way compensation* (PCRC), with the commission no later than December 1, 1999 under Project Number 20935, *Implementation of HB 1777.*

(B) Subsequent reporting.

(i) Each municipality shall file annually with the commission a report on municipal compensation received from each CTP by February 1 of the following year. The reporting shall commence in 2001 and shall include all amounts received pursuant to this section from each CTP and shall include payments from each CTP made on a quarterly basis.

(ii) The commission may request documentation if it determines a filing by the municipality is insufficient. If the commission requires additional information, the municipality shall respond to any request from the commission within 30 days from the time the municipality receives the request.

(j) Reporting for additional in-kind compensation. This subsection applies only to a municipality filing a request to value in-kind compensation at a level greater than 1.0% of its base amount, pursuant to subsection (e) of this section. The municipality maintains the burden of proof for establishing the reasonableness of its request. No later than December 1, 1999, the municipality shall file its request using the commission-approved *Form for Valuing In-kind Services Over 1.0%*. If the commission determines that the value of in-kind services is less than the value claimed by the municipality, the value of in-kind services for that municipality shall, on an interim basis, default to 1.0% of the base amount until the municipality makes a showing consistent with this section and subsection (e) of this section.

(k) Waiver of reporting requirements. The commission may waive the reporting requirement for specific information required by this section if it determines that it is either impractical or unduly burdensome on a municipality to furnish the requested information. To obtain a waiver of any reporting requirement, a municipality shall submit a written request to the commission, explaining the reasons for the waiver, no later than ten days prior to the date the information is required to be reported. Nothing in this section shall be construed

to limit CTPs' access to municipal records under the Texas Open Records Act.

(l) Late, insufficient, or incorrect filing.

(1) If a municipality fails to file the FCRC or PCRC report by the date required by this section, the commission shall not set rates for that municipality until the later of May 1, 2000 or up to 90 days after the filing is received by the commission.

(2) If the commission determines that the filing under subsection (i) of this section is insufficient or incorrect, the commission shall not set rates for that municipality until the municipality has completed its filing under subsection (i) of this section.

(3) A municipality that did not fulfill its reporting obligations under subsection (i) of this section, shall continue receiving compensation from CTPs under the terms of any applicable existing or expired agreement or ordinance until the commission's determination of rates for the municipality and the CTPs' implementation of those rates. All commission established rates and all compensation thereunder shall be applied prospectively from the date the commission determines the rates for the municipality and the CTPs timely implement the appropriate rates.

(m) Report attestation. All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the municipality under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties).

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 August 27, 1999.

TRD-9905452
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 936-7308

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Part 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

Chapter 33. LICENSING

Subchapter A. APPLICATION PROCEDURES

16 TAC §33.8

The Texas Alcoholic Beverage Commission proposes a new §33.8 governing the procedures for filing applications for licenses and permits with the agency.

Recent amendments to §§11.391(a) and 61.381 of the Alcoholic Beverage Code imposes a new requirement on applicants who seek issuance of a license or permit for a location not previously licensed or permitted for the on-premises consumption of alcoholic beverages to inform the public of the impending application by posting a sign at the proposed location for 60 days prior to filing the application with the commission. This rule is proposed to define the statutory terms "the date the application is filed" and "a location not previously licensed (or permitted) for the on-premises consumption of alcoholic beverages."

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect, there will be no fiscal implications for units of state or local governments as a result of enforcing the rule. Mr. Bright has determined that the public will benefit from this rule in that it imposes standardized procedures for filing applications for certain alcoholic beverage licenses and permits, thereby, avoiding the expense and inefficiency attendant on applications filed in contravention to agency procedures through ignorance of those procedures. Further, through this rule, applicants may accurately calculate when to post the notice signs required by law, thereby, more efficiently notifying the public of a proposal to place an alcoholic beverage establishment at that location.

Many alcoholic beverage applications are filed by small businesses. The statutory command to place a sign at a proposed location for 60 days prior to application will impose a cost on those businesses. This cost is not subject to calculation because the number of future small business applicants is undetermined and the cost to each of posting a sign is subject to local cost and other variables. Independently of the statute, this rule imposes no additional fiscal impact on small businesses.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

This rule is proposed under Alcoholic Beverage Code, §5.31, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §§11.08, 11.391(a), 61.09 and 61.381(a).

§33.8. On-Premises Application Notification.

(a) For purposes of §§11.08, 11.391(a), 61.09 and 61.381(a) of the Alcoholic Beverage Code, an application is filed with the commission on the date it is received in the commission's headquarters office.

(b) For purposes of the above referenced sections, locations not previously licensed or permitted for on-premises consumption of alcoholic beverages shall refer to locations for which a license or permit authorizing the on-premises consumption has not been active for any part of the 12 months immediately preceding the initial review of any part of an application by a commission field office.

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

Filed with the Office of the Secretary of State on August 24, 1999.

TRD-9905350
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 206-3204

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Subchapter C. LICENSE AND PERMIT ACTIONS

16 TAC §33.32

The Texas Alcoholic Beverage Commission proposes a new §33.32 concerning notification to members of the wholesale tier of expired or suspended retail licenses or permits.

Recent amendments to Alcoholic Beverage Code, §§11.091 and 61.031, require that the commission promptly notify wholesalers of expired or suspended retail licenses or permits. This rule is proposed to erect procedures that accomplish that notification in the quickest and most efficient manner.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect there will be no fiscal implications for units of state or local government as a result of enforcing the rule. Mr. Bright has determined that the public will benefit from this rule in that members of the wholesale tier will have open and free access to information, the use of which will make it less likely that alcoholic beverages will be sold outside the lawful channels of distribution. There is no anticipated cost to small businesses as a result of this rule.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

This rule is proposed under Alcoholic Beverage Code, §5.31, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §§11.091 and 61.031.

§33.32. Notification of Expired or Suspended Licenses and Permits.

(a) This rule refers to §§11.091(b) and 61.031(b) of the Alcoholic Beverage Code.

(b) Notification to wholesalers of expired or suspended licenses or permits shall be by electronic publication of such information on the commission's internet web page.

(c) For purposes of the above referenced sections, an expired license or permit shall be one which has ceased to be active because of the operation of time and for which no timely and sufficient application for renewal has been filed with the commission.

(d) For purposes of the above referenced sections, a suspended license or permit shall be one that has ceased to be active by operation of the procedures described in §33.31 of these rules.

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 August 24, 1999.

TRD-9905351
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 206-3204

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Chapter 45. MARKETING PRACTICES

Subchapter B. STANDARDS OF IDENTIFY FOR WINE

16 TAC §45.46

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

The Alcoholic Beverage Commission proposes the repeal of 16 TAC §45.46 relating to the production, importation or sale of wine fermented from raisins, dried fruits, dried berries or any substandard or imitation wine.

This repeal is proposed to bring the agency's rules into conformance with recent amendment of Alcoholic Beverage Code, §101.65.

Lou Bright, General Counsel, has determined that for the first five year period this repeal is in effect there will be no fiscal implications for state or local governments. Mr. Bright has determined that the public will benefit from this action in that the statutory and regulatory provisions will be harmonized. There is no anticipated costs to owners of small businesses as a result of this action.

Comments should be submitted to Lou Bright, General Counsel, P. O. Box 13127, Austin, Texas 78711. For further information, please call (512) 206-3204.

This action is proposed under Alcoholic Beverage Code, §5.31, which provides the commission authority to prescribe such rules as are necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §101.65.

§45.46. Application.

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905354
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 206-3204

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Subchapter D. ADVERTISING AND PROMOTION-ALL BEVERAGES

16 TAC §45.113

The Texas Alcoholic Beverage Commission proposes an amendment to 16 TAC §45.113 concerning promotions on licensed retail premises by manufacturers and distributors of beer. The amendment is proposed to bring the agency's rules into conformance with recent legislative amendments to Alcoholic Beverage Code, §102.07(g).

Lou Bright, General Counsel, has determined that, for the first five years the rule is in place, there will be no fiscal implications for units of state or local government as a result of enforcing the rule. Mr. Bright has determined that the public will benefit from the rule in that the amendment operates to remove certain regulatory controls over promotional activities thereby allowing greater flexibility in marketing products to consumers. In that the proposed amendment would serve to remove restrictions on voluntary activities by manufacturers and distributors, there is no anticipated costs to small businesses as a result of this rule.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711. For further information, please call (512) 206-3204.

This amendment is proposed under Alcoholic Beverage Code, §5.31 which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §§102.07, 102.12, 102.15 and 108.06.

§45.113. Gifts, Services and Sales.

(a) (No change.)

(b) Gifts to Consumers. Manufacturers and distributors may furnish novelty items and beer to consumers.

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

(3) Beer may be purchased for consumers provided that such beverages are consumed at retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive[~~, prearranged or preannounced~~]. All members of the manufacturing and distribution tier participating in promotions authorized by this paragraph must hold an agent's beer license.

(4)-(5) (No change.)

(c)-(f) (No change.)

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905352
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 206-3204

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16 TAC §45.117

The Alcoholic Beverage Commission proposes an amendment to 16 TAC §45.117 concerning promotions on retail premises by manufacturers and wholesalers of liquor. The amendment is proposed to bring the agency's rule into conformance with recent amendments to Alcoholic Beverage Code, §102.07(g).

Lou Bright, General Counsel, has determined that, for the first five years the rule is in effect, there will be no fiscal implications for units of state or local government as a result of enforcing the rule. Mr. Bright has determined that the public will benefit from this rule in that the proposed amendment repeals regulatory provisions that conflict with statutory commands. There is no anticipated cost to small business as a result of this rule.

Comments may be directed to Lou Bright, General Counsel, P. O. Box 13127, Austin, Texas 78711. For further information, please call (512) 206-3204.

This amendment is proposed under Alcoholic Beverage Code, §5.31 which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §102.07.

§45.117. Gifts and Advertising Specialties.

(a) (No change.)

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

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

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive[~~, prearranged or preannounced~~]. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) (No change.)

(c)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905353
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 206-3204

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Part 9. TEXAS LOTTERY COMMISSION

Chapter 401. ADMINISTRATION OF STATE LOTTERY ACT

Subchapter D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission proposes amendments to 16 TAC §401.305, concerning "Lotto Texas" on-line game rule. The amendments change the way Lotto Texas is played by adding four additional prize categories, four additional balls, and a seventh number which will be used in the additional prize categories. The amendments delete the specific time of the Lotto Texas drawings in order to provide flexibility to the Texas Lottery to assist the Texas Lottery in having the live drawings broadcast and aired by television stations in Texas.

Other amendments are simply "clean up" changes to eliminate obsolete language or typographical errors.

Richard F. Sookiasian, Budget Analyst, Texas Lottery Commission has determined for each year of the first five years the section as proposed will be in effect there will not be fiscal implications to local government and there will be fiscal implications to state government as a result of enforcing or administering the section. The fiscal implications to state government for each year of the first five years the section as proposed will be in effect are increased revenue to the state as follows: FY 00, $20,489,261; FY 01, $20,489,261; FY 02, $20,489,261; FY 03, $20,489,261; and, FY 04, $20,489,261.

Pamela Udall, On-line Product Manager, Texas Lottery Commission has determined that the public benefit to be anticipated for each year of the first five years the section as proposed will be in effect will be offering players what they have been requesting: larger jackpots categories and more prize money. There are no anticipated economic cost to persons who are required to comply with the section as proposed. There will be no effect on small businesses.

In accordance with Government Code, §2001.022, this agency has determined that the section as proposed will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Comments may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. A public hearing to receive public comments concerning the proposed amendments will be held at 10:00 a.m. on September 27, 1999, at the Texas Lottery Commission headquarters building, first floor auditorium, 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

The amendments are proposed under Texas Government Code, §466.015, which gives the Texas Lottery Commission the authority to adopt all rules necessary to administer the State Lottery Act and rules governing the establishment and operation of the lottery; and, under Texas Government Code §467.102 which gives the Commission the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466 is affected by this proposed amendment.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. A Texas Lottery on-line game to be known as "Lotto Texas" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §401.304 of this title (relating to On-Line Game Rules (General)), and unless the context in this section otherwise requires, the following definitions apply.

(1) Cash value option–An election a player makes at the time the player purchases a ticket to be paid the net present value of the player's share of the jackpot, in the event the player has a valid winning jackpot ticket.

(2) Number–Any play integer from one through 54 [~~50~~] inclusive.

(3) Play–The six numbers selected on each play board and printed on the ticket.

(4) Play board–A field of the 54 [~~50~~] numbers found on the playslip.

(5) Playslip–An optically readable card issued by the Texas Lottery used by players of Lotto Texas to select plays. There shall be five play boards on each playslip identified as [~~at~~] A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(6) Seventh number - The Texas Lottery Commission will conduct drawings every Wednesday and Saturday evening. Six balls will be drawn from a field of 54 balls. A seventh ball will be drawn from the remaining 48 balls. The seventh number may be renamed for marketing and/or for promotional purposes.

(c) Price of ticket. The price of each Lotto Texas play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Lotto Texas.

(1) Type of play. A Lotto Texas player must select six numbers in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when two, three, four, five, or six of the numbers selected by the player match, in any order, the [~~six winning~~] numbers drawn by the lottery in one of the following matching combinations.
Figure: 16 TAC §401.305(d)(1)

(2) Method of play. The player will use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. A [~~If offered by the lottery, a~~] player may leave all play selections to a random number generator operated by the computer, commonly referred to as "quick pick."

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning number drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Lotto Texas [~~lotto~~].

(1) Prize amounts. The prize amounts, for each drawing, paid to each lotto player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the seventh and eighth prizes [~~fourth prize~~], which are each [~~is~~] a guaranteed $5.00 [~~$3.00~~]. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage, with the exception of the seventh and eighth [~~fourth~~] prize breakage, will carry forward to the next drawing for each respective prize category. The seventh and eighth [~~fourth~~] prize category breakage will be placed in the reserve fund. No prize amount shall be less than $5.00 [~~$3.00~~]. The prize amounts are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category.

[~~Figure: 16 TAC §401.305(e)(1)~~]

(2) Prize pool. The prize pool for Lotto Texas prizes shall be a minimum of 50% of lotto sales.

(3) Prize categories.

(A) First prize (jackpot).

(i) In the event of a prize winner who does not select the cash value option, the prize winner's share of the jackpot shall be paid in 25 installments. To determine the annuitized future value of each share (prize amount), the annuitized future value of the prize category is divided by the shares. A share is the matching combination, in one play, of all six numbers from the first six numbers drawn by the lottery, excluding the seventh number (in any order). Each share will be paid in 25 installments. The initial payment shall be paid only upon completion of all internal validation procedures. The subsequent 24 payments shall be paid annually by monies generated by the purchase of securities which shall be purchased through the Comptroller of Public Accounts-Treasury Operations, State of Texas, after each drawing for which lottery records reflect the sale of one or more winning Lotto Texas six of six plays, and the value of the 24 installments shall be determined by the face or market value of said securities at purchase. Annual installment payments shall be based on the annual maturity value of the securities purchased. The payment of annual annuities will be made on the 15th day of the anniversary of the month in which the ticket was won. If the cash value of each share is equal to or greater than the amount required to pay an initial first-year cash installment and 24 subsequent annuitized annual installments yielding total payments of $2 million or greater, each share shall be paid in 25 installments in the same manner as described in this paragraph. If the cash value of each share is less than the amount required to pay an initial first-year cash installment and 24 subsequent installments yielding total payments of $2 million, each share shall be paid the cash value of each share in one payment.

(ii) In the event of a prize winner who selects the cash value option, the prize winner's share will be paid in a single, lump sum payment based on the discounted, present cash value of the prize winner's share of the jackpot on the next business day after the drawing. The player must make the election of the cash value option at the time of purchasing a Lotto Texas ticket. If the player does not make any election at the time of purchasing a Lotto Texas ticket, the share will be paid in accordance with clause (i) of this subparagraph. [~~The executive director shall, in his/her sole discretion, establish the implementation date of the cash value option.~~]

(iii) The first prize (jackpot) [~~six of six jackpot~~] prize must be claimed at the Austin claim center. The total prize category contribution for a drawing will include the following.

(I) The direct prize category contribution may be 64.69% [~~64%~~] of the prize pool for the drawing.

(II) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(B) Second Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the first six numbers drawn by the lottery, plus the seventh number (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 0.46% [~~5.0%~~] of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(C) Third prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the first [~~four of the~~] six numbers drawn by the lottery, excluding the seventh number (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 2.18% [~~18%~~] of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(D) Fourth prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the first six numbers drawn by the lottery, plus the seventh number (in any order) [~~is a guaranteed minimum $3.00. Any roll-over amounts shall be added to the prize reserve fund~~]. The total prize category contribution will include the following .[~~:~~]

(i) The direct prize category contribution shall be 1.36% [~~11%~~] of the prize pool for the drawing.

(ii) The indirect prize category contribution , which may be increased, [~~as determined~~] by the executive director , will include the roll-over from the previous drawing, if any.

(E) Fifth Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the first six numbers drawn by the lottery, excluding the seventh number (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 3.14% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(F) Sixth Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any three of first six numbers drawn by the lottery, plus the seventh number (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 4.19% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(G) Seventh Prize. The prize amount is a guaranteed minimum $5.00. Any roll-over amounts shall be added to the prize reserve fund. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 12.56% of the prize pool for the drawing.

(ii) The indirect prize category contribution as determined by the executive director.

(H) Eighth Prize. The prize amount is a guaranteed minimum $5.00. Any roll-over amounts shall be added to the prize reserve fund. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 9.42% of the prize pool for the drawing.

(ii) The indirect prize category contribution as determined by the executive director.

(4) Prize reserve fund.

(A) The Lotto Texas prize reserve is 2.0% of the prize pool.

(B) The Lotto Texas prize reserve fund may be increased or decreased by any amounts allocated to the prize pool and not paid to the winners. For example, rounding down, paying Lotto Texas prizes, and roll-over amounts from the seventh and eighth prizes [~~fourth prize~~].

(f) Ticket purchases.

(1) Lotto tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Lotto tickets shall show the player's selection of number or Quick Pick (QP) numbers, boards played, drawing date, jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Lotto Texas tickets must be purchased using official Lotto Texas playslips. Playslips which have been mechanically completed are not valid. Lotto Texas tickets must be printed on official Texas lottery paper stock and purchased at a licensed location through an authorized Texas lottery retailer's on-line terminal.

(g) Drawings.

(1) The Lotto Texas drawings shall be held each week on Wednesday and Saturday evenings after the drawbreak [~~at 9:59 p.m. Central Time except that~~]. The [~~the~~] exact time of the drawings [~~drawing schedule~~] may be changed by the executive director[~~, if necessary~~].

(2) Lotto Texas tickets will not be sold from 9:45 p.m. Central Time until 10 p.m. Central Time on Wednesday and Saturday nights.

(3) The drawings will be conducted by lottery officials.

(4) Each drawing shall determine, at random, seven [~~six~~] winning numbers in accordance with Lotto Texas drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all Lotto Texas [~~lotto~~] winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the lottery.

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

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

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

TRD-9905505
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

Part 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

Chapter 17. CAMPUS PLANNING

Subchapter A. CRITERIA FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §§17.22-17.25

The Texas Higher Education Coordinating Board proposes amendments to §§17.22, 17.23, 17.24, and 17.25 concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation. The proposed amendments to the rules are being made to make the Board's rules consistent with changes made by the Legislature in the Texas Education Code. The rules will delegate additional authority to governing boards, by raising the thresholds, below which projects are exempt from Coordinating Board review.

Roger Elliott, Assistant Commissioner for Financial Planning, Campus Planning and Research determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be there should be a slight decrease in administrative costs associated with construction costs at institutions of higher education.

Dr. Elliott also has determined that for the first five years the rules are in effect the public benefit will be that they will result on more efficient government. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, §§61.027, and 61.058 which provides the Texas Higher Education Coordinating Board with the authority to adopt

rules concerning Criteria for Approval of New Construction and major Repair and Rehabilitation.

There were no other sections or articles affected by the proposed amendments.

§17.22. Scope of Coordinating Board Review.

(a) If the cost of a proposed project is not more than $2,000,000 [~~$600,000~~], the Coordinating Board's consideration and determination shall be limited to the purpose for which such new or remodeled building shall be used and its gross dimensions to assure conformity with approved space utilization standards and the institution's approved programs and role and scope. An evaluation of the effectiveness of use of the space in the proposed facility, of current institutional space availability, effectiveness of utilization of existing space, and relative need for additional space will be made from the current physical facilities inventory on file at the Coordinating Board.

(b) For projects that exceed $2,000,000 [~~$600,000~~], the Board may consider cost factors and the financial implications of the project to the state.

§17.23. Campus Master Plans.

(a) Consideration of new construction or major repair and rehabilitation projects shall be based upon a comprehensive and current institutional campus master plan on file at the Coordinating Board. In accordance with Texas Education Code, Section 61.0582, the campus master plan should include:

(1)-(3) (No change.)

(4) the funding source of any new construction project that costs more than $1,000,000 [~~$300,000~~] or repair and rehabilitation project that costs more than $2,000,000 [~~$600,000~~]. An institution shall report to the Board any change in the funding source of a project before the project begins;

(5)-(6) (No change.)

(b) (No change.)

§17.24. New Construction.

(a) Coordinating Board approval for new construction financed from any source shall be limited to projects the total cost of which is in excess of $1,000,000 [~~$300,000~~].

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

§17.25. Major Repair and Rehabilitation.

Coordinating Board approval for major repair and rehabilitation of buildings and facilities shall be limited to projects the total cost of which is in excess of $2,000,000 [~~$600,000~~].

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 August 25, 1999.

TRD-9905386
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: October 28, 1999
For further information, please call: (512) 483-6162

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19 TAC §17.28, §17.32

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

The Texas Higher Education Coordinating Board proposes the repeal of §§17.28 and 17.32 concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation. The repeal of the rules is being made to simplify the Board's rules and eliminate a certification that is no longer needed. Section 17.28 will be replaced by a certification of compliance in the construction application form as referenced by §17.43. Section 17.32 is no longer needed.

Roger Elliott, Assistant Commissioner for Financial Planning, Campus Planning and Research determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be there should be a slight decrease in administrative costs associated with construction costs at institutions of higher education.

Dr. Elliott also has determined that for the first five years the rules are in effect the public benefit will be that they will result on more efficient government. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the repealed rule as proposed.

Comments on the repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules is proposed under Texas Education Code, §§61.027, and 61.058 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Construction and major Repair and Rehabilitation.

There were no other sections or articles affected by the proposed repealed amendments.

§17.28. Barriers to the Handicapped.

§17.32. Assessment of Needs for Instructional and Research Equipment.

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

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James McWhorter
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Texas Higher Education Coordinating Board
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Subchapter B. APPLICATION FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §§17.43-17.45

The Texas Higher Education Coordinating Board proposes amendments to §§17.43, 17.44, 17.45 concerning Application for Approval of New Construction and Major Repair and Rehabilitation. The proposed amendments to the rules are being made to make the current application form conform to changes made in the Government Code and the Education Code, to streamline the application process for construction and land acquisition projects, to make the rules conform to current Coordinating Board practice, and focus attention on some Coordinating Board priorities. Institutions will be able to use simpler, on-line application forms; institutions will verify certain facts on the form rather than providing a separate letter. Institutions will be required to verify that the project will comply with minimum flood plain management standards and fire and safety standards established by the State Fire Marshal.

Roger Elliott, Assistant Commissioner for Financial Planning, Campus Planning and Research determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be there should be a slight decrease in administrative costs associated with construction costs at institutions of higher education.

Dr. Elliott also has determined that for the first five years the rules are in effect the public benefit will be that they will result in more efficient government. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, §§61.027, and 61.058 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Construction and major Repair and Rehabilitation.

There were no other sections or articles affected by the proposed amendments.

§17.43. Compliance with Statutory Building Requirements for Elimination of Architectural Barriers to Persons with Disabilities.

As part of the Coordinating Board's construction project review, the proposing institution's compliance with statutory building requirements under Texas Civil Statutes, Article 9102, shall be determined. The authority for the administration and enforcement of Texas Civil Statutes, Article 9102, except as otherwise provided in the Act, Section 7.05(f), rests with the Texas Department of Licensing and Regulation. To verify this compliance, the institution shall certify that it has complied with Article 9102 for the Elimination of Architectural Barriers for persons with Disabilities [~~filed an Elimination of Architectural Barriers Project Registration with the Texas Department of Licensing and Regulation~~].

§17.44. Information Required. [~~Application Form.~~]

Institutions shall provide the following information when applying for CB approval: [~~Application forms and guidelines for requesting Coordinating Board approval will be provided by the Coordinating Board and shall call for the following information:~~]

(1) (No change.)

(2) Verification [~~Letter of assurance~~] that the project has been designed to improve utilization of energy using the Energy Management Center standards;

[~~(3) For projects that would add space that will generate state funding, a letter from the chairperson of the institution's governing board certifying that the need for new construction is at least equal to the need to acquire additional or more modern instructional and research equipment;~~]

(3) [~~(4)~~] Verification that the project is included in the institution's most recent campus master plan update on file at the Coordinating Board;

(4) Verification that the project will comply with the minimum flood plain management standards established by the Texas Natural Resources Conservation Commission and the Federal Emergency Management Administration (FEMA).

(5) Verification that the project will comply with fire and safety standards established by the State Fire Marshall.

(6) [~~(5)~~] Other information on the proposed project that is needed by the Board's staff to prepare recommendations to the Board; and

(7) [~~(6)~~] Other information that the requesting institution may wish to provide to ensure a full understanding of the proposed project.

§17.45. Energy Conservation Projects.

For the purpose of encouraging repair and rehabilitation projects that improve energy conservation in higher education facilities, the following procedure may be used to review, for Board approval, energy conservation projects reviewed by the State Energy Conservation Office and the Texas Energy Coordination Council for funding through a performance contract; or energy conservation contracts approved for funding by the State Energy Conservation Office through the Texas LoanSTAR Program.

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

(5) The committee may refer to the full Board any projects it does not wish to approve that cost more than $2,000,000 [~~$600,000~~]. If a Loanstar project would have the effect of increasing space, it must be referred to the full Board.

(6) The Coordinating Board or Campus Planning Committee must approve energy conservation performance contracts. However, the Board or Campus Planning Committee will consider the review and comment report from a licensed professional engineer who is not an officer or employee of an offerer of the contract under review or otherwise associated with the contract [~~the Energy Management Center prior to approval~~].

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

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6162

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Subchapter C. REQUESTING COORDINATING BOARD ENDORSEMENT OF REAL PROPERTY ACQUISITIONS

19 TAC §§17.62, 17.63, 17.65, 17.67

The Texas Higher Education Coordinating Board proposes amendments to §§17.62, 17.63, 17.65 and 17.67 concerning Requesting Coordinating Board Endorsement of Real Property Acquisitions. The proposed amendments to the rules are being made to streamline the application process for land acquisition projects. The threshold for which appraisals are required for property acquisitions will be raised from $10,000 to $50,000 and a property appraisal provided by a local appraisal district may be used.

Roger Elliott, Assistant Commissioner for Financial Planning, Campus Planning and Research determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be there should be a slight decrease in administrative costs associated with construction costs at institutions of higher education.

Dr. Elliott also has determined that for the first five years the rules are in effect the public benefit will be that they will result in more efficient government. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, §§61.027, and 61.058 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Construction and major Repair and Rehabilitation.

There were no other sections or articles affected by the proposed amendments.

§17.62. Real Property Costing $50,000 [$10,000] or Less.

For any real property acquisition costing $50,000 [$10,000] or less, the institution shall describe briefly how it is certain that fair value is being paid for the property. The institution may obtain and submit appraisals for this purpose.

§17.63. Real Property Costing $50,000 [$10,000].

For the acquisition of real property whose cost exceeds $50,000 [$10,000], the institution shall comply with the following procedure:

(1) On real property proposed to be acquired, the institution shall obtain two appraisal reports issued by appraisers, at least one of whom meets one of the following requirements:

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

(D) is a senior member or appraiser-counselor of the National Association of Independent Fee Appraisers (designated I.F.A.S. or I.F.A.C.).

(E) The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(2)-(3) (No change.)

§17.65. Procedure for Endorsement of Real Property Acquisition.

(a) The application procedure shall [~~consist of two stages as follows:~~]

[~~(1) The first stage, which is optional, involves the partial completion of the application form prescribed in Section 17.64 of this title (relating to Application Form). Items dealing with financial data, costs, and appraisal reports shall be excluded. The application shall be submitted at least 60 days prior to the board meeting at which the request is to be considered. Board endorsement of the request at this step shall constitute preliminary approval of the acquisition.~~]

[~~(2) The second stage, which is required in all cases,~~] include [~~includes~~] the completion and submission of the [~~entire~~] application form, including costs, source of funds, and the procurement of two appraisal reports as provided in Section 17.63 of this title (relating to Real Property Costing More than $50,000 [~~$10,000~~]).

[~~(3) For acquisitions which have received preliminary approval, the board shall give specific consideration to the cost of the real property in determining whether to endorse the acquisition. There shall be a three year time limit between preliminary approval and final approval.~~]

(b) For requests of an emergency nature, Coordinating Board consideration of requests for real property acquisitions may be [~~which had received preliminary board approval under stage 1 is~~] delegated to the Campus Planning Committee. The committee will act upon such requests between scheduled meetings of the board in accordance with the following guidelines:

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

§17.67. Time Limitation for Endorsement of Land Acquisition.

Upon final endorsement of land acquisition the institution will have two years [~~one year~~], to purchase the approved property. If not purchased within two years [~~one year~~], the institution must resubmit the proposal to the Commissioner [~~Board~~]. The Commissioner shall approve, disapprove, or refer the project to the Campus Planning Committee.

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

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Part 2. TEXAS EDUCATION AGENCY

Chapter 105. FOUNDATION SCHOOL PROGRAM

Subchapter AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

19 TAC §105.1001

The Texas Education Agency (TEA) proposes an amendment to 19 TAC §105.1001, concerning optional extended year programs. The section establishes requirements and procedures related to applying for optional extended year program funds, including eligibility and funding criteria.

The proposed amendment to §105.1001 specifies that optional extended year program funds cannot be used to provide services to students served under the accelerated reading instruction program. During the 76th Texas Legislative Session, 1999, the legislature approved the implementation of the accelerated reading instruction program. Texas Education Code, §28.006(g), states that school districts shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to students in kindergarten, first grade, or second grade and shall determine the form, content, and timing of that program.

Felipe T. Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have 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 support for school districts that will reduce and ultimately eliminate retention of students. The section would also provide consistent administration of the grant program and give school districts well-defined guidelines for applying for optional extended year program funds. There will not be an 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §29.082, which authorizes the commissioner education to adopt rules for administering programs provided under the Texas Education Code, §29.082.

The proposed amendment implements the Texas Education Code, §29.082.

§105.1001. Optional Extended Year Program.

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 35% of the students in Kindergarten through Grade 8 are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended-year instructional services to not more than 10% of the at-risk student population in Kindergarten through Grade 8.

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 8 in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts with 50% or more economically disadvantaged students.

(c) At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement notice [~~card~~] used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per- capita basis.

(d) A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 8 under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 8 to the extent necessary to avoid duplicate funding of optional extended year programs.

(e) A school district receiving funds for the accelerated reading instruction program authorized under the Texas Education Code, §28.006(g), is ineligible to use funds authorized under the Texas Education Code, §29.082, to serve students in Kindergarten during the 1999-2000 school year, Kindergarten-Grade 1 during the 2000-2001 school year, and Kindergarten-Grade 2 during the 2001-2002 school year.

(f) [~~(e)~~] An optional extended year program may extend the day, the week, or the year. The program shall be conducted beyond the required instructional days which may include intercessions for year-round programs.

(g) [~~(f)~~] A school district may use funds under this section for follow-up activities so long as the optional extended year program is provided for no less than 30 instructional days. Follow-up activities provided by this subsection are restricted to participants of the program.

(h) [~~(g)~~] All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(i) [~~(h)~~] Students who do not meet district standards or policies for promotion on the basis of academic achievement or demonstrated proficiency of the subject matter of the course or grade level shall be eligible for services under the optional extended year program.

(j) [~~(i)~~] A school district must include a parent/family awareness component in the program.

(k) [~~(j)~~] Training required under Texas Education Code, §29.082 (d), shall provide teachers with the knowledge and skills needed to help students in the program meet challenging state content and student performance standards. Training is to occur prior to the implementation of the program. Additional professional development may be provided throughout the implementation of the program.

(l) [~~(k)~~] A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A tutorial program is not an acceptable instructional design for the program.

(m) [~~(l)~~] A school district shall submit an annual report evaluating the program in the time and format required by the Agency. The report shall include a complete list of students who participated in the program for at least one day.

(n) [~~(m)~~] For audit purposes, a school district shall maintain documentation to support each of the requirements of this section.

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

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

TRD-9905458
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Chapter 1. ARCHITECTS

Subchapter D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.71

The Texas Board of Architectural Examiners proposes a new rule, §1.71 Inactive Registration Status. The section sets forth the conditions under which a registered architect may change his or her registration status to inactive. The section also sets forth the practice and title restrictions placed upon an inactive registrant, the penalties and fees that may be imposed for failure to adhere to the restrictions, as well as the conditions under which a registrant's inactive status may be changed to active status. The new rule is expected to enable registrants to forego payment of registration renewal fees when they choose not to work in Texas for prolonged periods of time.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased flexibility for and cost savings to registrants. The agency anticipates that there will be minimal effect on small business. Registrants who choose to take advantage of the rule will experience cost savings because they will not be required to pay registration renewal fees.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249a, Section 11A, which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding inactive status.

This new rule does not affect any other statutes.

§1.71. Inactive Registration Status.

(a) A registrant whose certificate of registration is active and in good standing may apply for inactive status on a form prescribed by the Board before the expiration date of the registration.

(b) A registrant whose certificate of registration is on inactive status may not practice architecture or use any form of the title "architect" to describe the registrant or the registrant's work. If an "inactive" registrant practices architecture or uses any form of the title "architect" improperly, the registrant's registration certificate may be suspended or revoked or the registrant may be fined up to $1,000 for each day that the registrant practiced architecture or used a form of the title "architect" improperly.

(c) The registrant's seal, wall certificate and current pocket card must be returned to the Board before the application for inactive status is approved and will not be returned to the registrant.

(d) An annual record maintenance fee may be charged as prescribed by the Board.

(e) An annual fee for the architectural candidate scholarship fund established by the 76th Texas Legislature may be charged.

(f) To return the registration to active status, the registrant shall:

(1) apply on a form prescribed by the Board; and

(2) complete all continuing education requirements for each year the registration was inactive; and

(3) pay a fee as prescribed by the Board.

(g) A registrant whose registration has been inactive for five years or longer shall:

(1) be re-examined prior to returning the certificate of registration to active status; or

(2) furnish evidence that the registrant is currently registered in another jurisdiction where the registration requirements are substantially equivalent to Texas requirements and that the current registration is active and in good standing.

(h) Applications to return to active status may be rejected for any of the reasons that an initial application for a certificate may be rejected or that a certificate may be revoked.

(i) The Board may require that applications to return to active status include verification that the applicant has complied with the laws governing the practice of architecture.

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 August 24, 1999.

TRD-9905364
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Subchapter E. FEES

22 TAC §1.84

The Texas Board of Architectural Examiners proposes an amendment to §1.84 Annual Registration and Renewal Fee. The proposed amendment is to indicate that the penalty for late renewal will be determined by the Board instead of being based on the examination fee and to indicate that a fee will be charged to change an individual's registration status. The amendment is expected to enable the Board to establish fee rates that are reasonable and will allow the Board to recover the costs of providing certain services.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss of revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the penalty for late renewal will be more reasonable and persons actually receiving certain services will be responsible for their costs. The agency anticipates that there will be minimal effect on small business. The anticipated economic cost to persons who are required to comply with the rule as proposed will be less than the current cost for registrants who fail to renew their registrations on time. The cost to registrants who choose to change their registration status will be the amount necessary to offset the agency's cost for providing the service.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a, Section 12, which provides the Texas Board of Architectural Examiners with authority to establish a penalty for late renewal and Article 249a, Section 3, which authorizes the Board to establish fees.

This proposed amendment does not affect any other statutes.

§1.84. Annual Registration and Renewal Fee.

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

(c) Annual renewal payment must be received by the annual expiration date. Failure to renew by the annual expiration date will result in the imposition of a penalty as prescribed by the Board [~~a penalty. If payment is received within 90 days after the expiration date, the penalty is one-half of the examination fee. If payment is received from 91 days to one year (91 days to 365 days) after the expiration date, the penalty is the full examination fee.~~] All penalties are in addition to the annual renewal fee.

(d) (No change.)

(e) If a registrant wishes to change the registrant's registration status, such as from active to emeritus or active to inactive, the registrant must pay a status change fee as prescribed by the Board in addition to any renewal fee that might be due.

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 August 24, 1999.

TRD-9905365
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §1.85

The Texas Board of Architectural Examiners proposes an amendment to §1.85 Reinstatement Fee. The proposed amendment is to indicate that the reinstatement fee will be as prescribed by the Board instead of being based on the examination fee and renewal fee. The amendment is expected to enable the Board to establish fee rates that are reasonable.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that no fiscal implications are anticipated at the present time as a result of enforcing or administering the section for the first five years the section as proposed is in effect.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the reinstatement fee will be more reasonable. The agency anticipates that there will be minimal effect on small business. The agency anticipates no economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a, Section 3, which provides the Texas Board of Architectural Examiners with authority to establish fees.

This proposed amendment does not affect any other statutes.

§1.85. Reinstatement Fee.

Certificates of registration revoked for any cause [~~stated in these rules~~] may be reinstated by Board[~~board~~] action only upon payment of a fee as prescribed by the Board [~~of the current examination fee plus the current renewal fee.~~] Payments, by cashier's check or money order, thus required can be remitted only as directed by notices from the Board [~~board~~] office. [~~The reinstatement fee will be waived for emeritus architects.~~].

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 August 24, 1999.

TRD-9905366
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §1.86

The Texas Board of Architectural Examiners proposes an amendment to §1.86 Reciprocal Transfer Fee. The proposed amendment is to indicate that the reciprocal transfer fee will be as prescribed by the Board. The amendment is expected to enable the Board to establish fee rates that are reasonable.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, no fiscal implications are anticipated at the present as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the reinstatement fee will be more reasonable. The agency anticipates that there will be minimal effect on small business. At the present time, no change is anticipated in the economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a, Section 3, which provides the Texas Board of Architectural Examiners with authority to establish fees.

This proposed amendment does not affect any other statutes.

§1.86. Reciprocal Transfer Fee.

Initial registration fee for reciprocal registration [~~license~~] in Texas shall be as prescribed by the Board [~~$350~~].

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 August 24, 1999.

TRD-9905367
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §1.87

The Texas Board of Architectural Examiners proposes an amendment to §1.87 Replacement Certificate Fee. The proposed amendment is to indicate that the replacement certificate fee will be as prescribed by the Board. The amendment is expected to enable the Board to recover the cost of providing a certain service.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be minimal.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that persons actually receiving a certain service will be responsible for the cost of that service. The agency anticipates that there will be minimal effect on small business. The anticipated economic cost to persons who are required to comply with the rule as proposed will be $50.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a, Section 3, which provides the Texas Board of Architectural Examiners with authority to establish fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

§1.87. Replacement Certificate Fee.

A replacement certificate authorized by the Board [~~this board~~] will require remittance of a fee as prescribed by the Board [~~of $25 with the letter of request~~].

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905368
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §1.89

The Texas Board of Architectural Examiners proposes a new rule, §1.89 Inactive Fee. The new rule is to set forth the amount of the annual fee for inactive registrants, to indicate that the fee will be deposited into a scholarship fund for architectural candidates, and to indicate that a fee will be charged to return an inactive registration to active status. The new rule is expected to notify interested parties that certain fees are related to inactive status.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will produce a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be cost savings to certain registrants. The agency anticipates that there will be minimal effect on small business. Persons who take advantage of the rule will experience cost savings because they will not be required to pay the registration renewal fee.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249a which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§1.89. Inactive Fee.

(a) An annual fee of $10 will be charged as required by the 76th Legislature and will be deposited to the credit of the scholarship fund for architectural candidates.

(b) A fee to return an inactive registration to active status will be charged as prescribed by the Board.

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 August 24, 1999.

TRD-9905369
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Chapter 3. LANDSCAPE ARCHITECTS

Subchapter D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.71

The Texas Board of Architectural Examiners proposes a new rule, §3.71 Inactive Registration Status. The section sets forth the conditions under which a registered landscape architect may change his or her registration status to inactive. The section also sets forth the practice and title restrictions placed upon an inactive registrant, the penalties and fees that may be imposed for failure to adhere to the restrictions, as well as the conditions under which a registrant's inactive status may be changed to active status. The new rule is expected to enable registrants to forego payment of registration renewal fees when they choose not to work in Texas for prolonged periods of time.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased flexibility for and cost savings to registrants. The agency anticipates that there will be minimal effect on small businesses. Registrants who choose to take advantage of the rule will experience cost savings because they will not be required to pay registration renewal fees.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249c, Section 6A, which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding inactive status.

This new rule does not affect any other statutes.

§3.71. Inactive Registration Status.

(a) A registrant whose certificate of registration is active and in good standing may apply for inactive status on a form prescribed by the Board before the expiration date of the registration.

(b) A registrant whose certificate of registration is on inactive status may not practice landscape architecture or use any form of the title "landscape architect" to describe the registrant or the registrant's work. If an "inactive" registrant practices landscape architecture or uses any form of the title "landscape architect" improperly, the registrant's registration certificate may be suspended or revoked or the registrant may be fined up to $1,000 for each day that the registrant practiced landscape architecture or used a form of the title "landscape architect" improperly.

(c) The registrant's seal, wall certificate and current pocket card must be returned to the Board before the application for inactive status is approved and will not be returned to the registrant.

(d) An annual record maintenance fee may be charged as prescribed by the Board.

(e) To return the registration to active status, the registrant shall:

(1) apply on a form prescribed by the Board; and

(2) complete all continuing education requirements for each year the registration was inactive; and

(3) pay a fee as prescribed by the Board.

(f) A registrant whose registration has been inactive for five years or longer shall:

(1) be re-examined prior to returning the certificate of registration to active status; or

(2) furnish evidence that the registrant is currently registered in another jurisdiction where the registration requirements are substantially equivalent to Texas requirements and that the current registration is active and in good standing.

(g) Applications to return to active status may be rejected for any of the reasons that an initial application for a certificate may be rejected or that a certificate may be revoked.

(h) The Board may require that applications to return to active status include verification that the applicant has complied with the laws governing the practice of landscape architecture.

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 August 24, 1999.

TRD-9905370
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Subchapter E. FEES

22 TAC §3.84

The Texas Board of Architectural Examiners proposes an amendment to §3.84 Annual Registration and Renewal Fee. The proposed amendment is to indicate that the penalty for late renewal will be determined by the Board instead of being based on the examination fee and to indicate that a fee will be charged to change an individual's registration status. The amendment is expected to enable the Board to establish fee rates that are reasonable and will allow the Board to recover the costs of providing certain services.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss of revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the penalty for late renewal will be more reasonable and persons actually receiving certain services will be responsible for their costs. The agency anticipates that there will be minimal effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be less than the current cost for registrants who fail to renew their registrations on time. The cost to registrants who choose to change their registration status will be the amount necessary to offset the agency's cost for providing the service.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c, Section 7, which provides the Texas Board of Architectural Examiners with authority to establish a penalty for late renewal and Article 249a, Section 3, which authorizes the Board to establish fees.

This proposed amendment does not affect any other statutes.

§3.84. Annual Registration and Renewal Fee.

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

(c) Annual renewal payment must be received by the annual expiration date. Failure to renew by the annual expiration date will result in the imposition of a penalty as prescribed by the Board [~~a penalty. If payment is received within 90 days after the expiration date, the penalty is one-half of the examination fee. If payment is received from 91 days to one year (91 days to 365 days) after the expiration date, the penalty is the full examination fee.~~] All penalties are in addition to the annual renewal fee.

(d) (No change.)

(e) If a registrant wishes to change the registrant's registration status, such as from active to emeritus or active to inactive, the registrant must pay a status change fee as prescribed by the Board in addition to any renewal fee that might be due.

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 August 24, 1999.

TRD-9905371
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §3.85

The Texas Board of Architectural Examiners proposes an amendment to §3.85 Reinstatement Fee. The proposed amendment is to indicate that the reinstatement fee will be as prescribed by the Board instead of being based on the examination fee and renewal fee. The amendment is expected to enable the Board to establish fee rates that are reasonable.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect there are no fiscal implications anticipated at the present time as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section will be that the reinstatement fee will be more reasonable. The agency anticipates that there will be minimal effect on small businesses. The agency anticipates no economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c which provides the Texas Board of Architectural Examiners with authority to establish fees.

This proposed amendment does not affect any other statutes.

§3.85. Reinstatement Fee.

Certificates of registration revoked for any cause [~~stated in these sections~~] may be reinstated by Board[~~board~~] action only upon payment of a fee as prescribed by the Board [~~of the current examination fee plus the current renewal fee.~~] Payments, by cashier's check or money order, thus required can be remitted only as directed by notices from the Board[~~board~~] office. [~~The reinstatement fee will be waived for emeritus architects.~~]

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 August 24, 1999.

TRD-9905372

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §3.87

The Texas Board of Architectural Examiners proposes an amendment to §3.87 Replacement Certificate Fee. The proposed amendment is to indicate that the replacement certificate fee will be as prescribed by the Board. The amendment is expected to enable the Board to recover the cost of providing a certain service.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be minimal.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that persons actually receiving a certain service will be responsible for the cost of that service. The agency anticipates that there will be minimal effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be $50.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c which provides the Texas Board of Architectural Examiners with authority to establish fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

§3.87. Replacement Certificate Fee.

A replacement certificate authorized by the Board [~~this board~~] will require remittance of a fee as prescribed by the Board [~~of $25 with a letter of request~~].

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905373
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §3.90

The Texas Board of Architectural Examiners proposes a new rule, §3.90 Inactive Fee. The new rule is to set forth the amount of the annual fee for inactive registrants and to indicate that a fee will be charged to return an inactive registration to active status. The new rule is expected to notify interested parties that certain fees are related to inactive status.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will produce a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be cost savings to certain registrants. The agency anticipates that there will be minimal effect on small businesses. Persons who take advantage of the rule will experience cost savings because they will not be required to pay the registration renewal fee.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249c which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§3.90. Inactive Fee.

A fee to return an inactive registration to active status will be charged as prescribed by the Board.

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 August 24, 1999.

TRD-9905374
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Subchapter I. CHARGES AGAINST LANDSCAPE ARCHITECTS; ACTION

22 TAC §3.161

The Texas Board of Architectural Examiners proposes an amendment to §3.161 Disciplinary Action. The proposed amendment expands the rule to govern the implementation of an amendment to the Architectural Barriers Act. The amendment is expected to provide for uniform enforcement of a new provision of the Architectural Barriers Act.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section cannot be determined at this time.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be uniform enforcement of the requirement that landscape architects submit plans and specifications for accessibility review. The agency anticipates that there will be

minimal effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be $1,000 or less per violation.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas, 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 9102 which requires landscape architects to submit plans for accessibility review, and Article 249c (section 4), which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment affects the enforcement of Article 9102.

§3.161. Disciplinary Action.

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

(c) Landscape architects must comply with the Texas Department of Licensing and Regulation's requirements and submit drawings in a timely manner. The board may revoke or suspend a landscape architect's certificate of registration; place on probation a landscape architect whose registration has been suspended; reprimand a landscape architect; or assess an administrative penalty in an amount not to exceed $1,000. [~~Texas Accessibility Standards, 16 Texas Administrative Code Chapter 68, per Texas Department of Licensing and Regulation.~~]

(1) If the facts and circumstances of a TDLR referral appear to warrant informal disposition by offering the landscape architect a consent order, the executive director, on the advice of staff and legal counsel, may approve of such offer in lieu of formal action by the board. The consent order may include the following provisions:

(A) the imposition of an administrative penalty in an amount not to exceed $1,000;

(B) the imposition of directives that require the landscape architect to implement written policies within the landscape architect's practice that are reasonably designed to prevent subsequent violations of the Architectural Barriers Act; and/or

(C) the deferral of the case for a certain period of no more than one year with the case being finally dismissed at the end of the period if no new violations of law occur during the period.

(2) If the executive director approves of a proposed consent order and the consent order provides for deferral of the case for a certain period, the landscape architect's professional registration shall remain in good standing for the duration of the period as long as the landscape architect adheres to the terms of the consent order.

(3) If the executive director approves of a proposed consent order and the landscape architect fails to adhere to the terms of the consent order, the executive director shall refer the case for formal action by the board.

(4) If a consent order is proposed and either the landscape architect or the executive director fails to approve of the consent order, the executive director shall refer the case for formal action by the board.

(5) The executive director shall not approve of a consent order if the conduct that is the subject of the consent order occurred after either of the following:

(A) the executive director and the landscape architect approved of a consent order in connection with a different referral from the Texas Department of Licensing and Regulation;

(B) the board took action against the landscape architect's professional registration based on a different referral from the Texas Department of Licensing and Regulation.

(d)-(n) (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 August 24, 1999.

TRD-9905375
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Chapter 5. INTERIOR DESIGNERS

Subchapter D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.81

The Texas Board of Architectural Examiners proposes a new rule, §5.81 Inactive Registration Status. The section sets forth the conditions under which a registered interior designer may change his or her registration status to inactive. The section also sets forth the practice and title restrictions placed upon an inactive registrant, the penalties and fees that may be imposed for failure to adhere to the restrictions, as well as the conditions under which a registrant's inactive status may be changed to active status. The new rule is expected to enable registrants to forego payment of registration renewal fees when they choose not to work in Texas for prolonged periods of time.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased flexibility for and cost savings to registrants. The agency anticipates that there will be minimal effect on small businesses. Registrants who choose to take advantage of the rule will experience cost savings because they will not be required to pay registration renewal fees.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249e, Section 13A, which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding inactive status.

This new rule does not affect any other statutes.

§5.81. Inactive Registration Status.

(a) A registrant whose certificate of registration is active and in good standing may apply for inactive status on a form prescribed by the Board before the expiration date of the registration.

(b) A registrant whose certificate of registration is on inactive status may not practice interior design or use any form of the title "interior designer" to describe the registrant or the registrant's work. If an "inactive" registrant practices interior design or uses any form of the title "interior designer" improperly, the registrant's registration certificate may be suspended or revoked or the registrant may be fined up to $1,000 for each day that the registrant practiced interior design or used a form of the title "interior designer" improperly.

(c) The registrant's seal, wall certificate and current pocket card must be returned to the Board before the application for inactive status is approved and will not be returned to the registrant.

(d) An annual record maintenance fee may be charged as prescribed by the Board.

(e) To return the registration to active status, the registrant shall:

(1) apply on a form prescribed by the Board; and

(2) complete all continuing education requirements for each year the registration was inactive; and

(3) pay a fee as prescribed by the Board.

(f) A registrant whose registration has been inactive for five years or longer shall:

(1) be re-examined prior to returning the certificate of registration to active status; or

(2) furnish evidence that the registrant is currently registered in another jurisdiction where the registration requirements are substantially equivalent to Texas requirements and that the current registration is active and in good standing.

(g) Applications to return to active status may be rejected for any of the reasons that an initial application for a certificate may be rejected or that a certificate may be revoked.

(h) The Board may require that applications to return to active status include verification that the applicant has complied with the laws governing the practice of interior design.

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 August 24, 1999.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Subchapter E. FEES

22 TAC §5.95

The Texas Board of Architectural Examiners proposes an amendment to §5.95 Annual Registration and Renewal Fee. The proposed amendment is to indicate that the penalty for late renewal will be determined by the Board instead of being based on the examination fee and to indicate that a fee will be charged to change an individual's registration status. The amendment is expected to enable the Board to establish fee rates that are reasonable and will allow the Board to recover the costs of providing certain services.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be a loss of revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the penalty for late renewal will be more reasonable and persons actually receiving certain services will be responsible for their costs. The agency anticipates that there will be minimal effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be less than the current cost for registrants who fail to renew their registrations on time. The cost to registrants who choose to change their registration status will be the amount necessary to offset the agency's cost for providing the service.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e, Section 14, which provides the Texas Board of Architectural Examiners with authority to establish a penalty for late renewal and Article 249a, Section 3, which authorizes the Board to establish fees.

This proposed amendment does not affect any other statutes.

§5.95. Annual Registration and Renewal Fee.

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

(c) Annual renewal payment must be received by the annual expiration date. Failure to renew by the annual expiration date will result in the imposition of a penalty as prescribed by the Board [~~a penalty. If payment is received within 90 days after the expiration date, the penalty is one-half of the examination fee. If payment is received from 91 days to one year (91 days to 365 days) after the expiration date, the penalty is the full examination fee.~~] All penalties are in addition to the annual renewal fee.

(d) (No change.)

(e) If a registrant wishes to change the registrant's registration status, such as from active to emeritus or active to inactive, the registrant must pay a status change fee as prescribed by the Board in addition to any renewal fee that might be due.

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

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §5.96

The Texas Board of Architectural Examiners proposes an amendment to §5.96 Reinstatement Fee. The proposed amendment is to indicate that the reinstatement fee will be as prescribed by the Board instead of being based on the examination fee and renewal fee. The amendment is expected to enable the Board to establish fee rates that are reasonable.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that no fiscal implications are anticipated at the present time as a result of enforcing or administering the section for the first five years the section as proposed is in effect.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the reinstatement fee will be more reasonable. The agency anticipates that there will be minimal effect on small businesses. The agency anticipates no economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provides the Texas Board of Architectural Examiners with authority to establish fees.

This proposed amendment does not affect any other statutes.

§5.96. Reinstatement Fee.

Certificates of registration revoked for any cause [~~stated in these rules~~] may be reinstated by Board[~~board~~] action only upon payment of a fee as prescribed by the Board [~~of the current examination fee plus the current renewal fee.~~] Payments, by cashier's check or money order, thus required can be remitted only as directed by notices from the Board [~~board~~] office. [~~The reinstatement fee will be waived for emeritus interior designers.~~]

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

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §5.97

The Texas Board of Architectural Examiners proposes an amendment to §5.97 Reciprocal Transfer Fee. The proposed amendment is to indicate that the reciprocal transfer fee will be as prescribed by the Board. The amendment is expected to enable the Board to establish fee rates that are reasonable.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, no fiscal implications are anticipated at the present as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that the reinstatement fee will be more reasonable. The agency anticipates that there will be minimal effect on small businesses. At the present time, no change is anticipated in the economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provides the Texas Board of Architectural Examiners with authority to establish fees.

This proposed amendment does not affect any other statutes.

§5.97. Reciprocal Transfer Fee.

Applicants requesting reciprocal registration in Texas [~~by reciprocity from other states~~] must remit an application fee as prescribed by the Board. [~~in the amount of $100.~~] This fee is not refundable. If the application is approved, a Certificate of Registration will be issued upon receipt of an initial registration fee as prescribed by the Board.[~~in the amount of $100.~~]

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 August 24, 1999.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §5.98

The Texas Board of Architectural Examiners proposes an amendment to §5.98 Replacement Certificate Fee. The proposed amendment is to indicate that the replacement certificate fee will be as prescribed by the Board. The amendment is expected to enable the Board to recover the cost of providing a certain service.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will be minimal.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be that persons actually receiving a certain service will be responsible for the cost of that service. The agency anticipates that there will be minimal effect on small business. The anticipated economic cost to persons who are required to comply with the rule as proposed will be $50.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provides the Texas Board of Architectural Examiners with authority to establish fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

§5.98. Replacement Certificate Fee.

A replacement certificate authorized by the Board [~~this board~~] will require remittance of a fee as prescribed by the Board [~~of $25 with the letter of request~~].

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

Filed with the Office of the Secretary of State, on August 24, 1999.

TRD-9905380
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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22 TAC §5.100

The Texas Board of Architectural Examiners proposes a new rule, §5.100 Inactive Fee. The new rule is to set forth the amount of the annual fee for inactive registrants and to indicate that a fee will be charged to return an inactive registration to active status. The new rule is expected to notify interested parties that certain fees are related to inactive status.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section will produce a loss in revenue in an amount that cannot be determined at this point.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be cost savings to certain registrants. The agency anticipates that there will be minimal effect on small businesses. Persons who take advantage of the rule will experience cost savings because they will not be required to pay the registration renewal fee.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed under Vernon's Texas Civil Statutes, Article 249e which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§5.100. Inactive Fee.

A fee to return an inactive registration to active status will be charged as prescribed by the Board.

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 August 24, 1999.

TRD-9905381
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 305-8535

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Subchapter I. CHARGES AGAINST INTERIOR DESIGNERS: ACTION

22 TAC §5.171

The Texas Board of Architectural Examiners proposes an amendment to §5.171 Disciplinary Action. The proposed amendment imposes a fine against interior designers who fail to comply with the Architectural Barriers Act. The amendment is expected to make the penalty for violation consistent with that for architects and landscape architects.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, the fiscal implications as a result of enforcing or administering the section cannot be determined at this time.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be uniform enforcement of the requirement that interior designers submit plans and specifications for accessibility review. The agency anticipates that there will be minimal effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be $1,000 or less per violation.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 9102 which requires landscape architects to submit plans for accessibility review, and Article 249e (section 15), which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment affects the enforcement of Article 9102.

§5.171. Disciplinary Action.

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

(c) Interior designers must comply with the Texas Department of Licensing and Regulation's requirements and submit drawings in a timely manner. The board may revoke or suspend an interior designer's certificate of registration; place on probation an interior designer whose registration has been suspended; [~~or~~] reprimand an interior [~~designer.~~] designer; or assess an administrative penalty in an amount not to exceed $1,000.

(1) If the facts and circumstances of a TDLR referral appear to warrant informal disposition by offering the interior

designer a consent order, the executive director, on the advice of staff and legal counsel, may approve of such offer in lieu of formal action by the board. The consent order may include the following provisions:

(A) the imposition of an administrative penalty in an amount not to exceed $1,000;

(B) [~~(A)~~] the imposition of directives that require the interior designer to implement written policies within the interior designer's practice that are reasonably designed to prevent subsequent violations of the Architectural Barriers Act; and/or

(C) [~~(B)~~] the deferral of the case for a certain period of no more than one year with the case being finally dismissed at the end of the period if no new violations of law occur during the period.

(2) If the executive director approves of a proposed consent order and the consent order provides for deferral of the case for a certain period, the interior designer's professional registration shall remain in good standing for the duration of the period as long as the interior designer adheres to the terms of the consent order.

(3) If the executive director approves of a proposed consent order and the interior designer fails to adhere to the terms of the consent order, the executive director shall refer the case for formal action by the board.

(4) If a consent order is proposed and either the interior designer or the executive director fails to approve of the consent order, the executive director shall refer the case for formal action by the board.

(5) The executive director shall not approve of a consent order if the conduct that is the subject of the consent order occurred after either of the following:

(A) the executive director and the interior designer approved of a consent order in connection with a different referral from the Texas Department of Licensing and Regulation;

(B) the board took action against the interior designer's professional registration based on a different referral from the Texas Department of Licensing and Regulation.

(d)-(n) (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 August 24, 1999.

TRD-9905382

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Proposed date of adoption: October 15, 1999

For further information, please call: (512) 305-8535

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 101. GENERAL RULES

Subchapter H. EMISSIONS BANKING AND TRADING

Division 2. EMISSIONS BANKING AND TRADING OF ALLOWANCES

30 TAC §§101.330-101.337

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §101.330, concerning Definitions; §101.331, concerning Applicability; §101.332, concerning General Provisions; §101.333, concerning Allocation of Allowances; §101.334, concerning Allowance Transfer; §101.335, concerning Allowance Banking; §101.336, concerning Emission Monitoring, Compliance Demonstration, and Reporting; and §101.337, concerning El Paso Region. The new sections would be placed into a new Division 2, concerning Emissions Banking and Trading of Allowances, of a new Subchapter H, concerning Emissions Banking and Trading. The proposed rules would also be submitted as a revision to the state implementation plan (SIP).

EXPLANATION OF PROPOSED RULES

Senate Bill (SB) 7, 76th Legislature, 1999, amended the Texas Utilities Code, Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Chapter 39, Restructuring of Electric Utility Industry. SB 7 requires the commission to implement the permitting and allowance requirements of new §39.264, concerning Emissions Reductions of "Grandfathered Facilities." SB 7 requires the commission to develop a mass cap and trade system to distribute emission allowances for use by electric generating facilities (EGF). Under SB 7, two categories of EGFs are eligible to use the proposed trading system. The first category consists of EGFs in existence on January 1, 1999, which were not subject to the requirement to obtain a permit under Texas Clean Air Act (TCAA), §382.0518(g). These facilities are commonly referred to as grandfathered facilities. SB 7 also mandates that grandfathered EGFs apply for a permit on or before September 1, 2000, and obtain a permit by or cease operation after May 1, 2003. The second category of EGFs consists of permitted EGFs that are not subject to the permitting requirements of SB 7, yet elect to participate in the allowance trading system.

These new sections are proposed concurrently with new sections in Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. Proposed new Chapter 116, Subchapter I, concerning Electric Generating Facility Permits, will contain the requirements for permitting of EGFs. The amendments to Chapter 116 are published in a separate section of this edition of the *Texas Register.*

Texas Utilities Code, §39.264(g) and (h) requires the commission to allocate emission allowances to grandfathered EGFs in defined regions of the state. As stated in §39.264(c), the legislature intended that total annual emissions of nitrogen oxides (NO_x) would not exceed 50% of the emissions during 1997 as reported to the commission, and that for coal-fired grandfathered EGFs, total annual emissions of sulfur dioxide (SO_2) would not exceed 75% of the emissions during 1997 as reported to the commission. To further this goal, Texas Utilities Code, §39.264(h) provides emission rates to calculate specific allowances.

As previously stated, Texas Utilities Code, §39.264(c) provides that emission limitations may be met through an emissions

allocation and allowance transfer system. An allowance trading program is a regulatory program which caps emissions over a designated region to a level consistent with regulatory goals. Each EGF must hold allowances equal to or greater than its emissions to be in compliance with the program. For example, if an EGF's emissions are 100 tons over the control period, then the allowance account for this EGF should reflect a balance equal to or greater than 100 tons of allowances. The program encourages EGFs to determine the methods of control which will allow the EGF to meet its allowances. Further, the program allows for trading of allowances between EGFs in the same region, thereby creating alternatives for control. For example, if an EGF emitted 100 tons over the control period and has a balance of 150 allowances in its compliance account, the EGF may sell the unused portion 50 tons or allowances to another EGF. This trading provision allows companies to determine the most economical method of meeting the regulation, either by purchasing surplus allowances created by another EGF's reductions or by making their own reductions.

Consistent with Texas Utilities Code, §39.264(i), currently permitted EGFs may elect to participate in the permitting program being proposed concurrently in Chapter 116, Subchapter I. Permitted facilities electing to participate in the permitting program under Chapter 116, Subchapter I are called electing EGFs. In the concurrently proposed changes to Chapter 116, the commission proposes that the existing New Source Review (NSR) permit would be consolidated with a permit issued under Chapter 116, Subchapter I. Participation in the permitting program will allow electing EGFs to obtain allowances under the Emissions Banking and Trading of Allowances (EBTA). It may be advantageous for a company to include all EGFs, regardless of permitting status, in the permitting program to allow maximum flexibility in control strategies. Under §39.264(i)(2) and (4), electing EGFs are given allowances equal to their actual emissions reported in the commission's 1997 emission inventory unless a federal or state standard otherwise limits the 1997 emission rate.

The proposed new §101.330 contains the definitions to be used in the EBTA. "Allowance" means the authorization to emit one ton of NO_x or SO_2 during the specified control period or any specified control period thereafter. An "authorized account representative" is the responsible person who is authorized, in writing, to transfer and otherwise manage allowances. A "banked allowance" means an allowance which is not used to reconcile emissions in the designated year of allocation but which is carried forward into next year and noted in the compliance or broker account as "banked." Consistent with Texas Utilities Code, §39.264(c), "control period" means the 12-month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003. "Compliance account" means the account for an EGF or multiple EGFs in which allowances are held. "Broker Account" means the account where allowances held by a person are recorded. A broker is one who is participating in the EBTA for the purposes of trading allowances and not to satisfy emission requirements at an EGF. Allowances held in a broker account may not be used to satisfy compliance requirements for this division. EGFs can purchase allowances from brokers, however, the allowances are not eligible to meet reduction requirements until the ownership of the allowances has been transferred and the allowances reside in the purchaser's compliance account.

"East Texas Region" means all counties traversed by or east of Interstate Highway 35 (IH-35) north of San Antonio, or traversed by or east of Interstate Highway 37 (IH-37) south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somerville, and Wise counties. The commission is proposing to modify the definition of "East Texas Region" from Texas Utilities Code, §39.264(g) to clarify that counties east of IH-35 and west of IH-37 are not included in this region. It is believed that had the legislature intended for the definition to include these counties, the definition would have simply referenced IH-35 and not IH-37 also. Additionally, these counties (between IH-35 and IH-37) have been excluded from commission plans involving statewide air control strategies, and the commission believes that the legislature was attempting to be consistent with current commission planning structures. "El Paso Region" means all of El Paso County. "West Texas Region" means all counties not contained in the East Texas or El Paso Regions.

An "electric generating facility," as defined in SB 7, is a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. The commission proposes to modify that definition to exclude a facility that generates electric energy primarily for internal use, but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity. This exclusion eliminates cogeneration facilities that were not intended to be included in this program. "Electing EGF" is an EGF that is not subject to the requirements of Texas Utilities Code, §39.264, that elects to comply with Chapter 116, Subchapter I. "Permitted EGF" is an EGF permitted under Chapter 116, Subchapter I, including electing EGFs. "Heat input" is the heat derived from the combustion of any fuel at an EGF. Heat input does not include the heat derived from reheated combustion air, recirculated flue gas, or exhaust from other sources. The commission proposes defining "NO_x allowance" as an authorization to emit NO_x, valid only for the purposes for meeting the requirements of this division; and Chapter 116, Subchapter I. "SO_2 allowance" is an authorization to emit SO_2, valid only for the purposes for meeting the requirements of this division and Chapter 116, Subchapter I.

The proposed new §101.331 establishes the applicability of banking and trading allowances. EGFs subject to the concurrently proposed Chapter 116, Subchapter I or electing EGFs would be required to comply with EBTA. The section also allows the opening of broker accounts for those not required to participate in the EBTA.

The proposed new §101.332 contains the general provisions for the EBTA. Compliance with the allowance system would begin with the control period beginning May 1, 2003. Allowances would only be valid for meeting the purposes of the EBTA. Allowances cannot be used to meet or exceed the limitations of a permit or applicable law, generate emission reduction credits, or satisfy emission offset requirements under federal NSR. Because allowances do not by themselves meet federal criteria as creditable emission reductions, they may not be used to satisfy other requirements of the Federal Clean Air Act (FCAA), such as netting for Prevention of Significant Deterioration (PSD), NSR, or offsets under a nonattainment NSR permit. Neither a NO_x allowance nor an SO_2 allowance constitutes a security or property right. To meet the requirements of Texas Utilities Code, §39.264(e), this section would require that on May 1 of each year, beginning in 2004, an EGF

shall hold in its compliance account a quantity of allowances that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period. The commission proposes that allowances be allocated, transferred, or used as whole allowances. For simplicity, the number of allowances will be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater. This section also proposes allowing only one compliance account for use by multiple permitted EGFs located at the same property and under common ownership or control. These limitations on the number of compliance accounts will assist the commission in the allocation of allowances and tracking of allowance transfers. Proposed §101.332(j) incorporates Texas Utilities Code, §39.264(n), concerning the deduction of allowances from compliance accounts where the EGF exceeded its allowances.

The proposed new §101.333 contains the methods by which allowances for permitted EGFs are calculated and determined. As specified in Texas Utilities Code, §39.264(h), the allowances will be calculated by multiplying total heat input measured in millions of British thermal units (MMBtu) during 1997 by an emission rate expressed in pounds per MMBtu divided by 2,000. To determine allowances, the commission proposes using information obtained from the United States Environmental Protection Agency's (EPA) Acid Rain Program's Emissions Scorecard 1997. This database is the only readily-available, consistently-reported, and comprehensive source of 1997 heat input data for EGFs. This database was the basis for determining the emission rates necessary to achieve the program's goals of a 50% reduction in NO_x emissions and 25% reduction in SO_2 emissions from 1997 levels. If information for an EGF concerning heat input is not reported to the acid rain database, the executive director may approve a method for calculating heat input for that EGF as long the method is consistent with the requirements of the acid rain database.

Texas Utilities Code, §39.264(h), specifies the emission rates for the El Paso, East Texas, and West Texas Regions. In the East Texas Region the emission rate is 0.14 pounds of NO_x per MMBtu and 1.38 pounds of SO_2 per MMBtu. The emission rate in the El Paso Region is 0.195 pounds of NO_x per MMBtu. The West Texas Region's emission rates are identical to those in the El Paso Region. Consistent with Texas Utilities Code, §39.264(i)(2), the allowances for electing EGFs are equal to the EGF's emission in tons in 1997. Should a permitted coal-fired EGF elect to participate in the permitting program under Chapter 116, Subchapter I, the annual emissions of SO_2 from 1997 would be used to establish its allowances.

In addition to the 50% reduction expected from grandfathered EGFs under SB 7 requirements, the commission anticipates adopting additional requirements for EGFs in nonattainment areas to meet the ozone National Ambient Air Quality Standard (NAAQS). For each nonattainment area, the amount of reductions for the SIP will be consistent with the SIP modeling efforts for that area. At this time the point source reductions expected in the Dallas/Fort Worth (DFW) area are 88%. Reductions in the Beaumont/Port Arthur (BPA) area are expected to be 40-50%, and reductions in the Houston/Galveston (HGA) are expected to be 90%. The commission expects to propose the reductions for BPA and DFW areas in December of 1999. For the HGA area, proposal is expected in May of 2000. The commission expects to propose reductions in attainment counties of east and central Texas not later than December of 1999. Future rulemaking addressing these reductions will affect the EBTA and the allocation of future allowances. Since Texas Utilities Code, §39.264(s) recognizes the current authority of the commission to require additional reductions of NO_x or SO_2, as future SIP rules are developed allowances will be reduced accordingly.

Allowances for grandfathered EGFs must be allocated by January 1, 2000, as required by Texas Utilities Code, §39.264(h). In order to meet this deadline, the commission intends to issue an order this fall to allocate these allowances. The commission is aware of the needs of owners or operators of EGFs to know as soon as possible the number of allowances that will be allocated to each EGF. A draft of proposed allowances is available from the commission on request and will be available on the commission's Web Site. To meet the statutory deadline to issue allowances by January 1, 2000, proposed §101.333(4) provides that a commission order will be issued by that date with the SB 7 allowances for the grandfathered EGFs. The allowances allocated for subsequent years will reflect the same values issued in the initial allocation, provided no subsequent state or federal regulations require additional reductions. To allow EGFs to identify potential sellers of allowances, the commission shall maintain a publically available registry of the allowances in each compliance account. For each transfer, the registry shall include the price paid per allowance. The registry shall not contain proprietary information. The commission believes that public access to information regarding the price and transfer of allowances will promote an open trading system. Consistent with Texas Utilities Code, §39.264(s), 30 TAC §101.333(a)(3) permits the commission to reduce allowances for the purposes of satisfying the SIP or other federal, state, or local requirements.

Initial allowances for electing EGFs for the control period beginning May 1, 2003 would be allocated by January 1, 2001. Since the commission will not know which EGFs are electing to participate in the permitting program until September 1, 2000, it would be impossible to allocate those allowances on the same schedule as the grandfathered allocations. This later allocation schedule will allow companies to determine whether to participate in the programs and which programs best suit their individual business needs.

The proposed new §101.334 would establish requirements concerning the transfer of allowances. Allowances may be transferred at any time during a control period with documentation received by the commission no later than June 30 following the control period for which the allowances are used. The commission believes that 60 days to report all transfers will give owners or operators ample time to finalize transfers for that control period. In addition to the annual report, notification of transfer of allowance must occur within 30 days after the transfer of any allowances to another party. This requirement will ensure that the data kept on the commission's registry is accurate and current. Allowance transfers are prohibited prior to May 1, 2003. The commission believes it is appropriate to set a beginning date for the receipt of transfer notification. This restriction will allow the commission to set up the appropriate tracking mechanisms prior to receipt of notifications. As required by Texas Utilities Code, §39.264(i)(3), allowances at electing EGFs resulting from reduced utilization or shutdowns cannot be transferred. Transferrable allowances for electing EGFs shall be calculated using the heat input from 1997, the heat input from the control period, and changed emission factors. The equations to determine transferable allowances from electing EGFs are in the rule text.

Consistent with Texas Utilities Code, §39.264(j), allowances may only be transferred within the same region. Transfers from broker accounts are restricted based on the location of the EGF where the allowance was originally allocated.

SB 7 allows EGFs the flexibility to decide when and where to make reductions or to add on controls. EGFs must consider local impacts of allowance transfers specifically on those counties which are nonattainment and near nonattainment. For example, most near-nonattainment areas have EGFs that are in close proximity to these areas. These EGFs emit significant amounts of NO_x, which has been shown to heavily influence local ozone levels. Other EGFs located a greater distance from these areas have regional impacts on background ozone levels but do not impact near-nonattainment areas to the extent the closer facilities can.

While the commission believes that the trading program will result in emission reductions throughout the East Texas Region, emission reductions, rather than allowance transfers, at the nearby facilities should be thoroughly considered before investments are made for emission control equipment at more distant plants. In making these economic decisions, it is incumbent on businesses to weigh the environmental consequences of their actions. Prior to making an allowance transfer to a nonattainment or near-nonattainment area, EGFs must be aware that such transfers might jeopardize the status of a near-nonattainment area. For example, at this time the Tyler/Longview/Marshall area is operating under the terms of a Flexible Attainment Region (FAR). If numerous transfers occur into that area, the conditions of the FAR may be compromised. The FAR will expire in September 2001 and can be extended by the parties. During the term of the FAR agreement, EPA will treat the area under an approach similar to a maintenance plan area. However, EPA may designate the area as nonattainment, regardless of whether a FAR agreement is in place. Designation of nonattainment could result in additional reductions of NO_x from EGFs in the Northeast Texas FAR area. Furthermore, a nonattainment designation would require additional reductions from industry sources and potential restrictions on trade into the new nonattainment area. The commission encourages EGFs to consider the long-term consequences of decisions to utilize allowances rather than the installation of controls at EGFs located close to nonattainment areas and in near-nonattainment areas.

The proposed new §101.335 regulates the banking of allowances. As required by Texas Utilities Code, §39.264(i)(3), allowances at electing EGFs resulting from reduced utilization or shutdown cannot be banked. Allowances not used for compliance may be banked for use in subsequent years.

The proposed new §101.336 establishes compliance demonstration methods. All EGFs using the EBTA must comply with §116.914, concerning Emissions Monitoring and Reporting Requirements. By June 1 of each year, EGFs participating in the EBTA shall report to the commission the amount of emissions of each allocated air contaminant during the preceding control period. Emission allowances equal to the amount of emissions during that control period would be deducted from the EGF's compliance account. Consistent with Texas Utilities Code, §39.264(n), if the amount of emissions exceeds the EGF's allowance, allowances in the amount of the excess shall be deducted from the allowances for the next year. The proposed new §101.336 requires that at the end of each control period, the owner or operator of an EGF report its emissions to balance the emissions with the allowances in its compliance account.

As authorized by Texas Utilities Code, §39.264(p), the proposed new §101.337 would allow facilities in the El Paso Region to meet emission allowances using credits from the City of Juarez, in the United States of Mexico. The reduction must be reviewed and approved by the executive director and must be permanent, quantifiable, enforceable by the commission, and not required by other rule or law. Under Texas Utilities Code, §39.264(q), 30 TAC §101.337 would also exempt the El Paso Region from the EBTA if either EPA or the commission determines that reductions of NO_x will increase ambient levels of ozone. Currently, NO_x reductions are not required for facilities in the El Paso nonattainment area because EPA has granted a waiver under FCAA, §182(f) concerning NO_x Requirements. Under this waiver, NO_x reductions are not required if the attainment demonstration for compliance with the ozone NAAQS can be made without a NO_x control strategy. The basis for this waiver does not satisfy §39.264(q) of the Texas Utilities Code because it has not been demonstrated, under the §182(f) waiver or otherwise, that NO_x reductions would increase ambient ozone in El Paso County. These EGFs would still be required to obtain a permit under Chapter 116, Subchapter I regardless of the determination that NO_x reductions are counterproductive in controlling ambient ozone levels in the El Paso Region. The commission believes that this requirement is appropriate since Texas Utilities Code, §39.264(e) provides that EGFs without a permit may not operate after May 1, 2003, and Texas Utilities Code, §39.264(q) refers only to reduction requirements, not permitting requirements.

FISCAL NOTE

Bob Orozco, a technical specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed amendments. River authorities and units of local government that own and operate EGFs are affected by the proposed amendments. Although EGFs of 25 megawatts or less owned by units of state and local government may be excused from the permitting requirements, some EGFs will be required to obtain a permit and reduce emissions to continue operating. It is anticipated that the proposed amendments which allow emission allowance banking and trading for EGFs will provide flexibility and potential cost savings in planning and determining the most economical mix of the application of emission control technology with the purchase of other facilities' surplus allowances to meet emission reduction requirements.

The proposed amendments to Chapter 101, concerning General Rules, would develop and implement the EBTA system for grandfathered EGFs and other EGFs that elect to participate in EBTA requirements. The provisions to establish such a system are contained in:

Act of May 27, 1999, 76th Legislature, SB 7, Regular Session, 1999 (to be codified at Texas Utilities Code, §11.003-163.002).

SB 7 also requires grandfathered EGFs to apply for a permit on or before September 1, 2000. A grandfathered EGF is a facility that was exempt from permitting requirements by virtue of existing or beginning construction, alteration, or modification on or before August 31, 1971. An EGF that does not obtain a

permit by May 1, 2003, may not operate unless the commission finds good cause for an extension.

The new sections in Chapter 101 are proposed concurrently with new sections in Chapter 116. The purpose of the rulemaking in these chapters is to implement permit and emission control requirements, including EBTA procedures for certain EGFs, and related permit application and public notice procedures.

The proposed amendments establish an emission allowance banking and trading program which caps emissions over a designated region to a level consistent with SB 7. SB 7 requires the commission to allocate allowances for grandfathered EGFs by January 1, 2000. Each participating EGF must hold allowances equal to or greater than its emissions to be in compliance with the program. The program encourages EGFs to determine the methods of emissions control which will allow the EGF to meet its emission allowances. The EBTA program allows for voluntary trading of allowances between EGFs in the same region to provide EGFs with the flexibility to determine the best mix of using control technologies to reduce their own emissions and/or the purchase or trading of surplus allowances from other facilities.

SB 7 also allows non-grandfathered EGFs to elect to participate in the EBTA and permitting program. These electing facilities will be given allowances equal to their actual emissions reported in their 1997 emissions inventory unless a federal or state standard otherwise limits the 1997 emission rate.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 101 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be potentially increased efficiency in the reduction of air contaminants emitted from affected EGFs, and increased flexibility for affected EGFs in planning and determining the most economical mix of control technology alternatives and trading of emission allowances to meet SB 7 reduction requirements.

It is the intent of the legislature in SB 7 that, starting May 1, 2003, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the levels emitted during 1997 as reported to the commission. It is also required by SB 7 that emissions of SO_2 from coal-fired power plants not exceed 75% of the levels emitted in 1997. It is anticipated that these emission reductions may be met, in part or in whole, by the emissions trading and allowance system which is the subject of this rulemaking. Counties within Texas have been divided into three regions by SB 7 East Texas, West Texas, and El Paso for the purpose of allocating emissions of NO_x and SO_2 and for the trading of emissions allowances, by region, among the EGFs. The East Texas Region emission rate shall be 0.14 pounds of NO_x and 1.38 pounds of SO_2 per MMBtu. The El Paso Region and West Texas Region emission rate shall be 0.195 pounds of NO_x and 1.38 pounds of SO_2 per MMBtu.

The purpose of the proposed amendments is to create and implement an EBTA program which caps emissions over a designated area from grandfathered and other EGFs that elect to participate in the EBTA program. Each EGF participating in the EBTA program must hold allowances equal to or greater than its emissions to be in compliance with the program. The EBTA program allows for trading of allowances between EGFs in the same region to provide EGFs with flexibility in planning and determining the most economical mix of control technology alternatives to reduce its own emissions with the purchase or trading of another facility's surplus allowances to meet emission reduction requirements.

There are no significant additional costs anticipated to any person or business as a result of complying with the proposed amendments to Chapter 101. The proposed amendments are intended to provide increased flexibility in planning and determining the most economical alternatives to reducing emissions by either applying control technologies or purchasing or trading emission allowances with other EGFs.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

Based on the expected revenues from the smallest generators and the number of employees defined as a micro-business, there are no known small businesses and micro-businesses as defined in the Texas Government Code with EGFs which would be affected by these proposed amendments to Chapter 101. There are no significant additional costs anticipated to any person or business as a result of complying with the proposed amendments to Chapter 101.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and specifies how and when emission allowances can be banked and traded; makes the trading and/or banking of emission allowances voluntary; and allows the EGFs the flexibility to decide the extent of banking and trading of allowances, the rulemaking does not meet the definition of a "major environmental rule." The proposed amendments would only apply to grandfathered EGFs and electing EGFs. Finally, the proposed amendments do not meet any of the four applicability requirements of a "major environmental rule." The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. In addition, the proposed amendments are made specifically to comply with SB 7.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact analysis under Texas Government Code, 2007.043. The following is a summary of that analysis. While these amendments may result in capital costs for some EGFs, the amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). These amendments implement the requirements of Texas Utilities Code, 39.264. EGFs are required to reduce emissions of NO_x by 50% and, if applicable, SO_2, by

25%. Although EGFs are required to make specific emission reductions, these facilities have alternatives available under the proposed banking program that may allow the EGF to avoid installing add on controls. Further, allowances can be transferred under the proposed banking program so that EGFs have opportunities to buy and sell allowances in order to respond to business needs. This action is intended to reduce emissions of NO_x and SO_2. The action significantly advances this purpose by requiring substantial reductions in the emission of NO_x and SO_2 through a system of emission allowances. While requiring these reductions, this rule allows the trading of emission allowances so that EGFs may transfer allowances providing flexibility for compliance with emission limits. This action is taken in response to a real and substantial threat to public health and safety and significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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, concerning Consistency with 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 new sections relating to the authorization of emission allowances and the banking and trading of allowances, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of 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 proposal is intended to reduce overall emissions of NO_x and SO_2 from EGFs. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in El Paso on October 1, 1999, at 9:00 a.m. in the City of El Paso Council Chambers, located at 2 Civic Center Plaza, 2nd Floor. Additional hearings will be held in Lubbock on October 1 at 6:00 p.m. in the City of Lubbock Council Chambers, located at 1625 13th Street; in Austin on October 4 at 9:00 a.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle; in Irving on October 5 at 1:00 p.m. in the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard; in Houston on October 7 at 9:00 a.m. in the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard; and in Beaumont on October 7 at 6:00 p.m. in the John Gray Institute, located at 855 Florida Avenue. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99033- 116-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

These new sections are proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules for the allocation of emission allowances to EGFs and to make rules concerning the banking and trading of those allowances. The new sections are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.023, which authorizes the commission to issue orders; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new sections implement Texas Utilities Code, §39.264, concerning Emissions Reductions of "Grandfathered Facilities"; and Texas Health and Safety Code, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.023, concerning Orders; and §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to Executive Director.

§101.330. Definitions.

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

(1) Allowance - The authorization to emit one ton of nitrogen oxide (NO_x) or sulfur dioxide (SO_2) during a control period.

(2) Authorized account representative - The responsible person who is authorized, in writing, to transfer and otherwise manage allowances.

(3) Banked allowance - An allowance which is not used to reconcile emissions in the designated year of allocation but which is carried forward into future years and noted in the compliance or broker account as "banked."

(4) Broker account - The account where allowances held by a person are recorded. Allowances held in a broker account may not be used to satisfy compliance requirements for this division.

(5) Compliance account - The account for an electric generating facility (EGF) or multiple EGFs in which allowances are held.

(6) Control period - The 12 month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

(7) East Texas Region - All counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somerville, and Wise Counties.

(8) Electing EGF - An electric generating facility permitted under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) which is not subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(9) Electric generating facility - A facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. An EGF does not include a facility that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity.

(10) El Paso Region - All of El Paso County.

(11) Heat input - The heat derived from the combustion of any fuel at an EGF. Heat input does not include the heat derived from reheated combustion air, recirculated flue gas, or exhaust from other sources.

(12) NO_x allowance - An authorization to emit NO_x. A NO_x allowance is valid only for the purposes of meeting the requirements of:

(A) this division; or

(B) Chapter 116, Subchapter I of this title.

(13) Permitted EGF - An electric generating facility permitted under Chapter 116, Subchapter I of this title, including electing facilities.

(14) SO_2 Allowance - An authorization to emit SO_2 valid only for the purposes for meeting the requirements of this division and Chapter 116, Subchapter I of this title.

(15) West Texas Region - All counties not contained in the East Texas Region or El Paso region.

§101.331. Applicability.

This division applies only to the following:

(1) Electric generating facilities permitted under Chapter 116, Subchapter I of this title, (relating to Electric Generating Facility Permits).

(2) A person not required to participate in the requirements of this division may open a broker account under this division for the purposes of banking and trading emissions allowances.

§101.332. General Provisions.

(a) Allowances are valid only for the purposes of meeting the requirements of this division and cannot be used to meet or exceed the limitations of a permit or any applicable rule or law.

(b) On May 1 of each year, beginning in 2004, an electric generating facility (EGF) shall hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period. Compliance with the allowance system will begin with the control period beginning May 1, 2003.

(c) Emission reductions used to satisfy the requirements of the Emissions Banking and Trading of Allowances (EBTA) cannot be used to generate emission reduction credits or discrete emission reduction credits.

(d) Allowances cannot be used for netting requirements to avoid the applicability of federal and state new source review (NSR) requirements.

(e) Allowances cannot be used to satisfy offset requirements for new or modified sources subject to federal nonattainment NSR requirements.

(f) An allowance does not constitute a security or a property right.

(g) All allowances will be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances will be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(h) One compliance account shall be used for multiple permitted EGFs located at the same property and under common ownership or control.

(i) If emissions of nitrogen oxides or, if applicable, sulfur dioxide, exceed the amount of allowances for a given control period, allowances for the next control period will be reduced in an amount equal to the emissions exceeding the allowances in the compliance account.

§101.333. Allocation of Allowances.

Allowances will be allocated according to the requirements of this section.

(1) Except as provided in paragraphs (2) and (3) of this section, allowances will be calculated using the following equation: Figure: 30 TAC §101.333(1)

(A) the acid rain database of the EPA; or

(B) an method approved by the executive director, consistent with the emission reduction requirements of this division, if the information is unavailable from the EPA acid rain database.

(C) In the East Texas region,

(i) 0.14 pound nitrogen oxides (NO_x) per MMBtu; and

(ii) 1.38 pounds sulfur dioxide (SO_2) per MMBtu;

(D) In the West Texas and El Paso Regions, 0.195 pound NO_x per MMBtu;

(2) For electing electric generating facilities (EGF), the amount of allowances is equal to the EGF's actual emissions in tons in 1997 and shall not exceed any of the following:

(A) the emission inventory reported for calendar year 1997;

(B) the allowable emission rate in an existing permit; and

(C) an applicable state or federal requirement.

(3) The commission may increase or decrease the amount of allowances for any control period in order to satisfy requirements under a state implementation plan or other federal, state, or local air quality requirement.

(4) Allowances will be allocated:

(A) initially, by:

(i) January 1, 2000, for grandfathered EGFs;

(ii) January 1, 2001, for electing EGFs; and

(B) subsequently, by May 1 of each year, beginning in 2004.

(C) Allowances will be allocated by commission order.

(5) The commission shall maintain a registry of the allowances in each compliance account. For each transfer, the registry shall include the price paid per allowance. The registry shall not contain proprietary information.

§101.334. Allowance Transfer.

(a) Allowances may be transferred at any time during the control period.

(b) Documentation of all final transfers must be received by the commission on or before June 30 following the control period for which the allowances are to be used.

(c) Only authorized account representatives may transfer allowances.

(d) Notification of transfer of allowance must occur within 30 days after the transfer of any allowances to another party. Allowance transfers are prohibited prior to May 1, 2003.

(e) Allowances at electing electric generating facilities (EGF) that result from reduced utilization or shutdowns are ineligible for transfer. The amount of allowances eligible for transfer from an electing EGF will be calculated using the heat input from 1997 and the changed emission factors as follows:

(1) If the heat input for the control period exceeds the heat input for 1997, the following equation will be used to calculate the amount of transferrable allowances.
Figure: 30 TAC §101.334(e)(1)

(2) If the heat input for the control period is less than the heat input for 1997, the following equation will be used to calculate the amount of transferrable allowances.
Figure: 30 TAC 101.334(e)(2)

(f) Allowances may be transferred within the same region, but not between regions.

(g) Trading to and from a broker account must meet the trading restrictions regarding the origin of the allowances and eligible transfers in this division.

§101.335. Allowance Banking.

(a) Allowances at electing facilities that result from reduced utilization or shutdown are ineligible for banking.

(b) Allowances not used for compliance may be banked for use in subsequent years.

§101.336. Emission Monitoring, Compliance Demonstration, and Reporting.

(a) Emission monitoring and reporting shall be conducted in accordance with §116.914 of this title, (relating to Emissions Monitoring and Reporting Requirements).

(b) For each control period, electric generating facilities (EGFs), must submit a report to the commission detailing the amount of emissions of each allocated air contaminant during the preceding control period. This report must be submitted by June 1 of each year. Emission allowances equaling the total emissions will be deducted from the EGF's compliance account.

§101.337. El Paso Region.

(a) An electric generating facility (EGF) in the El Paso Region may meet the emissions allowances by using credits from emissions reductions achieved in the City of Juarez, United States of Mexico. Emission reductions under this section must meet the following criteria.

(1) The emission reduction must be:

(A) enforceable by the commission;

(B) permanent, meaning that the emission reduction is unchanging for the remaining life of the source;

(C) quantifiable, so that the emission reduction can be measured or estimated with confidence using replicable techniques;

(D) surplus, such that the emission reduction is not otherwise required of a facility by a state or federal law, regulation or agreed order, and;

(E) a real reduction in which actual emissions are reduced.

(2) The emission reduction must be reviewed and approved by the executive director prior to converting the credits into allowances under this program.

(b) EGFs in the El Paso Region are exempt from the requirements of this division if either EPA or the commission determines that reductions of nitrogen oxide in the El Paso Region that would otherwise be required under this division would result in an increased ambient ozone level in El Paso County.

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 August 30, 1999.

TRD-9905501
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Chapter 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

Subchapter C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

Division 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.211, 115.212, 115.219

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§115.211, 115.212, and 115.219, concerning Loading and Unloading of Volatile Organic Compounds (VOC). The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from VOCs, and to the State Implementation Plan (SIP) in order to delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary.

EXPLANATION OF PROPOSED RULES

A gasoline terminal is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput of at least 20,000 gallons per day, averaged over any consecutive 30-day period. A gasoline bulk plant is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput less than 20,000 gallons per day, averaged over any consecutive 30-day period.

The proposed changes to §115.211, concerning Emission Specifications, delete the emission specification for gasoline bulk plants in the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), El Paso (ELP), and Houston/Galveston (HGA) ozone nonattainment areas, and in 95 counties in the eastern half of Texas. These 95 counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

For gasoline bulk plants, §115.211(2) sets an emission limit of 140 milligrams per liter (mg/l) of gasoline transferred. Under §115.212(a)(5)(A), a vapor balance system is required. Alternatively, add-on controls with a control efficiency of at least 90% may be used. Deletion of the 140 mg/l limit would eliminate this difficult-to-quantify/enforce emission limit, but the rules would still require a vapor balance system or a 90% efficient add-on control device. The United States Environmental Protection Agency (EPA) control techniques guideline guidance document upon which the Chapter 115 gasoline bulk plant rules are largely based supports deletion of the emission limit for gasoline bulk plants. Specifically, on page 1-3 of *Control of Volatile Organic Emissions from Bulk Gasoline Plants* (EPA-450/2-77-035, December 1977), the EPA states: "Regulations should be written in terms of operating procedures and equipment specifications rather than emission limits." In addition, the EPA's model reasonably available control technology (RACT) rules do not include an emission limit for gasoline bulk plants. Because the Chapter 115 rules would continue to require a vapor balance system or a 90% efficient add-on control device, the EPA's RACT requirements will continue to be satisfied, and no emission reduction credit will be affected by deletion of the emission limit in §115.211(2). Finally, the proposed revisions to §115.211 renumber the gasoline terminal emission specifications in the current §115.211(1)(A) and (B) as §115.211(1) and (2), respectively.

The proposed changes to §115.212, concerning Control Requirements, revise the "loading lockout" requirement of §115.212(a)(4)(C) and (D) by deleting the requirement to equip gasoline terminals in the DFW, ELP, and HGA ozone nonattainment areas with sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. The affected counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller. In addition, the existing §115.212(a)(4)(E) is proposed for deletion because it will become unnecessary due to the revisions to §115.212(a)(4)(C) and (D), described earlier.

The "loading lockout" rule was initially adopted by the commission on May 4, 1994, and included a requirement for instrumentation which prevents gasoline transfer if the vapor line is not connected between the transport vessel and the terminal's vapor collection system. The specific intent of this requirement was for gasoline terminals to be equipped with sensors and other equipment which is designed and connected to monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. Further, the intent was that if the system detects that the vapor return line is not connected during gasoline transfer, then the system automatically stops the transfer of gasoline to the transport vessel in the affected loading bay. These requirements have applied to gasoline terminals in the DFW, ELP, and HGA ozone nonattainment areas since the November 15, 1996 compliance date.

The commission is proposing to delete this "loading lockout" requirement because instrumentation will not prevent the vapor hose from being improperly connected, and can allow loading to continue if the hose is damaged or only partially connected. Loading lockout instrumentation would prevent completely uncontrolled gasoline loading from occurring. However, the commission's experience is that it is far more likely that tank-truck drivers and/or gasoline terminal operators would fail to take corrective action when vapor and/or liquid gasoline leaks occur than it is for completely uncontrolled loading to occur. Inspection for leaks and correction of leaks are specifically addressed by §115.212(a)(3) and §115.214(a)(1). Because the "loading lockout" instrumentation would not prevent such leaks, the commission believes that this instrumentation is unnecessary. However, the commission intends to vigorously enforce the requirements of §115.212(a)(3) and §115.214(a)(1) to ensure that when vapor and/or liquid gasoline leaks do occur at gasoline terminals, corrective action is taken in a timely manner.

For the DFW, ELP, and HGA ozone nonattainment areas, gasoline terminal emission reduction estimates of 2.17, 0.77, and 0.63 tons per day, respectively, were given in the 1996 *Fix-Ups to the 15% Rate-of-Progress SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas*. Deletion of the requirement for instru-

mentation which prevents gasoline transfer if the vapor line is not connected between the transport vessel and the terminal's vapor collection system will not have an impact on emission reduction credits already taken because that credit was based on tightening the stringency of the gasoline terminal emission specification from 40 to 10.8 milligrams per liter (mg/l) of gasoline loaded. Although the loading lockout requirement was used as additional substantiation for the commission's estimate of gasoline terminal emission reductions associated with implementation of the 10.8 mg/l emission specification, deletion of this requirement will not affect the emission reduction credit.

The proposed changes to §115.219, concerning Counties and Compliance Schedules, eliminate references to the gasoline bulk plant emission specification of §115.211(2) and update rule references to the gasoline terminal emission specification from the current §115.211(1)(A) and (B) to §115.211(1) and (2), respectively. These changes are necessary due to the changes to §115.211 and §115.212 described earlier.

FISCAL NOTE

Jeff Horvath, Strategic Planning and Appropriations Division, has determined that for the first five-year period the revisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments. Enforcement of the rule will not result in an increase in workload for commission staff.

There are approximately 36 gasoline terminals in the DFW, ELP, and HGA ozone nonattainment areas, and most of these do not have sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. It is estimated to cost $2,400 per loading bay to install this equipment. A typical gasoline terminal has three to eight loading bays, so the savings to each terminal from not installing this equipment are estimated to range from $7,200 to $19,200. There are numerous gasoline bulk plants in the BPA, DFW, ELP, and HGA ozone nonattainment areas, and in 95 counties in the eastern half of Texas. The proposed revisions will relieve gasoline bulk plants from the cost of conducting performance testing to demonstrate compliance with the 140 mg/l emission limit of §115.211(2). The estimated cost savings is $5,000 per test.

PUBLIC BENEFIT

Mr. Horvath has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement of and compliance with the rules will be more cost-effective rules. The proposed revisions will relieve gasoline terminals that are not already complying with the loading lockout requirements of §115.212(a)(4)(C)-(D) from the cost of installing sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. None of the gasoline terminals affected by this proposed revision are small businesses. In addition, the proposed revisions will relieve gasoline bulk plants from the cost of conducting performance testing to demonstrate compliance with the 140 mg/l emission limit of §115.211(2). Most of the gasoline bulk plants affected by this proposed revision are small businesses.

SMALL BUSINESS ANALYSIS

As identified in the PUBLIC BENEFIT and FISCAL NOTE sections, the rule revision does not impose any costs on persons or small businesses and, in fact, is expected to result in cost savings.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. The revision proposed in this rulemaking will delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary for the reasons stated earlier in this preamble. This revision does not meet the definition of a major environmental rule, as it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. This rulemaking will result in a cost savings to the industry. Furthermore, this rulemaking will not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. This revision will not adversely affect any SIP emission reduction obligations relating to attainment demonstrations, because deletion of the loading lockout provisions described earlier is not expected to increase the duration or amount of emissions. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, 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 and federal program, and was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

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 rulemaking is to delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary. The proposed revisions will relieve gasoline terminals that are not already complying with the loading lockout requirements of §115.212(a)(4)(C)-(D) from the cost of installing sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. In addition, the proposed revisions will relieve gasoline bulk plants from the cost of conducting performance testing to demonstrate compliance with the 140 mg/l emission limit of §115.211(2). This rulemaking will result in a cost savings to the industry. Therefore, this revision will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed 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, concerning Consistency with

the 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, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking will not have a significant adverse effect on air quality in the coastal area, because it will not affect any SIP emission reduction obligations relating to attainment demonstrations, and because deletion of the loading lockout and gasoline bulk plant emission limit described earlier is not expected to increase the duration or amount of emissions. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARINGS

A public hearing on this proposal will be held in Austin on October 4, 1999 at 2:00 p.m. in Building F, Room 5108 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, 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 99053-115-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Eddie Mack, Strategic Environmental Analysis and Assessment Division, at (512) 239-1488.

STATUTORY AUTHORITY

The amendments are proposed under the 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 policy and purposes of the TCAA; and TCAA, §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Texas Health and Safety Code, §382.017.

§115.211. Emission Specifications.

The owner or operator of each gasoline terminal and gasoline bulk plant in the covered attainment counties and in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall ensure that volatile organic compound (VOC) [~~VOC~~] emissions from the vapor control system vent at gasoline terminals [~~gasoline transfer~~] do not exceed the following rates:

(1) [~~from the vapor control system vent at gasoline terminals:~~]

[~~(A)~~] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, 0.09 pound per 1,000 gallons (10.8 mg/liter) of gasoline loaded into transport vessels.

(2) [~~(B)~~] in the covered attainment counties, 0.17 pound per 1,000 gallons (20 mg/liter) of gasoline loaded into transport vessels. Until April 30, 2000 in Gregg, Nueces, and Victoria Counties, VOC emissions are limited to [~~shall not exceed~~] 0.67 pound per 1,000 gallons (80 mg/liter) of gasoline loaded into transport vessels.

[~~(2) at gasoline bulk plants, 1.2 pounds per 1,000 gallons (140 mg/liter) of gasoline transferred into transport vessels or storage tanks.~~]

§115.212. Control Requirements.

(a) The owner or operator of each volatile organic compound (VOC) transfer operation, transport vessel, and marine vessel in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall comply with the following control requirements.

(1)-(3) (No change.)

(4) Gasoline terminals. The following additional control requirements apply to the transfer of gasoline at gasoline terminals.

(A)-(B) (No change.)

(C) Each gasoline terminal shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device [~~, and to monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system~~].

[~~(i)~~] If the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

[~~(ii)~~ ~~If the vapor return line is not connected during gasoline transfer, then:~~]

[~~(I)~~ ~~systems which monitor for a positive coupling of the vapor return line to the transport vessel shall automatically stop the transfer of gasoline to the transport vessel in that loading bay immediately; and~~]

[~~(II)~~ ~~systems which monitor for the presence of vapor flow shall allow no more than one minute of gasoline transfer to occur before automatically stopping the transfer of gasoline to the transport vessel in that loading bay.~~]

(D) As an alternative to subparagraph (C) of this paragraph, the following requirements apply to gasoline terminals which have a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. Such gasoline terminals shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device [~~, and to monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system~~].

[~~(i)~~] If the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store

additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

~~[(ii) If the vapor return line is not connected during gasoline transfer, then:]~~

~~[(I) systems which monitor for a positive coupling of the vapor return line to the transport vessel shall automatically stop the transfer of gasoline to the transport vessel in that loading bay immediately; and]~~

~~[(II) systems which monitor for the presence of vapor flow shall allow no more than one minute of gasoline transfer to occur before automatically stopping the transfer of gasoline to the transport vessel in that loading bay.]~~

~~[(E) As an alternative to subparagraphs (C) and (D) of this paragraph, gasoline terminals in the Beaumont/Port Arthur area may comply with subsection (b)(4)(C) or (D) of this section.]~~

(5)-(7) (No change.)

(b) (No change.)

§115.219. Counties and Compliance Schedules.

(a) (No change.)

(b) The owner or operator of each gasoline bulk plant in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall comply with §§~~[115.211(2),]~~ 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title (relating to ~~[Emission Specifications;]~~ Control Requirements; Inspection Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than April 30, 2000.

(c) The owner or operator of each gasoline terminal in the covered attainment counties, as defined in §115.10 of this title (excluding Gregg, Nueces, and Victoria Counties), shall comply with §§ 115.211(2) ~~[115.211(1)(B)]~~, 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title as soon as practicable, but no later than April 30, 2000.

(d) The owner or operator of each gasoline terminal in Gregg, Nueces, and Victoria Counties shall:

(1) (No change.)

(2) be in compliance with the following specifications as soon as practicable, but no later than April 30, 2000:

(A) the 20 mg/liter emission specification of §115.211(2) ~~[§115.211(1)(B)]~~ of this title;

(B)-(D) (No change.)

(e)-(i) (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 August 30, 1999.

TRD-9905510
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 1, 1999
For further information, please call: (512) 239-0348

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Chapter 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Natural Resource Conservation Commission (commission) proposes new §116.16, concerning Voluntary Emission Reduction Permit Definitions; §116.810, concerning Eligibility; §116.811, concerning Voluntary Emission Reduction Permit Application; §116.812, concerning Project Emission Reduction Credits; §116.813, concerning Application Review Schedule; §116.814, concerning General and Special Conditions; §116.816, concerning Deferral of Emission Reductions; §116.820, concerning Modifications; §116.840, concerning Public Participation for Initial Issuance; §116.841, concerning Notice and Comment Hearings for Initial Issuance; §116.842, concerning Notice of Final Action; §116.850, concerning Voluntary Emission Reduction Permit Application Fee; §116.860, concerning Voluntary Emission Reduction Permit Renewal; and §116.870, concerning Delegation. These proposed new sections implement those portions of Senate Bill (SB) 766, 76th Legislature, 1999, that require the commission to create a voluntary emission reduction permit (VERP) program. These new sections will be placed in a new Subchapter H, concerning Voluntary Emission Reduction Permit.

The commission also proposes new §116.601, concerning Types of Standard Permits; §116.602, concerning Issuance of Standard Permits; §116.603, concerning Public Participation in Issuance of Standard Permits; §116.604, concerning Duration and Renewal of Registrations to Use Standard Permits; §116.605, concerning Standard Permit Amendment and Revocation; §116.606, concerning Delegation; and amendments to §116.610, concerning Applicability; §116.611, concerning Registration Requirements; and §116.614, concerning Standard Permit Fees. These proposed new sections and amendments implement those portions of SB 766 that authorize the commission to issue standard permits. These sections are also proposed as revisions to the state implementation plan (SIP).

EXPLANATION OF PROPOSED RULES CONCERNING VERPS

During the 75th legislative session in 1997, House Bill (HB) 3019 directed the commission to develop a voluntary emissions reduction plan for the permitting of existing significant sources. These existing significant sources are commonly known as grandfathered facilities. A grandfathered facility is one that existed at the time the legislature amended the Texas Clean Air Act (TCAA) in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants. If grandfathered facilities have not been modified, they continue to be authorized to operate without a permit. Beginning in the early 1990s, efforts were made to develop concepts and provide incentives to bring grandfathered facilities into the permit program. The intent of HB 3019 was to create a program that would encourage the remaining grandfathered facilities to voluntarily obtain permits that would reduce the emissions from those facilities. In response to the legislative directive in HB 3019, the commission appointed an eleven-member advisory panel to provide recommendations regarding the criteria for a voluntary emission reductions plan for grandfathered facilities. This committee, the Clean Air Respon-

sibility Enterprise (CARE) Committee, consisted of representatives from local governments, the environmental community, and industry groups, and met several times in the fall of 1997 to provide the commission with recommendations. Those recommendations were presented to the commission at the December 18, 1997, Commissioner's Work Session. The commission held several hearings to obtain comments on the recommendations made by the CARE committee and received comments from the public and industry groups.

In order to implement the recommendations of the CARE committee and the requirements of HB 3019, the 76th Legislature passed SB 766 in 1999. In general, SB 766 recategorizes the new source review authorizations under the TCAA and creates the new program for the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. Senate Bill 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. A new authorization permits by rule was created for the construction of certain types of insignificant facilities. Exemptions from permitting now authorize only changes at insignificant facilities. Finally, the commission is now authorized to develop criteria for facilities that emit a *de minimis* amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the VERP program for permitting of grandfathered facilities, and the multiple plant permit. As a part of the VERP program, the commission is required to create an emission reduction credit program for use by grandfathered facilities that are unable to meet the control method requirements of the VERP program.

Senate Bill 766 also provided several incentives for grandfathered facilities to apply for a permit under the VERP program. Section 11 of the bill provides that not later than January 15, 2001, the commission shall prepare a report on the number of companies that have obtained or applied for a VERP and the reductions in emissions anticipated. The report shall be submitted to the governor, the lieutenant governor, the speaker of the House of Representatives, the chair of the Senate Committee on Natural Resources, and the chair of the House Committee on Environmental Regulation. Section 12 of the bill states that the commission may not initiate an enforcement action against a person for the failure to obtain a preconstruction permit under Texas Health and Safety Code, §382.0518, concerning Preconstruction Permit, or a rule adopted or order issued by the commission under that section, that is related to the modification of a facility that may emit air contaminants if, on or before August 31, 2001, the person files an application for a VERP. Section 12 does not apply to an act related to the modification of a facility that occurs after March 1, 1999. The bill also amended TCAA, §382.0621(d) to require increasing emission fees for the largest grandfathered facilities which do not participate in the VERP program by the dates established. The fee increases will be proposed in rulemaking scheduled for November, 1999.

This proposal implements two of the new requirements of SB 766, the VERP program and the new process for issuing standard permits. The authority for the VERP program is in TCAA, §382.0519, concerning Voluntary Emissions Reduction Permit; §382.05191, concerning Voluntary Emissions Reduction Permit: Notice and Hearing; §382.05192, concerning Review and Renewal of Voluntary Emissions Reduction Permit; and §382.05193, concerning Emissions Permits Through Emissions Reduction. The new process for issuance of standard permits is under TCAA, §382.05195, concerning Standard Permit. The remaining elements of SB 766, including emissions fees, multiple plant permits, permits by rule, and *de minimis* criteria, will be addressed in rulemaking scheduled for proposal in November 1999.

This proposal will provide a significant amount of flexibility to owners and operators of grandfathered facilities to voluntarily make cost-effective emissions reductions. Applications for a VERP are voluntary and applicants must demonstrate the ability to meet flexible control options not available to new permitted facilities. For a grandfathered facility to be eligible for a VERP, an application must be submitted before September 1, 2001.

The proposed new §116.16 defines "airshed" and "excessive emissions." For grandfathered facilities in a nonattainment area, an airshed is defined as the nonattainment area in which it is located. Nonattainment areas are geographic areas which exceed a National Ambient Air Quality Standard (NAAQS). Nonattainment areas are defined in §101.1, concerning Definitions. For facilities in attainment areas, the airshed is defined as the East Texas Region, the West Texas Region, or the El Paso Region. These regions are defined in concurrent rulemaking in Chapter 101 in this edition of the *Texas Register* for implementation of certain provisions of SB 7, 76th Legislature, 1999, concerning emissions banking and trading of allowances for grandfathered electric generating facilities. "Excessive emissions" is defined as emissions exceeding the emission rate that would otherwise be required by TCAA, §382.0519(b), which provides the control methods required for the VERP program.

The requirements applicable to VERPs would be contained in a new Subchapter H in Chapter 116. Consistent with TCAA, §382.0519(a), the proposed new §116.810 requires VERP applications to be submitted before September 1, 2001. The proposal would require that applications be submitted under the seal of a Texas licensed professional engineer, if required under §116.110(e). The owner or one authorized to act for the owner of a facility, group of facilities, or account is responsible for compliance with the requirements of Subchapter H.

The proposed new §116.811 specifies VERP application requirements, and that emissions from the grandfathered facility issued a VERP will comply with the intent of the TCAA. TCAA, §382.0519(c), provides that the commission may not issue a VERP if it finds that the emissions from the grandfathered facility will not meet the control methods specified in TCAA, §382.0519(b), or will not be protective of public health and property. The requirement to protect physical health and property is included in the proposed rule in §116.811(1). Because of these requirements, the commission believes that some type of health effects review may be necessary and appropriate, depending on the type of controls used and whether or not there are increases or decreases in emissions resulting from the VERP. The CARE committee recommended that a company seeking a VERP should be required to undergo an abbreviated health effects review. The commission is considering applying an abbreviated health effects review and invites comments on this issue. If an applicant proposes an allowable emission rate which represents a reduction in actual emissions from the highest rate emitted over the prior three years, an abbreviated health effects review would automatically be performed. If there are proposed emission increases from the highest rate emitted over the prior

three years, the commission will consider other factors when determining if an abbreviated health effects review is appropriate. Those factors include: whether best available control technology (BACT) is being proposed; whether the controls required by the VERP program are already being used; the proximity of the nearest off-property receptor; whether any monitoring data exists which indicates that no adverse off-property impacts will occur; whether the applicant proposes to use fenceline or stack monitoring technology to demonstrate ongoing protection of public health; and whether emissions reductions should be determined from emission rates over other representative periods. The commission believes that this approach will protect public health and provide incentives for reductions in emissions from the 1997 survey of grandfathered facilities. If the commission determines that an abbreviated health effects review is not appropriate, a routine health effects review will be done consistent with the commission's Technical Guidance Package concerning Modeling and Effects Review Applicability (RG-324, August 1998). Copies of this document are available from the commission's Office of Permitting. The VERP may also have provisions for the measurement of air contaminants, including installation of sampling ports and sampling platforms.

Section 116.811(3) implements the control requirements and emission reduction options consistent with TCAA, §382.0519(b). Generally, the facility must be able to use an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility, of the same class or type, as a condition for permitting 120 months prior to an application for a VERP (10-year-old BACT), considering the age and remaining useful life of the facility. A nonattainment area is a geographic area of the state where monitored air contaminant levels are in excess of a NAAQS. Facilities located in a nonattainment or near-nonattainment area for a criteria pollutant must use the more stringent of either 10-year-old BACT or a control technology the commission finds is generally achievable for facilities in the same area and of the same type permitted by a VERP, considering the age and remaining useful life of the facility. Solely for the purposes of the VERP program, the commission proposes listing the following attainment counties as near-nonattainment areas: Bexar, Gregg, Harrison, Nueces, Smith, Travis, and Victoria. These counties are derived from Article VI, §13 of House Bill 1, 76th Legislature, 1999, (The General Appropriations Act), which allocates funding for air quality planning activities in the following areas considered to be near nonattainment under the ozone standards under the Federal Clean Air Act Amendments of 1990: Austin, Corpus Christi, Longview-Tyler-Marshall, San Antonio, and Victoria. The commission believes that generally achievable control technology (GACT) is between 10-year-old BACT and BACT in stringency. In order to provide for a consistent starting point for determining what constitutes GACT, the commission is considering using the first-tier of BACT (i.e., the control technology used by a representative number of identical facilities). But rather than remaining first-tier BACT, the stringency of GACT will be adjusted, as necessary, according to the area in which the facility is located and considering the age and remaining useful life of the facility. This method should provide for GACT determinations which are as consistent as possible and should ensure that the stringency is between BACT and 10-year old BACT. Consistent with TCAA, §382.0519(e), the new §116.816 authorizes the commission to defer required emission reductions if certain conditions are met. In addition, §116.811 provides that if an owner or operator of a grandfathered facility is unable to make the reductions required to obtain a VERP, they may meet the requirements by acquiring project emission reduction credits (PERCs) under the program in the new §116.812.

In order to be consistent with the current review process for permits and applicable federal requirements, §116.811 would require grandfathered facilities applying for VERPs to be able to demonstrate that they meet applicable federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Facilities must be able to meet performance standards specified in the application and may be required to provide information that demonstrates ongoing compliance after the permit is issued. If applicable, facilities would be required to comply with Prevention of Significant Deterioration (PSD) and nonattainment review as specified in Subchapter B of Chapter 116. Since grandfathered facilities must comply with federal requirements, if applicable, it is appropriate to ensure that these facilities are in compliance with federal requirements in the process of reviewing VERP applications. If a qualitative health effects review is required, the facility may be required to submit air dispersion modeling. The VERP application would identify each facility to be included in the VERP, identify the air contaminants emitted, and provide emission rate calculations, propose a control method, and identify the date by which the control method will be implemented.

The proposed new §116.812 establishes procedures and conditions under which PERCs may be obtained. PERCs must result in emission reductions in the airshed in which the grandfathered facility is located. The PERCs must provide reductions comparable to the reductions that would be achieved through 10-year-old BACT or GACT, and the reductions must be made from one or more facilities in Texas.

The proposed new §116.812 provides a list of qualifying emission reduction projects that includes generation of electric energy by a low-emission method (wind, biomass gasification, and solar power), the purchase and destruction of high-emission automobiles or other mobile sources, the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit, a carpooling or alternative transportation program for the owner's or operator's employees, telecommuting for the owner's or operator's employees, or switching of a motor vehicle fleet operated by the owner or operator to a lower-sulfur fuel than required or an alternative fuel approved by the commission. Facilities must provide specific information in applications for a VERP concerning any proposal to use the qualifying emission reduction projects for the creation of PERCs. The commission will provide guidance for the implementation of this program, including qualification of credits.

Section 116.812 would also require that applications for VERPs with PERCs demonstrate that the PERCs will be permanent, quantifiable, enforceable by the commission, and real reductions in actual emissions; and not be required of a facility by a state or federal law, regulation, or agreed order. These requirements are generally accepted for creation of emission reduction credits and are used in the commission's existing emissions credit banking and trading program. Credits under this program are not transferrable consistent with TCAA, §382.05193(f). A VERP that authorizes a PERC will contain specific conditions that require the successful completion of the project. This will

ensure that the anticipated emissions reductions actually occur in a reasonable amount of time.

The proposed new §116.813 would commit the commission to processing VERP applications under §116.114, concerning Application Review Schedule, and as required by TCAA, §382.0519(f), to give priority to processing VERP applications for grandfathered facilities located less than two miles from schools, day care centers, nursing homes, or hospitals. The new §116.814 will allow the commission to include general and special conditions within the VERP and will require holders of VERPs to comply with the general and special conditions contained in §116.115, concerning General and Special Conditions.

The proposed new §116.816 implements the provisions of TCAA, §382.0519(e), and authorizes the commission to issue permits that defer reductions in emissions of certain air contaminants only if the applicant will make substantial reductions in other specific air contaminants based on a prioritization of contaminants considering local, regional, and state air quality needs. The legislature intended very limited use of deferrals. An applicant must clearly document that exceptional economic hardship or specific technical impracticability problems are a barrier to implementing the reductions required by a VERP (SB 766 - Statement of Legislative Intent Adoption of Conference Committee Report). When prioritizing air quality needs to determine whether to grant a deferral, the commission proposes to consider the location of the grandfathered facility, the size of the reduction of emissions of other specific air contaminants, the impact of the reduction of emissions of other specific air contaminants and the deferral on attaining NAAQS, anticipated state or federal regulations that may require reductions of the air contaminants being deferred, and the benefit to public health from the reduction of other specific air contaminants versus the deferral. The commission considers these to be the minimum criteria to be used when granting a deferral and invites comments on other criteria that should be considered. As a point of clarification, deferrals are intended for grandfathered facilities which cannot meet the control requirements of the VERP program due to exceptional economic hardship or specific technical impracticability problems, as stated earlier. Applicants will not have to apply for a deferral in order to phase in controls required under the VERP program.

The new §116.820 would require that modifications of grandfathered facilities permitted under VERPs must comply with Subchapter B of Chapter 116. In other words, once a VERP has been issued, existing requirements for amending or altering permits under Subchapter B of Chapter 116 are applicable. This section implements the requirements of TCAA, §382.0519(d).

The proposed new §116.840 would require applicants for initial issuance of a VERP to publish notice of intent to obtain a permit in accordance with Chapter 39, Subchapter K of this title, concerning Public Notice of Air Quality Applications. Subchapter K implements the new requirements of TCAA, §382.056, as amended by the 76th Legislature by HB 801. Subchapter K also includes alternative means of notice for small businesses, as required by TCAA, §382.05191(b). TCAA, §382.05191 provides that public participation for initial issuance of a VERP will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Chapter 2001, Texas Government Code, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing. The proposed requirements of §§116.840-116.842 are based on the sections in 30 TAC Chapter 122, concerning Federal Operating Permits, that implement the requirements of TCAA, §382.0561 and §382.0562. Section 116.840 provides that any person who may be affected by emissions from the grandfathered facility may request a notice and comment hearing on a VERP application within 30 days after the publication of notice under §39.418, concerning Notice of Receipt of Application and Intent to Obtain Permit. Persons affected by a decision of the commission to issue or deny a VERP will be entitled to petition for a rehearing under §50.119 of this title, concerning Notice of Commission Action, Motion for Rehearing, and may seek judicial review under TCAA, §382.032, concerning Appeal of Commission Action.

The proposed new §116.841 contains the hearing requirements for the initial issuance of VERPs. The proposed rule would allow the commission to decide whether to hold a hearing based on the reasonableness of a request. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a grandfathered facility is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing. This section would require that notice of hearing on a draft permit be published in the public notice section of one issue of a newspaper of general circulation in the municipality where the grandfathered facility is located or in the nearest municipality. The notice must be published at least 30 days prior to a hearing. The notice is published at the applicant's expense, and the rule specifies the content of the notice. The proposed rule provides the procedures for the submission of comments at a hearing and specifically states that the period for submitting written comments extends to the close of the hearing and may be extended beyond the close of the hearing. Any person, including the applicant, may submit comments on whether the draft permit contains inappropriate conditions or whether the preliminary decision to issue or deny the VERP is inappropriate. Commenters shall raise all issues and submit all comments supporting their position by the end of the public comment period. This requirement will assist the commission in developing its response to comments as required by the new §116.842. To ensure a complete record of the comments, the rule prohibits the incorporation by reference of supporting materials for comments unless the materials meet the criteria in §116.842(g). The commission is required to keep a record of all comments submitted or raised at a hearing and to have an audio recording or written transcript of the hearing. The record is available to the public. Draft permits may be revised based on comments pertaining to whether the permit provides for compliance with the requirements of a VERP.

The proposed new §116.842 would require the commission to individually notify persons who commented during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing and for judicial review.

The proposed new §116.850 would require a permit fee from VERP applicants. The amount of the application fee would

vary based on the level of control, a factor that directly impacts the amount of commission resources needed to review an application. Applicants that propose controls at least as stringent as 10-year-old BACT or GACT under §116.811(3)(A) and (B) would remit a flat fee of $450. The fee for 10-year-old BACT or GACT is appropriate since determining the level of control due to the age and remaining useful life of the facility can involve extensive resources. Since GACT is a new standard for controls, the commission anticipates that this determination will require extended staff and management time. Applicants proposing to defer emission reductions or to use PERCs would remit a fee of $1,000. It is expected that extensive commission staff time will be required to verify the conditions of deferrals and to validate PERCs. If an applicant for a VERP at an account proposes to include more than one grandfathered facility in the VERP, the highest applicable fee would apply. However, only one fee per VERP would be required.

The new §116.860 implements the requirements of TCAA, §382.05192, which requires the renewal of a VERP in accordance with Chapter 116, Subchapter D, concerning Permit Renewals. TCAA, §382.05193(e) adds specific requirements to be considered in the renewal of a VERP that was issued based on emission credits under §116.818. To renew such a VERP, the facility owner shall have made the equipment improvements or emissions reductions necessary to meet the requirements of §116.811(3), or acquire additional credits under the program, as necessary, to meet the permit requirements.

The new §116.870 states that the commission may delegate to the executive director any action regarding a VERP. This delegation is authorized by TCAA, §382.061, which allows the commission to delegate to the executive director the powers and duties under TCAA, §§382.051-382.0563, and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

EXPLANATION OF PROPOSED RULES CONCERNING STANDARD PERMITS

Senate Bill 766 created a new process for the development and issuance of standard permits. A standard permit is applicable to new or existing similar facilities. Prior to the amendments by SB 766, standard permits were required to be developed under the rulemaking procedures of the Administrative Procedure Act. Currently, the commission has adopted standard permits under §116.617, concerning Standard Permits for Pollution Control Projects; §116.620, concerning Installation and/or Modification of Oil and Gas Facilities; and §116.621, concerning Municipal Solid Waste Landfills. The new procedures authorized by TCAA, §382.05195 require rulemaking to establish the criteria for issuing and amending a standard permit. The actual standard permits are no longer required to be adopted by rule. "Issuing" in this case means that the commission has developed a standard permit and made it available for use by similar facilities. This process is similar to that used for the development of general permits under the Texas Water Code. Consistent with current practice, the executive director will continue to approve registrations to use the commission-issued standard permits. The new process requires public notice, an opportunity for a public meeting, and a response to comments that is similar to the process used for rulemaking. The benefit of this new process is that it allows the standard permits to be issued and amended in an efficient manner without sacrificing public input. In addition, the process will allow the commission to quickly develop and seek comment on proposed standard permits which will benefit affected facilities as well as the public, since facilities choosing to construct under a standard permit will be limited by the conditions of the permit. Throughout the preamble and the proposed rules concerning standard permits, the existing standard permits that were developed by rule are referred to as standard permits "adopted" by the commission, while standard permits that will be developed under the new process are referred to as standard permits "issued" by the commission.

The proposed new §116.601 categorizes a standard permit as either one adopted as a rule under the existing standard permit sections, or those issued by the commission under the procedures of the new §116.603. To ensure that currently-authorized facilities continue to be covered by a standard permit, if an existing standard permit adopted by the commission is repealed and replaced, with no changes, by a standard permit issued under the new procedures, existing registrations would be automatically converted as long as the facility continues to meet the requirements.

Senate Bill 766 made a significant revision to the existing process for continued operation under a standard permit. Prior to the amendments, if a facility was authorized by a standard permit, and that standard permit was revised, the facility could continue to operate under the version by which it was authorized. TCAA, §382.05195(f) specifically requires facilities authorized by a standard permit to comply with amendments to a standard permit within certain time periods. To be consistent with those requirements, the commission proposes to require existing standard permit holders to register and comply with the standard permit, as amended. If a standard permit adopted by the commission is repealed and replaced with a standard permit issued by the commission, and the requirements of the standard permit are changed in the process, then existing registrations would be invalidated and the facility would have to be registered under the issued standard permit by the later of either the deadline established by the commission in the issued standard permit, or the tenth anniversary of the original registration. Holders of registrations not wishing to register for the issued standard permit will have the option of applying for or qualifying for other applicable permits or exemptions from permitting.

The commission will notify, in writing, all holders of existing registrations of the date by which a new registration must be submitted. All registrations, new and existing, will be renewed according to the requirements of the new §116.604. Senate Bill 766 requires registrations to use a standard permit to be renewed. To be consistent, it is appropriate for all registrations, including those approved under the existing adopted standard permits, to be renewed.

The proposed new §116.602 would establish the conditions under which the commission may issue a standard permit. The standard permit must be enforceable, and the commission must be able to adequately monitor compliance. Generally, facilities authorized under these standard permits must use current BACT. The exceptions to this requirement are standard permits for installation of emission control equipment under TCAA, §382.057 and standard permits for grandfathered facilities. Standard permits for use by grandfathered facilities before September 1, 2001 are not required to meet BACT. The commission believes that the intent of TCAA, §382.057 is to provide a mechanism for authorizing emission reduction projects that constitute reasonably available control technology

under the rules adopted as part of the SIP. A standard permit for grandfathered facilities may be issued.

The proposed new §116.603 would establish the requirements of public participation to be satisfied prior to the issuance by the commission of a standard permit. The section establishes geographic coverage for newspaper publication by the commission of proposed standard permits. The proposed rule would require the commission to publish notice of standard permits that will have statewide applicability in a daily newspaper of largest general circulation within each of the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. Notice of standard permits that affect a limited area will be published in a daily or weekly newspaper of general circulation in that area. The commission will also publish notice of all proposed standard permits in the *Texas Register.* The commission will be required to publish newspaper notice of a proposed standard permit in accordance with 30 TAC §39.411, concerning Text of Public Notice, and will include an invitation for public comment with a comment period of at least 30 days. The commission would be required to hold a public meeting to provide additional opportunity for public comment and to respond to any comments at the time the commission issues or denies the standard permit. A copy of the commission's response will be mailed to each person who made a comment. A notice of the commission's final action and the text of its response to comments would be published in the *Texas Register.* Copies of issued permits and responses to comments would be available for inspection at the commission's Office of Permitting in Austin and at the appropriate regional offices. The commission believes that these procedures will provide ample opportunity for public input into the development and issuance of standard permits.

The proposed new §116.604 would establish the duration of a registration to use a standard permit as a term not to exceed ten years. The proposed rule requires that the registrations be renewed by the date the registration expires. The commission will send notice of the renewal deadline to standard permit holders. Instead of requiring permit holders to submit registrations for renewal, the commission may automatically renew the registration. For example, if the standard permit is relatively simple or if no state or federal requirements have changed for that industry, it may be a more efficient use of commission and industry resources to allow the commission to automatically renew the registration. The section also provides requirements governing the renewal of registration to use standard permits.

The proposed new §116.605 would establish the procedures for commission amendment or revocation of issued standard permits. Standard permits would remain in effect until amended or revoked. The commission would be able to amend or revoke standard permits after providing notice in the *Texas Register* and newspapers in areas affected by the standard permit, or in Austin, Dallas, and Houston if the standard permit has statewide applicability. The commission believes that these proposed notice requirements are appropriate since amendments to standard permits would likely be as stringent, or more stringent, than the existing standard permits. Similarly, in the unlikely event that a standard permit is revoked, it will probably be replaced with another standard permit, and affected registrants will be given individual notice.

The commission may add or delete requirements through amendment of a standard permit. The following criteria are proposed for use by the commission to determine whether or not to amend or revoke a standard permit: whether a condition of air pollution exists; the applicability of other state or federal standards that apply or will apply to the types of facilities covered by the standard permit; requests from the regulated community or the public to amend or revoke a standard permit consistent with the requirements of the TCAA; whether the standard permit requires BACT; and the amount of time that has elapsed since the last amendment to a specific standard permit. The commission believes that adhering to these criteria will harmonize implementation of state and federal requirements as well as providing a measure of certainty for the regulated community. Consistent with TCAA, §382.05195(f), facilities choosing to retain standard permit authorization would be required to comply with the amendments on the later of either the deadline of the original registration renewal date or on a date otherwise provided by the commission in the amended standard permit. However, standard permit registrants must still comply with changes in other state or federal requirements within the time frames stated in those requirements. Facilities may be required to register to use the amended standard permit, or if the amendments are minor, the commission may defer reregistration requirements until the original renewal date for the registration. If the commission revokes a standard permit, it will provide written notice to registrants of the revocation and inform them that other authorization must be sought. As provided by TCAA, §382.05195(g), the issuance, amendment, or revocation of a standard permit, or the issuance, renewal, or revocation of a registration to use a standard permit is not subject to Texas Government Code, Chapter 2001.

The new §116.606 states that the commission may delegate any authority in Subchapter F to the executive director. This delegation is authorized by TCAA, §382.061, which allows the commission to delegate to the executive director the powers and duties under TCAA, §§382.051-382.0563, and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The commission is not delegating the authority to issue standard permits at this time. The executive director is already authorized to approve registrations under §116.611 of this title, concerning Registration Requirements.

The current §116.610 contains general requirements for meeting state and federal emission limitations as conditions for entitlement to standard permits currently existing and adopted into this subchapter. The proposed amendment to §116.610 would require facilities to meet these general requirements as conditions for operation under standard permits issued by the commission as a result of adoption of this proposal. In addition, §116.610(a)(6) is being deleted since the requirement to register is stated in the new §116.604.

The proposed amendment to §116.611 clarifies that registrations on form PI-1s are registrations to use a particular standard permit. The name of the section would be amended accordingly.

Section 116.614 would be amended to clarify that the commission may waive application fees for registrations to use specific standard permits and that persons may be required to register to use specific standard permits rather than simply claiming them. This section would also require fees to be submitted for registrations to use an amended standard permit, or to renew a registration to use a standard permit, unless waived by the commission. This fee is consistent with the permit amendment

and renewal process for permits for individual facilities under Chapter 116.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments and new sections are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments and new sections. The proposed amendments and new sections to Chapter 116, Control Of Air Pollution By Permits For New Construction Or Modification, would implement the VERPs and standard permit provisions contained in SB 766, 76th Legislature, 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

The proposed amendments and new sections would create a VERP program authorized by SB 766. References are also included for public notice for the VERP program which are consistent with requirements in the proposed amendments to Chapter 39, concerning Public Notice. Because of the scope of SB 766, only the provisions regarding the VERP program and standard permits are being implemented in this rulemaking. Other provisions of SB 766, including fees, multiple plant permits, permits by rule, and *de minimis* criteria, will be addressed in later rulemaking.

The proposed amendments and new sections would provide owners and operators of grandfathered facilities the flexibility to voluntarily make cost-effective emission reductions in order to qualify for a VERP. Specifically, the proposed amendments and new sections establish procedures and conditions under which PERCs may be obtained. Depending on the location of the grandfathered facilities, PERCs must provide reductions comparable to the reductions that would be achieved through 10-year-old BACT or GACT considering the remaining useful life of the facility. The projects include generation of electric energy by a low- emission method, the purchase and destruction of high-emission automobiles or other mobile sources, the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit, carpooling or alternative transportation programs, telecommuting, and switching of a motor vehicle fleet to a lower-sulfur fuel than required or alternative fuel approved by the commission.

The proposed amendments and new sections also establish the general conditions under which the commission may issue a standard permit. A standard permit is a permit issued that is applicable to similar facilities. Generally, facilities authorized under a standard permit must use current BACT. The proposed amendments and new sections will provide an exception for grandfathered facilities, which may use a Standard Permit, provided the permit meets the requirements for a VERP, including the control requirements and application dates.

Grandfathered facilities that apply for a VERP or a standard permit, and other facilities that are authorized by a standard permit, will be affected by the proposed amendments to the rules, as will other persons generally involved in the air permitting process, including interested members of the general public.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments and new sections to Chapter 116 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments and new sections will be a reduction of air contaminants and the opportunity for the public to comment on the emissions from grandfathered facilities. It is anticipated that the public will benefit from the new process for the issuance of standard permits which will make it easier for the commission to amend standard permits with the most current control technology. The new requirements to renew standard permit registrations and to comply with amended standard permits ensures that the registrant will use the most current emissions control technology.

The purpose of the proposed amendments and new sections is to create and implement a VERP program. Applicants must apply for a VERP before September 1, 2001. Specifically, the proposed amendments and new sections would require the applicant for a VERP to use an air pollution control method at least as beneficial as 10-year-old BACT, considering the age and remaining useful life of the facility. Facilities located in a nonattainment or near-nonattainment area would be required to use the more stringent of the 10-year- old BACT or a control technology the commission finds is generally achievable for facilities in the same area of the same type permitted by a VERP, considering the age and remaining useful life of the facility.

The proposed amendments and new sections would allow the commission to include general and special conditions within the VERP and defer reductions in certain air contaminants if the applicant will make substantial reductions in other specific air contaminants based on local, regional, and state air quality needs priorities. The proposed amendments and new sections also provide flexibility and establish permit procedures that allow the commission to issue a permit to a facility that makes a good faith effort in equipment improvements and emission reductions but is unable to meet the 10-year-old BACT or generally achievable control levels provided the facility acquires a sufficient number of project emission reduction credits to offset excessive emissions. The proposed amendments in Chapter 116 reference procedures in Chapter 39, concerning Public Notice, in which VERP applicants must publish notice and seek public comment. The proposed amendments and new sections would allow the commission to decide whether to hold a hearing based on the reasonableness of the request.

Senate Bill 766 also specifies that not later than January 15, 2001, the commission shall prepare and distribute to the governor, the lieutenant governor, the speaker of the House of Representatives, the chair of the Senate Committee on Natural Resources, and the chair of the House Committee on Environmental Regulation a report on the number of companies that have obtained or applied for a permit under the Voluntary Emission Reduction Permit program, and the reduction in emissions anticipated to result from issuance of such permits.

A grandfathered facility is a facility that was exempt from permitting requirements by virtue of existing or beginning construction, alteration, or modification on or before August 31, 1971. The proposed amendments and new sections allow grandfathered facilities to apply for and receive a VERP after demonstrating the ability to meet flexible control options not normally available to newly permitted facilities. The available options would include types of emissions reduced, types of control technology, and type of reduction program.

It is estimated that applying 10-year-old BACT or control technology that is generally achievable for similar facilities could cost up to $10,000 per ton of emissions reduced depending on the types of emissions, the amount of emission reductions, the specific processes involved, and control methodologies employed for emission reductions. Applying 10-year-old BACT or GACT could be in the lower ranges of the estimated cost. It is anticipated that emission reductions will be made as the economics and other factors of individual facilities dictate. It is also anticipated that the incentives of decreasing regulatory requirements with emission reduction, emission reduction options for grandfathered facilities, and increased emission fees specified in SB 766 for grandfathered facilities which do not choose to participate in the VERP program may affect the amount and types of emissions and control methodologies employed for emission reductions. The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available is such that costs to implement the VERP program are impossible to estimate for specific facilities.

It is anticipated that the costs of using PERCs may mitigate the costs of applying 10-year-old BACT or GACT. As such, it is anticipated that the use of PERCs will be based on the economics and as other factors of individual facilities dictate. The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available are such that costs to implement the PERC options to the VERP program are impossible to estimate for specific facilities.

The proposed amendments and new sections specify fees for the VERP applicants. Grandfathered facilities that use controls at least as stringent as 10-year-old BACT or a control technology that is generally achievable for similar facilities shall pay a fee of $450 with the application. Those facilities that use emission deferrals or PERCs will have to submit a fee of $1,000. When more than one facility is included in a single VERP, the applicant shall remit only one fee the highest of the applicable fees.

It is estimated that the cost to applicants for a VERP will be the additional costs required to reduce emissions in order to qualify for the VERP; the public notice costs contained in the fiscal note to Chapter 39, concerning Public Notice; and the application fees specified earlier.

The proposed amendments and new sections also allow the commission to create a standard permit that can be used in lieu of a VERP, which increases the flexibility available to grandfathered facilities. A standard permit is applicable in situations where there are facilities with similar characteristics. Generally, facilities authorized under a standard permit must use current BACT. The proposed amendments and new sections allow the commission to issue a standard permit meeting the requirements of a VERP for the use of qualifying applicants with grandfathered facilities. This amendment is an exception to the standard permit requirement to use current BACT. The proposed amendments and new sections also specify that the requirements of public participation, including public notice and a public meeting, must be satisfied before a standard permit may be issued.

The costs for registrations to use a standard permit or to renew a registration would be $450, if a fee is required. Registrants would be required to comply with amended standard permits and may have to re-register for the amended permit. There will be no cost to registrants for publishing public notice because the commission is required to provide notice of intent to issue or amend a standard permit.

SMALL BUSINESS ANALYSIS

Based on analysis of the emission inventory database, the commission estimates that there may be 50 to 100 small businesses statewide that have grandfathered facilities. Small businesses are eligible to participate in the VERP program. Although participation is voluntary, the cost of emission reduction in general may make the program economically difficult for some small businesses even though it is likely that the costs of the VERP program would be less than the costs for an authorization under the existing new source review program. It is anticipated, however, that some small businesses will find it reasonable and beneficial to voluntarily reduce emissions. If emission reductions within the VERP program are undertaken, the costs are anticipated to be within the same range as those estimated for the businesses mentioned earlier, and are once again variable depending on the amount and types of emissions reductions and the control methodologies employed for emission reductions. It is also anticipated that some small business VERP applicants whose emissions do not have a significant effect on air quality will qualify for the reduced public notice requirements authorized by TCAA, 382.05191. The costs are anticipated to be in the range of $170-600 for one legal notice and one alternative language notice. Although these costs are in addition to the costs of emissions reductions, the effects have been mitigated in the proposed amendments to Chapter 39 by reducing the current requirement to publish notice of intent to obtain a permit in two successive issues of a newspaper. Further qualifying small business VERP applicants will only be required to publish one notice in the legal notice section of a newspaper of general circulation and, if applicable, one alternate language notice.

The amendments and new sections concerning PERCs may mitigate the control costs of the VERP program. It is anticipated that if an applicant chooses to use PERCs in lieu of the control requirements of the VERP program, there would be positive fiscal impacts in doing so.

It is anticipated that the commission will issue standard permits for small business facilities to use in lieu of applying for a VERP. Emission reduction costs are estimated to be similar to other businesses employing similar methodologies and similar reductions for the various types of emissions. However, application and notice costs will be mitigated by the use of a standard permit. For a standard permit, the cost to a small business of publishing public notice would be nil because that responsibility lies with the commission.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments for standard permits provide

streamlined processes to issue and amend standard permits. The new requirements for registration to use standard permits and registration renewals 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. The new requirement to comply with amended standard permits is not expected to have an adverse effect because the proposed rules provide criteria to be used by the commission for determining when and if a standard permit should be amended. Permit holders would be given ample time to comply with the amended standard permit. Because the proposed amendments for a VERP are voluntary, they are not anticipated to 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. In addition, the proposed amendments do not meet any of the four applicability requirements of a "major environmental rule." Specifically, the proposed changes will not impose any significant additional requirements not already required by state or federal law, and the proposed amendments do not exceed a standard set by federal law, an express requirement of state law, or a requirement of a delegation agreement. In addition, this proposal is made under a specific state law.

TAKING IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed amendments and new sections. The following is a summary of that assessment. These amendments and new sections authorize the VERP program. The amendments also propose the new process for issuance and amendment to standard permits and the new requirements for registrations. If an owner or operator of a grandfathered facility chooses to participate in the VERP program, it is possible that controls may be required for the facility to meet the requirements of the program. As an alternative to controls, applicants can propose a project that will provide emission reductions in an amount needed to meet the control requirements. In limited circumstances, applicants can request a deferral of the permitting of certain air contaminants if other emissions are controlled. However, this is a voluntary action at the discretion of the owner. The new requirements for permit holders to comply with amended standard permits will provide ample time for facilities to comply with the amendments, if they choose to do so. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). The reductions obtained from the issuance of VERPs will assist in the efforts of the commission to attain the NAAQS. This action is taken in response to a real and substantial threat to public health and safety, and significantly advances the health and safety purpose, and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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, concerning Consistency with 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 amendments and new sections related to the authorization of VERPs, and the new process to issue standard permits, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of 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 proposal is intended to provide incentive to owners and operators of grandfathered facilities to make voluntary reductions. The proposal also allows the commission to issue standard permits using a streamlined and efficient process while still allowing for public participation. This action is consistent with 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in El Paso on October 1, 1999, at 12:00 p.m. in the City of El Paso Council Chambers, located at 2 Civic Center Plaza, 2nd Floor. Additional hearings will be held in Lubbock on October 1 at 9:00 p.m. in the City of Lubbock Council Chambers, located at 1625 13th Street; in Austin on October 4 at 12:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle; in Irving on October 5 at 4:00 p.m. in the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard; in Houston on October 7 at 12:00 p.m. in the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard; and in Beaumont on October 7 at 9:00 p.m. in the John Gray Institute, located at 855 Florida Avenue. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99029A- 116-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. DEFINITIONS

30 TAC §116.16

STATUTORY AUTHORITY

The new section is proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.0515, which requires applicants to provide information that assures compliance with state and federal laws and regulations; §382.0519, which authorizes the commission to issue VERPs; §382.05191, which requires the commission to establish public hearing procedures for VERPs; §382.05193, which authorizes the commission to issue a VERP based on emissions reductions; §382.05195, which authorizes the commission to issue a standard permit; §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new section implements Texas Health and Safety Code, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; §382.0513, concerning Permit Conditions; §382.0515, concerning Application for Permit; §382.0519, concerning Voluntary Emissions Reductions Permits; §382.05191, concerning Voluntary Emission Reduction Permit: Notice and Hearing; §382.05193, concerning Emissions Permits Through Emissions Reduction; §382.05195, concerning Standard Permit; §382.055, concerning Review or Renewal of a Permit; §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; §382.0561, concerning Federal Operating Permit: Hearing; §382.0562, concerning Notice of Decision; Hearing; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to Executive Director.

§116.16. Voluntary Emission Reduction Permit Definitions.

The following words and terms, when used in Subchapter H of this chapter (relating to Voluntary Emission Reduction Permits), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Airshed -

(A) For grandfathered facilities in nonattainment areas, the nonattainment area in which the facility is located.

(B) For grandfathered facilities in attainment areas, the region in which the facility is located: the East Texas Region, the West Texas Region, or the El Paso Region, as defined in §101.330 of this title (relating to Electric Generating Facility Permits Definitions), including any nonattainment areas in those regions.

(2) Excessive emissions - The emissions exceeding the emission rate which would otherwise be required under §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application).

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

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

TRD-9905507
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Subchapter F. STANDARD PERMITS

30 TAC §§116.601-116.606, 116.610, 116.611, 116.614

STATUTORY AUTHORITY

The new and amended sections are proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorized the commission to issue a permit for numerous similar sources; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.0515, which requires applicants to provide information that assures compliance with state and federal laws and regulations; §382.0519, which authorizes the commission to issue VERPs; §382.05191, which requires the commission to establish public hearing procedures for VERPs; §382.05193, which authorizes the commission to issue a VERP based on emissions reductions; §382.05195, which authorizes the commission to issue a standard permit; §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new and amended sections implement Texas Health and Safety Code, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; §382.0513, concerning Permit Conditions; §382.0515, concerning Application for Permit; §382.0519, concerning Voluntary Emissions Reductions Permits; §382.05191, concerning Voluntary Emission Reduction Permit: Notice and Hearing; §382.05193, concerning Emissions Permits Through Emissions Reduction; §382.05195, concerning Standard Permit; §382.055, concerning Review or Renewal of a Permit; §382.056, concerning Notice of Intent to

Obtain Permit or Permit Review; Hearing; §382.0561, concerning Federal Operating Permit: Hearing; §382.0562, concerning Notice of Decision; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to Executive Director.

§116.601. Types of Standard Permits.

(a) For the purposes of this chapter a standard permit is either:

(1) one that was adopted by the commission in accordance with Texas Government Code, Chapter 2001, Subchapter B, into §§116.617, 116.620, and 116.621 of this title (relating to Standard Permits for Pollution Control Projects; Installation and/or Modification of Oil and Gas Facilities; and Municipal Solid Waste Landfills); or

(2) one that is issued by the commission in accordance with §116.603 of this title (relating to Public Participation in Issuance of Standard Permits).

(b) Any standard permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA.

(c) A registration to use a standard permit adopted by the commission in this subchapter shall be renewed by the applicant under the requirements of §116.604 of this title (relating to Duration and Renewal of Registrations to use Standard Permits) by the tenth anniversary of the date of the original registration.

(d) If a standard permit in this subchapter adopted by the commission is repealed and replaced, with no changes, by a standard permit issued by the commission, any existing registration to use the repealed standard permit will be automatically converted to a registration to use the new standard permit, if the facility continues to meet the requirements. An automatically converted registration to use a standard permit shall be renewed by the applicant under the requirements of §116.604 of this title by the tenth anniversary of the date of the new registration.

(e) If a standard permit adopted by the commission in this subchapter is repealed and replaced with a standard permit issued by the commission, and the requirements of the standard permit are changed in the process, persons registered to use the repealed standard permit shall register to use the issued standard permit by the later of either the deadline established in the issued standard permit, or the tenth anniversary of the original registration. The commission shall notify, in writing, all persons registered to use the repealed standard permit of the date by which a new registration must be submitted. Persons not wishing to register for the issued standard permit shall have the option of applying for or qualifying for other applicable authorizations in this chapter or in Chapter 106 of this title (relating to Exemptions from Permitting).

§116.602. Issuance of Standard Permits.

(a) The commission may issue a standard permit under the procedures in §116.603 of this title (relating to Public Participation in Issuance of Standard Permits) if the commission finds that:

(1) the standard permit is enforceable; and

(2) the commission can adequately monitor compliance with the terms of the standard permit.

(b) The commission may issue standard permits for:

(1) Grandfathered facilities. Standard permits for use by grandfathered facilities before September 1, 2001 are not required to meet best available control technology.

(2) The installation of emission control equipment that constitutes a modification or a new facility under TCAA, §382.057.

(c) Other than the standard permits issued for use under subsection (b)(1) and (2) of this section, all standard permits issued by the commission under this chapter shall require best available control technology.

§116.603. Public Participation in Issuance of Standard Permits.

(a) The commission will publish notice of a proposed standard permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed standard permit. If the proposed standard permit will have statewide applicability, notice will be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. In both cases, the commission will publish notice in the *Texas Register.*

(b) The contents of a public notice of a proposed standard permit shall be in accordance with §39.411 of this title (relating to Text of Public Notice) except where clearly not applicable. Each notice must include an invitation for written comments by the public regarding the proposed standard permit. The public notice will specify a comment period of at least 30 days and the public notice will be published not later than the 30th day before the commission issues a standard permit.

(c) The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this subsection as part of the notice described in subsection (b) of this section not later than the 30th day before the date of the meeting. The public comment period shall automatically be extended to the close of any public meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The commission will make the response available to the public, and shall mail the response to each commenter.

(e) The commission will publish notice of its final action on the proposed standard permit and the text of its response to comments in the *Texas Register.*

(f) The commission will make a copy of any issued standard permit and response to comments available to the public for inspection at the commission's Office of Permitting in its Austin office, and also in the appropriate regional offices.

§116.604. Duration and Renewal of Registrations to Use Standard Permits.

An owner or operator who chooses to use a standard permit shall register to use a standard permit, unless otherwise specified in a specific standard permit.

(1) The registration to use a standard permit is valid for a term not to exceed ten years.

(2) The holder of a standard permit shall be required to renew the registration to use a standard permit by the date the registration expires. Any registration renewal shall include the requirements, as applicable, of §116.611 of this title (relating to Registration to Use a Standard Permit) and shall provide information determined by the commission to be necessary to demonstrate compliance with the requirements and conditions of the standard permit and with applicable state and federal regulations.

(3) The commission will provide written notice to registrants of the renewal deadline before the expiration of the registration.

(4) The commission may choose to renew registrations to use specific standard permits automatically, and, in such cases, will provide written notice to registrants.

§116.605. Standard Permit Amendment and Revocation.

(a) A standard permit remains in effect until amended or revoked by the commission.

(b) After notice and comment as provided by subsection (c) of this section and §116.603(b)-(f) of this title (relating to Public Participation in Issuance of Standard Permits), a standard permit may be amended or revoked by the commission.

(c) The commission will publish notice of its intent to amend or revoke a standard permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the standard permit. If the standard permit has statewide applicability, then the requirement for newspaper notice shall be accomplished by publishing notice in the daily newspaper of largest general circulation within each of the following major metropolitan areas: Austin, Dallas, and Houston. In both cases, the commission will publish notice in the *Texas Register.*

(d) The commission may, through amendment of a standard permit, add or delete requirements or limitations to the permit.

(1) To remain authorized under the standard permit, a facility shall comply with an amendment to the standard permit on the later of either the deadline the commission provides in the amendment or the date the facility's registration to use the standard permit is required to be renewed.

(2) Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(3) The commission will consider the following when determining whether to amend or revoke a standard permit:

(A) whether a condition of air pollution exists;

(B) the applicability of other state or federal standards that apply or will apply to the types of facilities covered by the standard permit;

(C) requests from the regulated community or the public to amend or revoke a standard permit consistent with the requirements of the TCAA;

(D) whether the standard permit requires best achievable control technology; and

(E) the amount of time that has elapsed since the last amendment to a specific standard permit.

(e) The commission may require, upon issuance of an amended standard permit, or on a date otherwise provided, the owner or operator of a facility to submit a registration to use the amended standard permit in accordance with the requirements of §116.611 of this title (relating to Registration to Use a Standard Permit).

(f) If the commission revokes a standard permit, it will provide written notice to affected registrants prior to the revocation of the standard permit. The notice will advise registrants that they must apply for a permit under this chapter or qualify for an authorization under Chapter 106 of this title (relating to Exemptions from Permitting).

(g) The issuance, amendment, or revocation of a standard permit or the issuance, renewal, or revocation of a registration to use a standard permit is not subject to Texas Government Code, Chapter 2001.

§116.606. Delegation.

The commission may delegate to the executive director any authority in this subchapter.

§116.610. Applicability.

(a) Under the TCAA, §382.051, a project which meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration [~~claim~~].

(1)-(5) (No change.)

[~~(6) the owner or operator of the facility shall register the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).~~]

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

§116.611. Registration to Use a Standard Permit [~~Requirements~~].

(a) Registration to use [~~for~~] a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the executive director [~~commission's Office of Air Quality~~], the appropriate commission regional office, and any local air pollution program with jurisdiction, before a standard permit can be used [~~claimed~~]. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to:

(1)-(6) (No change.)

(b) (No change.)

(c) Any person using [~~claiming~~] a standard permit may certify and register a federally enforceable emission limitation for one or more air contaminants by stating a maximum allowable emission rate in the registration. The certification may be amended and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be maintained on-site and be provided upon request to a representative of the executive director or any air pollution control agency having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration.

§116.614. Standard Permit Fees.

Any person who registers to use [~~claims~~] a standard permit or an amended standard permit, or to renew a registration to use a standard permit shall remit, at the time of registration, a flat fee of $450 for each standard permit being registered, unless otherwise specified in a particular standard permit [~~claimed~~]. All standard permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the permit registration to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. No fees will be refunded.

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 August 30, 1999.

TRD-9905508
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Subchapter H. VOLUNTARY EMISSION REDUCTION PERMITS

30 TAC §§116.810-116.814, 116.816, 116.820, 116.840-116.842, 116.850, 116.860, 116.870

STATUTORY AUTHORITY

The new sections are proposed under Texas Health and Safety Code, TCAA, §382.11, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorized the commission to issue a permit for numerous similar sources; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.0515, which requires applicants to provide information that assures compliance with state and federal laws and regulations; §382.0519, which authorizes the commission to issue VERPs; §382.05191, which requires the commission to establish public hearing procedures for VERPs; §382.05193, which authorizes the commission to issue a VERP based on emissions reductions; §382.05195, which authorizes the commission to issue a standard permit; §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new sections implement Texas Health and Safety Code, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; §382.0513, concerning Permit Conditions; §382.0515, concerning Application for Permit; §382.0519, concerning Voluntary Emissions Reductions Permits; §382.05191, concerning Voluntary Emission Reduction Permit: Notice and Hearing; §382.05193, concerning Emissions Permits Through Emissions Reduction; §382.05195, concerning Standard Permit; §382.055, concerning Review or Renewal of a Permit; §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing; §382.0561, concerning Federal Operating Permit: Hearing; §382.0562, concerning Notice of Decision; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to Executive Director.

§116.810. Eligibility.

(a) The owner or operator of a grandfathered facility may apply for a permit to operate that facility under this subchapter. Applications under this subchapter must be submitted before September 1, 2001.

(b) Applications for a voluntary emissions reduction permit (VERP) shall be submitted under the seal of a Texas licensed professional engineer, in compliance with §116.110(e) of this title (relating to Applicability), as applicable.

(c) The owner or authorized operator of the grandfathered facility, group of facilities, or account is responsible for applying for the VERP and for complying with this subchapter.

§116.811. Voluntary Emission Reduction Permit Application.

Any application for a voluntary emission reduction permit (VERP) must include a completed Form PI-1V Voluntary Emission Reduction Permit Application. The Form PI-1V must be signed by an authorized representative of the applicant. The Form PI-1V specifies additional support information which must be provided before the application is deemed complete. In order to be granted a VERP, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the grandfathered facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The VERP may have provisions for measuring the emission of air contaminants as determined by the commission. These may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual."

(3) Control method.

(A) Control method in attainment areas. A grandfathered facility in an attainment area shall use an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the VERP application considering the age and remaining useful life of the facility, except as provided by subparagraphs (B), (C), and (D) of this paragraph.

(B) Control method in nonattainment areas and the following attainment counties: Bexar, Gregg, Harrison, Nueces, Smith, Travis, and Victoria. A grandfathered facility located in a nonattainment area for a national ambient air quality standard, or in an attainment county listed in this subparagraph, shall use the more stringent of:

(i) a control method at least as beneficial as that described in subparagraph (A) of this paragraph; or

(ii) a control method that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(C) Emissions reductions may be deferred at grandfathered facilities according to §116.816 of this title (relating to Deferral of Emission Reductions).

(D) A VERP may be issued for a grandfathered facility:

(i) that makes a good faith effort to make equipment improvements and emission reductions necessary to meet the requirements of subparagraphs (A) or (B) of this paragraph;

(ii) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(iii) whose owner or operator acquires a sufficient number of emission reduction credits to compensate for the facility's excessive emissions under the program established under §116.812 of this title (relating to Project Emission Reduction Credits).

(4) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by EPA under authority granted under FCAA, §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under FCAA, §112, as amended.

(6) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum available control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)).

(7) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after a VERP has been issued in order to demonstrate further that the grandfathered facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(8) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(9) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(10) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source (as defined in §116.15(1) of this title (relating to §112(g) Definitions)), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(12) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the VERP;

(B) identify the air contaminants emitted;

(C) provide emission rate calculations;

(D) propose a control method; and

(E) identify the date by which the control method will be implemented.

§116.812. Project Emission Reduction Credits.

(a) Project emission reduction credits (PERC) may be granted to the owner or operator of a grandfathered facility for the purpose of complying with §116.811(3)(D) of this title (relating to Voluntary Emission Reduction Permit Application) if the owner or operator conducts an emission reduction project to compensate for the facility's excessive emissions, provided:

(1) the emission reduction project reduces emissions in the airshed in which the grandfathered facility is located; and

(2) the emission reduction project reduces net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to comply with §116.811(3) of this title.

(b) Qualifying emission reduction projects include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) the replacement by a motor vehicle fleet owner or operator of the fleet's primary fuel to either a lower-sulfur fuel than required by state or federal law, or the use of an alternative fuel approved by the commission under TCAA, §382.131(1).

(c) Applications for voluntary emission reduction permits (VERP) must demonstrate that any proposed PERCs meet the following criteria, as applicable. The PERC must be:

(1) enforceable by the commission;

(2) permanent, meaning that the emission reduction is unchanging for the remaining life of the source;

(3) quantifiable, so that the emission reduction can be measured or estimated with confidence using replicable techniques;

(4) surplus, such that the emission reduction is not otherwise required of a facility by a state or federal law, regulation, or agreed order, and;

(5) a real reduction in which actual emissions are reduced.

(d) A VERP for a grandfathered facility participating in the PERC program will include a permit condition requiring the successful completion of the project or projects for which the facility owner or operator acquires the credits.

(e) Emission reduction credits acquired under this section are not transferrable.

§116.813. Application Review Schedule.

(a) The commission will review the voluntary emission reduction permit (VERP) application in accordance with §116.114 of this title (relating to Application Review Schedule).

(b) The commission will give priority to the processing of an application for the issuance of a VERP under §116.811 of this title (relating to Voluntary Emission Reduction Permit Application), the amendment of a VERP under §116.820 of this title (relating to Modifications), or the renewal of a VERP under §116.860 of this title (relating to Voluntary Emission Reduction Permit Renewal) for those grandfathered and formerly grandfathered facilities that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

§116.814. General and Special Conditions.

(a) Voluntary emission reduction permits (VERPs) may contain general and special conditions. The holders of a VERP shall comply with any and all such conditions.

(b) Holders of VERPs shall comply with the requirements of §116.115 of this title (relating to General and Special Conditions).

§116.816. Deferral of Emission Reductions.

(a) A voluntary emission reduction permit (VERP) may defer the requirement to reduce emissions of certain air contaminants.

(b) To qualify for a deferral of emission reductions, an applicant must specifically request a deferral of reductions of certain air contaminants and shall demonstrate how substantial emission reductions will be made in other specific air contaminants.

(c) The commission may grant a deferral based on its prioritization of air contaminants, as necessary, to meet local, regional, and statewide air quality needs and only if the applicant has clearly demonstrated that exceptional economic hardship or specific technical impracticability problems are a barrier to implementing the reduction required by the VERP.

(d) The commission will consider the following criteria for prioritizing air quality needs to determine whether to grant a deferral:

(1) the location of the grandfathered facility;

(2) the size of the reduction of emissions of other specific air contaminants;

(3) the impact of the reduction of emissions of other specific air contaminants and the deferral on attaining National Ambient Air Quality Standards (NAAQS);

(4) anticipated state or federal regulations that may require reductions of the air contaminants being deferred; and

(5) the benefit to public health from the reduction of other specific air contaminants versus the deferral.

§116.820. Modifications.

The owner or operator planning the modification of a facility permitted under a voluntary emission reduction permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

§116.840. Public Participation for Initial Issuance.

(a) An applicant for a voluntary emission reduction permit (VERP) shall publish notice of intent to obtain the permit in accordance with Chapter 39, Subchapter K of this title (relating to Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the VERP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(c) Any hearing regarding initial issuance of a VERP shall be conducted under the procedures in §116.841 of this title (relating to Notice and Comment Hearings for Initial Issuance) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a VERP will be conducted under the procedures in §116.842 of this title (relating to Notice of Final Action).

(e) A person affected by a decision of the commission to issue or deny a VERP may move for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

§116.841. Notice and Comment Hearings for Initial Issuance.

(a) The notice and comment hearing requirements apply only to the initial issuance of a voluntary emission reduction permit (VERP).

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the commission may extend the period for submitting written comments beyond the close of the hearing.

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.842 of this title (relating to Notice of Final Action).

§116.842. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the commission may petition for a rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

§116.850. Voluntary Emission Reduction Permit Application Fee.

Any person who applies for a voluntary emission reduction permit (VERP) shall remit a fee.

(1) If the grandfathered facility will use a control method at least as stringent as those defined in §116.811(3)(A) or (B) of this title (relating to Voluntary Emission Reduction Permit Application), the application fee shall be $450.

(2) If the grandfathered facility will defer emission reductions under §116.811(3)(C) of this title, or if the grandfathered facility will use emission reduction credits under §116.811(3)(D) of this title, the application fee shall be $1,000.

(3) Only one of the applicable fees required in paragraphs (1)-(2) of this section shall be remitted with a single VERP application which proposes to control more than one facility at an account. If more than one facility is included in a single VERP application, the applicant shall remit the highest of the applicable fees.

§116.860. Voluntary Emission Reduction Permit Renewal.

(a) Voluntary emission reduction permits (VERP) shall be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

(b) To renew a VERP with credits acquired under §116.812 of this title (relating to Project Emission Reduction Credits) the owner or operator of the facility shall have:

(1) made equipment improvements or emission reductions necessary to meet the requirements of §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application); or

(2) acquired additional credits under the program as necessary to meet the permit requirements of §116.811(3) of this title.

§116.870. Delegation.

The commission may delegate to the executive director the authority to take any action on a voluntary emission reduction permit.

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 August 30, 1999.

TRD-9905509
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Subchapter A. DEFINITIONS

30 TAC §116.18

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §116.18, concerning Electric Generating Facility Permits Definitions; §116.910, concerning Applicability; §116.911, concerning Electric Generating Facility Permit Application; §116.912, concerning Electric Generating Facility Permit Application for Electing Electric Generating Facilities; §116.913, concerning General and Special Conditions; §116.914, concerning Emissions Monitoring and Reporting Requirements; §116.915, concerning Emission Control Changes; §116 916, concerning Permits for Electric Generating Facilities in El Paso County; §116.920, concerning Public Participation for Initial Issuance; §116.921, concerning Notice and Comment Hearings for Initial Issuance; §116.922, concerning Notice of Final Action; §116.930, concerning Modifications; and §116.931, concerning Renewal. Sections 116.910-116.931 would be placed in a new Subchapter I, concerning Electric Generating Facility Permits. These new sections are also proposed as amendments to the state implementation plan (SIP).

EXPLANATION OF PROPOSED RULES

Senate Bill (SB) 7, 76th Legislature, 1999, amended Texas Utilities Code, Title 2, concerning Public Utility Regulatory Act, Subtitle B, concerning Electric Utilities, and created a new Chapter 39, concerning Restructuring of Electric Utility Industry.

SB 7 requires the commission to implement the permitting and allowance requirements of new §39.264, concerning Emissions Reductions of "Grandfathered Facilities." SB 7 requires electric generating facilities (EGFs) existing on January 1, 1999, that were not subject to the requirement to obtain a permit under Texas Clean Air Act (TCAA), §382.0518(g) to obtain a permit from the commission. These facilities are commonly referred to as grandfathered EGFs. A grandfathered facility is one that existed at the time the legislature amended the TCAA in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants.

These new sections are proposed concurrently with amendments and new sections in Chapter 101 of this title, concerning General Rules. The proposed new Division 2, concerning Emission Banking and Trading of Allowances, in the new Subchapter H, concerning Emissions Banking and Trading, in Chapter 101 sets out the allowance system to be used to assist EGFs in meeting the emission reduction requirements of SB 7. The purpose of the rulemaking in these chapters is to implement permit and emission control requirements, including emission banking and trading of allowances (EBTA), for certain EGFs and related permit application and public notice procedures. The permit application and public notice procedures are the subject of these proposed amendments to Chapter 116. The amendments to Chapters 101 and 117 are published in a separate section of this edition of the *Texas Register.*

SB 7 requires owners or operators of grandfathered EGFs to apply for a permit to emit nitrogen oxide (NO_x) and, for coal-fired EGFs, sulfur dioxide (SO_2). These applications are due on or before September 1, 2000. An EGF that does not obtain a permit may not operate after May 1, 2003, unless the commission finds good cause for an extension. It is the intent of SB 7 that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the NO_x emissions reported to the commission for 1997. Furthermore, it is the intent of the legislation that emissions of SO_2 from coal-fired EGFs not exceed 75% of the SO_2 emissions reported to the commission in 1997. The described emission limitations may be satisfied by using control technology or by participating in the banking and trading of allowances.

Persons, municipal corporations, electric cooperatives, and river authorities owning EGFs that are not grandfathered may elect to become subject to the permitting requirements and emission reductions. A municipal corporation, electric cooperative, or river authority may exclude any grandfathered EGF with a nameplate capacity of 25 megawatts or less from permitting and emission reduction requirements. Texas Utilities Code, §39.264(d) requires notice of the intent to exclude these EGFs by January 1, 2000. The commission will make available a form for this purpose, and requests that the form be returned to the commission by November 1, 1999.

The proposed new §116.18 contains the following definitions. An "electric generating facility," as defined in SB 7, is a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. The commission proposes to modify that definition to exclude a facility that generates electric energy primarily for internal use, but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity. This exclusion eliminates cogeneration facilities that were not intended to be included in this program. An "electing electric generating facility" is an EGF permitted under Chapter 116, Subchapter B, concerning New Source Review Permits, which is not subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I. An "allowance" is the authorization to emit one ton of NO_x or, if applicable, SO_2, during a specified control period or any specified control period thereafter. "Coal" is all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388 92 ''Standard Classification of Coals by Rank'' (as incorporated by reference in Title 40 Code of Federal Regulations (CFR) §72.13). This definition of coal is consistent with the definition found in 40 CFR Part 72, concerning Acid Rain Program. The commission is defining coal to clearly include lignite as coal, since these two fuels are sometimes referenced separately. "Combined permit" is a permit that consolidates the existing new source review (NSR) authorization with the requirements of an EGF permit. A "compliance account" is an account for an EGF or multiple EGFs in which allowances are held. Consistent with Texas Utilities Code, §39.264(c), a "control period" is the 12-month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin on May 1, 2003. "Nameplate Capacity" means the maximum electrical output (expressed in megawatts) that an EGF can sustain over a specified period of time when not restricted by seasonal or other deratings. This definition is consistent with the definition used under the Federal Clean Air Act (FCAA) Amendments of 1990, Acid Rain Program. The commission believes that using this definition will reduce any confusion for EGFs potentially subject to both the Acid Rain Program and the EBTA program proposed under Chapter 101, Subchapter H, Division 2. A "peaking unit" is an EGF that has: 1) an average capacity factor of no more than 10% during the past three calendar years, and 2) a capacity factor of no more than 20% in each of those calendar years. "Capacity factor" is either: 1) the ratio of an EGF's actual annual electric output (expressed in megawatt-hours) to the EGF's nameplate capacity times 8,760 hours or 2) the ratio of an EGF's annual heat input (in millions of British thermal units (MMBtu)) to the EGF's maximum design heat input (in MMBtu) times 8,760 hours. Both terms, capacity factor and peaking unit, are consistent with the same terms in the FCAA Acid Rain Program.

Section 116.910 states that a permit under this new subchapter would authorize emissions of NO_x for any EGF and emissions of SO_2 for coal-fired EGFs. Section 116.910 specifies that the EGF owner or operator authorized to act for the owner is responsible for complying with this subchapter. Consistent with Texas Utilities Code, §39.264(d), a municipal corporation, electric cooperative, or river authority may exclude any EGF with a nameplate capacity of 25 megawatts or less from this subchapter. The municipal corporation, electric cooperative, or river authority must notify the commission by January 1, 2000, of its intent to exclude those EGFs. The commission will make available a form for this purpose and requests that the form be returned to the commission by November 1, 1999.

SB 7 requires grandfathered EGFs to obtain a permit from the commission that authorizes the emission of NO_x and, for coal-fired EGFs, SO_2. Other than NO_x and SO_2, EGFs also emit products of combustion such as carbon monoxide, particulate

matter, and volatile organic compounds. At a coal-fired EGF, the emissions may include mercury as well. The commission believes that the SB 7 authorization was only intended to authorize NO_x and SO_2 (for coal-fired EGFs). The commission also believes that the intent of SB 7 was to eliminate the grandfathered status of EGFs. However, it is unclear how SB 7 authorizes or requires the permitting of anything other than NO_x and SO_2 (for coal-fired EGFs). Furthermore, if the commission were to permit these other air contaminants in an electric generating facility permit (EGFP), it is unclear what standards these air contaminants should be held to. Therefore, the commission proposes to incorporate these emissions using the emission control standards of the Voluntary Emissions Reduction Permits (VERP) proposed concurrently in this edition of the *Texas Register* under Chapter 116, Subchapter H, concerning Voluntary Emission Reduction Permits. These other air contaminants from the EGFs would be reviewed under the requirements of the VERP program but would only go through the public notice process one time.

The commission believes that it is appropriate to rely on the control methods and health effects requirements of the VERP program for air contaminants other than NO_x and, if applicable, SO_2. The VERP program provides control method options depending on the location of a grandfathered facility. The VERP proposal also describes the suggested methods for a health effects review for grandfathered facilities. This proposal to rely on the VERP control methods and health effects review will provide a consistent basis of review for emissions besides NO_x and SO_2 from all grandfathered facilities. The commission does not think it is appropriate to merely include other emissions in a grandfathered EGF's permit without a review of control methods and, if necessary, impacts. This is consistent with the longstanding policy to not treat certain facilities as being "permitted" simply because the facilities are consolidated into an existing permit. For example, a facility that was originally authorized by an exemption will continue to be authorized under the exemption even though the exemption is consolidated with an NSR permit during an amendment or at renewal. The proposal does not require applicants to permit these other air contaminants from EGFs.

Many power plants may have other grandfathered support facilities such as fuel storage tanks or coal handling facilities that are not electric generating facilities. Because SB 7 addresses only those facilities which generate electricity, these support facilities are not explicitly required to obtain a permit under SB 7. To encourage the permitting of grandfathered support facilities, the commission proposes that these facilities could apply for a VERP which would be consolidated with the EGFP. This would enable all the grandfathered facilities and EGFs at a site to go through a combined permitting process. Thus, all grandfathered facilities and EGFs would only go through the public notice process one time.

SB 7 does not provide procedures for the modification of an EGFP. Therefore, the commission believes that the requirements of the TCAA concerning modifications of existing facilities still apply. Any modifications to any facility in an EGFP remain subject to the permitting requirements of the TCAA and the existing modification requirements in Chapter 116, Subchapter B.

To address electing EGFs, the commission proposes that the existing NSR permit be consolidated with a permit under this subchapter. The combined permit would continue to authorize emissions of all air contaminants and would incorporate the requirements of this subchapter into a single permit. This permit would contain the general and special conditions for electing EGFs. The unchanged, existing NSR permit conditions would not be subject to public notice for the combined permit; only the conditions specific to the EGFs for NO_x and, if applicable, SO_2, would be subject to the public notice required by §116.920.

Consistent with existing application procedures of the commission, the proposed new §116.911 contains application procedures to obtain an EGFP. As specified by amended Texas Utilities Code, §39.264(e), the proposed new §116.911 would require that owners or operators of grandfathered and electing EGFs apply for a permit on or before September 1, 2000. The section also contains information concerning general content of the permit application. An EGFP will include provisions for measurement of emissions and a requirement to use control technology sufficient to ensure that emissions do not exceed an EGF's allowance. Although control technology is not explicitly required under SB 7, the control method language was included in the proposal to ensure that control technology, if appropriate, used by these EGFs would be sufficient to meet the limitations of the allowances. The removal of control technology could also trigger federal NSR requirements, since this change could constitute a modification under federal regulations. EGFs in nonattainment areas must comply with nonattainment review and, if applicable, Prevention of Significant Deterioration (PSD) review. Allowances cannot be used to avoid federal permitting requirements because the allowances do not constitute a permanent, enforceable emission limit. EGFs that are affected sources under FCAA, §112(g), concerning Modifications, must comply with those requirements. Since grandfathered EGFs must comply with federal requirements, if applicable, the commission believes that it is appropriate to ensure that these EGFs are in compliance with those requirements. The applicant must demonstrate how it will meet the requirements of §116.914. Texas Utilities Code, §39.264(e) requires coal-fired EGFs to comply with the opacity limits specified in commission rules. Applicants must submit an application for an EGFP under the seal of a Texas licensed professional engineer, consistent with §116.110(e), concerning Applicability.

EGFs that are currently authorized under Chapter 116 may elect to participate in the EBTA under Chapter 101, Subchapter H, Division 2 by consolidating their existing NSR permit with an EGFP. The proposed new §116.912 contains application requirements for electing EGFs that are in addition to those contained in the proposed §116.911. Since an existing NSR permit may authorize multiple facilities, the permit application submitted under this subchapter should identify which EGFs are to be included in the EGFP. Applications must contain documentation of actual emissions as well as fuel consumption, fuel heating values, and heat input in MMBtu for calendar year 1997. This information will be used to calculate allowances for these EGFs and provide the data needed to meet the requirements of Texas Utilities Code, §39.264(i)(3), which restricts the banking and trading of allowances that result from reduced utilization and shutdown. Conditions may be added to the combined permit where appropriate to ensure compliance with state and federal law. An electing EGF may opt out of the requirements of this subchapter under certain conditions. The electing EGF must notify the commission of its intent to opt out prior to the beginning of the next control period and may not opt out during a control period. This requirement would prevent an EGF from opting out in order to avoid being out of compliance with the requirement to not exceed their allowances. All allowances for the

electing EGF will be voided by the commission and may not be banked for subsequent use. Since the EGF would no longer be subject to the restrictions of the EBTA, it would be inappropriate to use those allowances at other EGFs, and no allowances will be allocated for subsequent control periods. Once an EGF has opted out, the EGF may not participate in the EBTA at any future date. Since SB 7 states that EGFs must elect to participate prior to September 1, 2000, there is not a subsequent opportunity for those EGFs to re-elect. The commission believes that a one-time election and a one-time opt out provide sufficient flexibility without undermining the program. The owner or operator shall request an alteration to the combined permit to remove the conditions pertaining to the EGFP and restore any conditions that existed prior to the consolidation. This alteration would restore the NSR permit to its prior status.

The proposed new §116.913 contains general conditions applicable to every EGFP unless specified differently in the permit, and authorizes the commission to include special conditions in the permit. An EGFP would authorize NO_x emissions from EGFs, and SO_2 emissions from coal-fired EGFs. The EGF must comply with the EBTA in Chapter 101, Subchapter H, Division 2. The proposed provisions for the EBTA require EGFs to maintain allowances in a compliance account. The EBTA in Chapter 101 contains all provisions for managing allowances. For emissions of NO_x and, where applicable, SO_2, the EGF shall hold in its account, on May 1 of each year, a quantity of allowances equal to or greater than the amount of that air contaminant emitted since May 1 of the previous year. Holders of EGFPs shall comply with this requirement beginning May 1, 2004. Beginning May 1, 2004, holders of EGFPs must report annual actual emissions of NO_x and, if applicable, SO_2, since the previous May 1. This report must be submitted by June 1 of each year. This report will be used to determine compliance with the requirement that the EGF hold allowances equal to or greater than the emissions over a given control period. The proposed section implements the requirement of Texas Utilities Code, §39.264(e) that requires coal-fired EGFs comply with the opacity limits specified in commission rules. Section 116.913 states that the removal of or failure to operate existing control technology is not permissible under this subchapter. The commission believes that it is not the intent of the EGFP to authorize removal or backsliding of control technology. Also under §116.913, proposed language would state that applicable requirements of New Source Performance Standards (NSPS), under 40 CFR Part 60, concerning Standards of Performance for New Stationary Sources; 40 CFR Part 61, concerning National Emission Standards for Hazardous Air Pollutants; and 40 CFR Part 63, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, are also conditions of the permit. The issuance of an EGFP does not modify or limit the applicability of these federal programs.

The proposed new §116.914 specifies monitoring and reporting requirements for EGFPs. The commission is required by Texas Utilities Code, §39.264(k) to provide methods for use in determining compliance with permits and methods for monitoring and reporting actual emissions of NO_x and, if applicable, SO_2. Title 40 CFR Part 75, concerning Continuous Emission Monitoring Under the Acid Rain Program (Acid Rain Program), contains monitoring requirements for SO_2 for affected units under that program. Since the acid rain program already requires extensive monitoring, the commission proposes to use that monitoring for EGFs that are subject to the acid rain program for compliance with this subchapter. EGFs not subject to the Acid Rain Program would have three choices in monitoring. The EGF may choose to meet either Part 75 monitoring requirements, or the requirements of Title 40 CFR Part 60, or the EGF may provide an alternative monitoring plan that would be incorporated into the permit conditions. Part 60 requirements are proposed as an alternative to Part 75 in order to be consistent with current NSR practices. Since Part 60 monitoring is less accurate than Part 75 monitoring, the proposal requires Part 60 monitored data to have a relative accuracy of greater than 10% (i.e., measured values within 90-100% of the correct value). To account for this inaccuracy, the monitored value must be multiplied by a factor of 1.1. This factor has been included to account for the inequity between the monitoring accuracy of Parts 75 and 60. The commission believes that this factor, proposed in the Ozone Transport Commission's (OTC) Model Rule, is appropriate for the EBTA as well, based on the similarity of the OTC requirements and the goals of Texas Utilities Code, 39.264. The OTC Model Rule implements a NO_x emission budget program to reduce ambient ozone concentrations. Although Texas is not required to participate in the OTC budget program, the commission believes that it is appropriate to model this budget rule after the OTC model rule. Additionally, EGFs with a heat input of less than 100 MMBtu/hr could use Appendix E of 40 CFR Part 75 to estimate NO_x emissions. Appendix E relies on stack testing of the facility to develop a relationship between the emission rate and heat input. The commission proposes to structure the monitoring requirements of this subchapter on these existing requirements because many EGFs are currently using Part 75 and Part 60 monitoring methods. Data collected from these monitoring requirements would be used to calculate annual emissions reported to the commission for the purpose of demonstrating compliance with allowances. Proposed §116.914 also specifies that data collected from the monitoring of EGFs shall be detailed in an annual report as required under 116.913. The commission will develop a form, AR-1, specifying the requirements of the report, which would be due on June 1 of each year.

The proposed new §116.915 would permit emission control changes to EGFs as a result of pollution control projects initiated under the EGFP program that reduce emissions of NO_x or, if applicable, SO_2. This section allows emission control changes to EGFs provided the control change follows the criteria in this section which is similar to §116.617, concerning Standard Permits for Pollution Control Projects. Any emission increases must be a result of the emission control change only. For changes that are not pollution control projects, if nonattainment NSR (NNSR), PSD, or FCAA, §112(g) is applicable, then the emission control change must be authorized under NSR. For any significant increase in emissions of a air contaminant for which a National Ambient Air Quality Standard (NAAQS) exists, the applicant must demonstrate that the project will not lead to a violation of the NAAQS or cause or contribute to a violation of a PSD increment or PSD visibility limitation. Netting is not required when determining whether this demonstration must be made for the proposed project; however, increases or decreases in emissions must be included in any future netting. This section references 30 TAC §116.12, concerning Nonattainment Review Definitions, or Title 40 CFR §52.21(b)(23), concerning Prevention of significant deterioration of air quality, to determine what constitutes a significant increase in an air contaminant. Consistent with existing standard permit registration requirements under Chapter 116, Subchapter F, concerning Standard Permits, permit holders must submit a PI-1UR registration for emission

control changes. The emission control change may be implemented any time after receipt of written notification from the executive director that there are no objections, or 45 days after receipt by the executive director of the registration, whichever occurs first.

Consistent with the current review process for registrations for standard permits for pollution control projects, the emission control change will not be authorized by the executive director if there are significant health effects concerning the increase in emissions of any air contaminant other than those for which a NAAQS has been established. Until those concerns are addressed by the applicant to the satisfaction of the executive director, the registration will not be approved. Excluding changes authorized under §116.915(a), increased emissions of any air contaminant, including NO_x or, if applicable, SO_2, must obtain preconstruction authorization under Subchapter B of this chapter if nonattainment, PSD, or FCAA, §112(g) are applicable. Since SB 7 does not authorize emissions which trigger federal permitting requirements, the commission believes that an EGF is still subject to preconstruction requirements for federal permits. Likewise, modifications that would trigger state NSR would need appropriate authorization under Chapter 116, Subchapter B.

Consistent with Texas Utilities Code, §39.264(q), the proposed new §116.915 would exempt EGFs in El Paso County from NO_x allowance requirements if the commission or United States Environmental Protection Agency (EPA) determines that reductions in NO_x emissions would lead to increased ambient levels of ozone. Currently, NO_x reductions are not required for facilities in the El Paso nonattainment area because EPA has granted a waiver under FCAA, §182(f). Under this waiver, NO_x reductions are not required if the attainment demonstration for compliance with the ozone NAAQS can be made without a NO_x control strategy. The existence of this waiver is not consistent with the provisions of Texas Utilities Code, §39.264(q) because it has not been demonstrated, under the §182(f) waiver or otherwise, that NO_x reductions would increase ambient ozone in El Paso County. These EGFs would still be required to obtain a permit under Chapter 116, Subchapter I regardless of the determination that NO_x reductions are counterproductive in controlling ambient ozone levels in the El Paso Region. The commission believes that this requirement is appropriate, since Texas Utilities Code, §39.264(e) provides that EGFs without a permit may not operate after May 1, 2003, and Texas Utilities Code, §39.264(q) refers only to reduction requirements, not permitting requirements. Regardless of this determination, grandfathered EGFs in El Paso County would still be required to obtain a permit under this subchapter.

The proposed new §116.920 would require applicants for initial issuance of an EGFP to publish notice of intent to obtain a permit in accordance with Chapter 39, concerning Public Notice, Subchapter K of this title, concerning Public Notice of Air Quality Applications. Subchapter K implements the new requirements of TCAA, §382.056, as amended by the 76th Legislature by House Bill 801, an act relating to Public Participation in Certain Environmental Permitting Procedures of the TNRCC. SB 7 provides that public participation for initial issuance of an EGFP will be done in the manner of §382.0561, concerning Federal Operating Permit; Hearing; and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, concerning Administrative Procedure, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing. The proposed requirements of §§116.920, 116.921, and 116.922 are based on the sections in 30 TAC Chapter 122, concerning Federal Operating Permits, that implement the requirements of TCAA, §382.0561 and §382.0562. Section 116.920 provides that any person who may be affected by emissions from the EGF may request a notice and comment hearing on an EGFP application within 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, relating to Notice of Receipt of Application and Intent to Obtain Permit. Grandfathered support facilities that elect to obtain a VERP and have it consolidated with an EGFP may publish a combined notice. The unchanged, existing NSR permit conditions would not be subject to public notice for the combined permit; only the conditions specific to the EGFs for NO_x and, if applicable, SO_2, would be subject to the public notice required by §116.920. Persons affected by a decision of the commission to issue or deny an EGFP will be entitled to petition for a rehearing under 30 TAC §50.119 of this title, concerning Notice of Commission Action, Motion for Rehearing, and may seek judicial review under TCAA, §382.032, concerning Appeal of Commission Action.

The proposed new §116.921 contains the hearing requirements for the initial issuance of EGFPs. The proposed rule would allow the commission to decide whether to hold a hearing based on the reasonableness of a request. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from the facility is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from the EGF, and that request is reasonable, the commission will hold a hearing. The section would require that notice of hearing on a draft permit be published in the public notice section of one issue of a newspaper of general circulation in the municipality or the nearest municipality where the EGF is located. The notice must be published at least 30 days prior to a hearing. The notice is published at the applicant's expense and the rule specifies the content of the notice. The proposed rule provides the procedures for the submittal of comments at a hearing and specifically states that the period for submitting written comments extends to the close of the hearing and may be extended beyond the close of the hearing. Any person, including the applicant, may submit comments on whether the draft permit contains inappropriate conditions or whether the preliminary decision to issue or deny the EGFP is inappropriate. Commenters shall raise all issues and submit all comments supporting their position by the end of the public comment period. This requirement will assist the commission in developing its response to comments as required by new §116.922. To ensure a complete record of the comments, the rule proposes prohibiting the incorporation by reference of supporting materials for comments unless the materials meet the criteria in §116.921(g). The commission is required to keep a record of all comments submitted or raised at a hearing and to have an audio recording or written transcript of the hearing. The record is available to the public. Draft permits may be revised based on comments pertaining to whether the permit provides for compliance with the requirements for an EGFP.

The proposed new §116.922 would require the commission to individually notify persons who commented, either during the public comment period or at a permit hearing, of the final action

of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing under 30 TAC §50.119, and for judicial review under TCAA, §382.032.

The EGFP establishes the conditions under which emissions of NO_x and SO_2 are regulated. Emissions of air contaminants other than NO_x and if applicable, SO_2, may be permitted under the VERP proposed in a concurrent rulemaking in other sections of this edition of the *Texas Register.* Additionally, the public notice requirements of the VERP and EGFP may be combined under §116.920.

Consistent with Texas Utilities Code, §39.264(r), the proposed new §116.931 would require EGFPs to be renewed under the requirements of Chapter 116, Subchapter D, concerning Permit Renewals.

FISCAL NOTE

Bob Orozco, a technical specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for the commission and most units of state and local government as a result of administration or enforcement of the proposed amendments. River authorities and units of local government that own and operate EGFs having a capacity of greater than 25 megawatts will be required to obtain a permit from the commission to continue operating. The fiscal implications for units of state and local government with EGFs will be addressed in the Public Benefit portion of this preamble.

The proposed amendments to Chapter 116 would implement the permit requirements for grandfathered EGF provisions contained in:

Act of May 27, 1999, SB 7, 76th Legislature, 1999, (to be codified in part at Texas Utilities Code, §§11.003-163.002).

In addition, the proposed amendments refer to public notice and public participation provisions incorporated in proposed changes to Chapter 39, Public Notice and specified in:

Act of May 13, 1999, HB 801, 76th Legislature, HB 801, 1999, (to be codified in Texas Water Code, Chapter 5, Subchapter M, and Texas Health and Safety Code, §361.088 and §382.056).

The proposed amendments require grandfathered EGFs to apply for a permit before September 1, 2000. A grandfathered EGF is an EGF that was exempt from permitting requirements by virtue of existing or beginning construction, alteration, or modification on or before August 31, 1971. An EGF that does not obtain a permit by May 1, 2003, may not operate unless the commission finds good cause for an extension.

The proposed amendments would establish requirements, procedures, deadlines, and responsibilities for electric generating facility permit (EGFP) applications for facilities that were formerly exempt from the agency's permit requirements.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 116 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a reduction of air contaminants emitted from affected electric generating facilities, and the opportunity for public participation and comment in the permitting procedures for formerly grandfathered EGFs and other participating EGFs.

The purpose of the proposed amendments is to create and implement a permit and emission control program, including an EBTA program for certain EGFs, and to implement related permit application and public notice procedures. EGF applicants must apply for a permit to emit air contaminants on or before September 1, 2000. An EGF that does not obtain a permit may not operate after May 1, 2003, unless the commission finds good cause for an extension.

The EGFP will also require measurement of emissions, prohibition of removal or failure to operate control technology, and a requirement to use control technology sufficient to ensure that emissions do not exceed an EGF's allowance. Emissions of air contaminants other than NO_x or SO_2 from EGFs may be included in the EGFP. If included, these emissions would be reviewed under the requirements of the concurrently proposed Voluntary Emissions Reduction Permit (VERP) in Chapter 116, Subchapter H. Support facilities for EGFs may be concurrently permitted under the VERP and the permit may be consolidated with an EGFP.

It is the intent of the legislature in SB 7 that, starting May 1, 2003, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the levels emitted during 1997 as reported to the commission. SB 7 also requires that emissions of SO_2 from coal-fired power plants not exceed 75% of the levels emitted in 1997 as reported to the commission. These reductions may be met by the emissions trading and allowance system which is the subject of related and concurrent rulemaking in Chapter 101. Counties within Texas have been divided into three regions by SB 7 East Texas, West Texas, and El Paso for the purpose of allocating emissions of NO_x and SO_2 and for the trading of emissions allowances, by region, among the EGFs. The East Texas Region emission rate shall be 0.14 lb of NO_x and 1.38 lbs of SO_2 per MMBtu. The El Paso and West Texas Regions emission rates shall be 0.195 lb of NO_x. The allowance calculation is specified in the concurrently proposed Chapter 101, Subchapter H, Division 2, concerning Emissions Banking and Trading of Allowances. The permit under this chapter would require compliance with the allowance system calculated under the EBTA.

For the purposes of this fiscal note, the estimated total annualized cost to EGFs of implementing the provisions of the proposed amendments consists of the cost of publishing notice of intent to obtain an air permit, and the cost of installing and operating the control technology sufficient to ensure that emission allowances are not exceeded. Each of these costs are addressed in turn.

SB 7 requires that applicants publish notice of intent to obtain a permit in accordance with TCAA, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing. The public notice requirements for these permits are contained in Chapter 39, concerning Public Notice. The cost of publishing notice is estimated to be in the range of $380 to $3,600, inclusive of one display notice, one legal notice, and one alternative language notice. Costs vary significantly depending on the location of the EGF and its proximity to large metropolitan areas. The alternative language notice is not always required. Small town/city newspapers generally charge much less for publication of a public notice.

In February 1999, the Public Utility Commission of Texas (PUCT) and the commission published a report entitled, "Electric Restructuring and Air Quality: A Preliminary Analysis of Reductions and Costs of Nitrogen Oxides Controls from Electric Utility Boilers in Texas." The PUCT and the commission used information collected from generation-owning utilities in Texas to assess the potential costs of NO_x emission reductions that could be required from existing utility power plants. Costs were estimated at an emission rate of 0.15 lb MMBtu which is close to the 0.14 lb MMBtu specified in the proposed amendments to Chapter 101. The average annual cost estimated by the utilities of applying a control technology to attain this level of reductions was approximately $4,000 per ton of emissions reduced. This average annual cost per ton of emissions reduced includes annualized capital costs plus the additional annual operating costs associated with the applied technology. The study states that the "NO_x control costs developed in this analysis are only estimates, and that a change in any one of a number of critical assumptions will cause these cost estimates to change significantly." Generic reduction and cost factors were used in the study but individual companies and specific units will most likely have different costs. This variability in cost depends on the types of emissions reduced, the amount of emission reductions, the specific processes involved, the size of the facility, and control methodologies employed for emission reductions. The data also indicates that EGFs with the largest required emission reductions have the lowest cost per ton of emission reduced. In general, the annualized cost for emission reductions is inversely proportional to the amount of emissions required because when larger emission reductions are required, the average cost is spread over more tons reduced.

The data also indicates that it would be more economical for some of the affected EGFs which require small reductions and large capital costs to use the banking and trading provisions to offset some or all of the costs of reducing emissions to the required level. It is anticipated that emission reduction requirements will be met as the economics of emission allowances, emission reduction costs, the emission banking and trading system, and other factors of individual facilities dictate. It is also anticipated that costs for using the EBTA system will be less than the cost of actual emission reduction in most cases. The PUCT/commission study states that "a subcommittee of the Ozone Transport Assessment Group (OTAG) has analyzed market-based emission trading options, estimating potential savings of as much as 50 percent, compared to the costs of unit-by-unit compliance." The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available for reduction is such that costs of emission reduction for the EGFP program are impossible to predict with certainty. However, an average annual cost of approximately $4,000 per ton of emissions reduced would appear to be an acceptable industry-wide estimate of the cost of installing and operating the control technology sufficient to ensure that emission allowances are not exceeded. For EGFs requiring an emission reduction of 100 to 1,000 tons annually, the total annualized costs are estimated to be in the range of $400,000 to $4,000,000. These estimated costs are inclusive of annualized capital costs and annual operating costs averaging approximately $4,000 per ton of emissions reduced plus the public notice costs.

Costs associated with authorizing emissions other than NO_x or, if applicable, SO_2, using the review process of the VERP are detailed in the concurrent proposed Chapter 116, Subchapter H. The VERP fee would not apply to these emissions and the public notice requirements would be satisfied under the EGFP. Costs associated with permitting support facilities under the VERP include the permit application fee as detailed in the concurrently proposed Chapter 116, Subchapter H. The public notice requirements for the VERP and the EGFP may be combined into one notice process.

A municipal corporation, electric cooperative, or river authority may exclude any electric generating facilities of 25 megawatts or less from the requirements to obtain an EGFP. These entities must inform the commission by January 1, 2000, of their intent to exclude facilities from permitting requirements. River authorities and units of local government that own and operate EGFs having a capacity greater than 25 megawatts will be required to obtain a permit from the commission to continue operating. These entities include the cities of Austin, Brownsville, Bryan, Denton, Garland, Greenville, Lubbock, San Antonio, the Texas Municipal Power Agency, Brazos Electric Power Cooperative, San Miguel Electric Cooperative, and the Lower Colorado River Authority. It is anticipated that the total annualized cost of emission reductions will be similar to those of the industry at large for similar sizes and types of facilities, and types of emissions. It is also anticipated that emission reductions will be made as the economics of emission allowances, the banking and trading system, and other factors of individual facilities dictate. The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available for reduction is such that costs of emission reduction for the EGFP program are impossible to predict with certainty for this segment of the industry. However, the estimated annualized cost that was used for the industry at large for installing and operating the control technology of approximately $4,000 per ton of emissions reduced would appear to be an acceptable estimate for municipal corporations, electric cooperatives, and river authorities. The cost of publishing notice will also be similar to those for the industry at large.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

Based on the expected revenues from the smallest generators and the number of employees defined as a micro-business, there are no known small businesses or micro-businesses as defined in the Texas Government Code with EGFs which would be affected by these proposed amendments to Chapter 116. If there are affected small businesses or micro-businesses, the estimated annualized cost that was used for the industry at large for installing and operating the control technology of approximately $4,000 per ton of emissions reduced would appear to be an acceptable estimate. The cost of publishing notice will also be similar to those for the industry at large.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking meets the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. However, the proposed amendments

to Chapter 116 are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse effects on grandfathered and electing EGFs which could be considered a sector of the economy. However, the analysis required by §2001.0225(c) does not apply because the proposed amendments do not meet any of the four applicability requirements of a major environmental rule. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement, and they are not proposed solely under the general powers of the agency. The amendments to Chapter 116 are proposed specifically to comply with SB 7. SB 7 requires grandfathered EGFs apply for a permit by September 1, 2000, and obtain a permit by May 1, 2003, or cease operating, absent a showing of good cause to continue operating. The proposed amendments allow the permitting of air contaminants other than NO_x or SO_2 for EGFs using the VERP process. Support facilities may be permitted under a VERP which will be consolidated with an EGFP. There is no federal law or delegation agreement with a federal agency that requires the permitting of grandfathered EGFs.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rules. The following is a summary of that assessment. These amendments implement the requirements of Texas Utilities Code, §39.264. This section requires owners or operators of grandfathered EGFs to apply for a permit on or before September 1, 2000, and obtain a permit or cease operation by May 1, 2003. It is the intent of SB 7 that for the 12-month period beginning May 1, 2003, and for each 12- month period following, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the NO_x emissions reported to the commission for 1997. Furthermore, it is the intent of the legislation that emissions of SO_2 from coal-fired EGFs not exceed 75% of the SO_2 emissions reported to the commission in 1997. NO_x and SO_2 allowances will be allocated to EGFs by January 1, 2000. To assist EGFs in meeting the reduction requirements, a banking and trading program is proposed concurrently in Chapter 101 of this title. Although EGFs are required to make specific emission reductions, these facilities have alternatives available under the proposed banking program that may allow the EGF to avoid installing add-on controls. Further, allowances can be transferred under the proposed banking program so that EGFs have opportunities to buy and sell allowances in order to respond to business needs. The amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). The reductions obtained from the issuance of EGFPs will assist in the efforts of the commission to attain the NAAQS. This action is taken in response to a real and substantial threat to public health and safety and significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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, relating to Consistency with 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 new sections related to the authorization of EGFPs, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of 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 proposal is intended to reduce overall emissions of NO_x and SO_2 from EGFs. This action is consistent with 40 CFR because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in El Paso on October 1, 1999, at 9:00 a.m. in the City of El Paso Council Chambers, located at 2 Civic Center Plaza, 2nd Floor. Additional hearings will be held in Lubbock on October 1 at 6:00 p.m. in the City of Lubbock Council Chambers, located at 1625 13th Street; in Austin on October 4 at 9:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle; in Irving on October 5 at 1:00 p.m. in the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard; in Houston on October 7 at 9:00 a.m. in the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard; and in Beaumont on October 7 at 6:00 p.m. in the John Gray Institute, located at 855 Florida Avenue. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99033- 116-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules

for the permitting of electric generating facilities; and Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue permits; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.0515, which requires applicants to provide information that assures compliance with state and federal laws and regulations; §382.0518, which authorizes the commission to issue permits for new construction and modifications; §382.0519, which authorizes the commission to issue voluntary emission reduction permits, §382.05191, which authorizes public notice for voluntary emission reduction permits; §382.05193, which authorizes permits through emissions reductions, §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new section implements Texas Utilities Code, §39.264, relating to Emissions Reductions of "Grandfathered Facilities"; Texas Health and Safety Code, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; §382.051, relating to Permitting Authority of Board; Rules; §382.0513, relating to Permit Conditions; §382.0515, relating to Application for Permit; §382.0519, relating to Voluntary Emissions Reduction Permit, §382.05191, relating to Voluntary Emissions Reduction Permit: Notice and Hearing; §382.05193, relating to Emissions Permits through Emissions Reductions; §382.0518, relating to Preconstruction Permit; §382.055, relating to Review and Renewal of Preconstruction Permit; §382.056, relating to Notice of Intent to Obtain Permit or Permit Review; Hearing; §382.0561, relating to Federal Operating Permit: Hearing; §382.0562, relating to Notice of Decision; and §382.061, relating to Delegation of Powers and Duties; and Texas Water Code, §5.122, relating to Delegation of Uncontested Matters to Executive Director.

§116.18. Electric Generating Facility Permits Definitions.

The following words and terms, when used in Subchapter I of this chapter (relating to Electric Generating Facility Permits) shall have the following meanings, unless the context clearly indicates otherwise.

(1) Allowance - The authorization to emit one ton of nitrogen oxide (NO_x) or sulfur dioxide (SO_2) during a control period.

(2) Capacity factor - Either:

(A) the ratio of an electric generating facility's (EGF) actual annual electric output (expressed in megawatt-hours) to the EGF's nameplate capacity times 8,760 hours; or

(B) the ratio of an EGF's annual heat input (in millions of British thermal units (MMBtu)) to the EGF's maximum design heat input (in MMBtu) times 8,760 hours.

(3) Coal - All solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388 92 ''Standard Classification of Coals by Rank'' (as incorporated by reference in Title 40 Code of Federal Regulations, §72.13 (effective June 25, 1999)).

(4) Combined permit - A permit that consolidates the existing new source review authorizations with the requirements of an EGF permit.

(5) Compliance account - The account for an EGF or multiple EGFs in which allowances are held.

(6) Control period - The 12 month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

(7) Electing electric generating facility (EGF) - An EGF permitted under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) which is not subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(8) Electric generating facility (EGF) - A facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. An EGF does not include a facility that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity.

(9) Nameplate Capacity - The maximum electrical output (expressed in megawatts) that an EGF can sustain over a specified period of time when not restricted by seasonal or other deratings.

(10) Peaking unit - An EGF that has:

(A) An average capacity factor of no more than 10% during the past three calendar years; and

(B) A capacity factor of no more than 20% in each of those calendar years.

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 August 30, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Subchapter I. ELECTRIC GENERATING FACILITY PERMITS

30 TAC §§116.910-116.916, 116.920-116.922, 116.930, 116.931

STATUTORY AUTHORITY

The new section is proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules for the permitting of electric generating facilities; and Texas

Health and Safety Code, TCAA, §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.051, which authorizes the commission to issue permits; §382.0518, which authorizes the commission to issue permits for new construction and modifications; §382.0519, which authorizes the commission to issue voluntary emission reduction permits, §382.05191, which authorizes public notice for voluntary emission reduction permits; §382.05193, which authorizes permits through emissions reductions, §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new section implements Texas Utilities Code, §39.264, relating to Emissions Reductions of "Grandfathered Facilities"; Texas Health and Safety Code, §382.012, relating to State Air Control Plan; §382.017, relating to Rules; §382.0513, relating to Permit Conditions; §382.051, relating to Permitting Authority of Board; Rules; §382.0519, relating to Voluntary Emissions Reduction Permit, §382.05191, relating to Voluntary Emissions Reduction Permit: Notice and Hearing; §382.05193, relating to Emissions Permits through Emissions Reductions; §382.0518, relating to Preconstruction Permit; §382.055, relating to Review and Renewal of Preconstruction Permit; §382.0561, relating to Federal Operating Permit: Hearing; §382.0562, relating to Notice of Decision; and §382.061, relating to Delegation of Powers and Duties; and Texas Water Code, §5.122, relating to Delegation of Uncontested Matters to Executive Director.

§116.910. Applicability.

(a) The owner or operator of a grandfathered electric generating facility (EGF) shall apply for a permit to operate that facility under this subchapter.

(b) Electing EGFs opting to obtain a permit under this subchapter shall submit a permit application to consolidate existing New Source Review (NSR) authorizations with a permit to authorize nitrogen oxide (NO_x) emissions and, if applicable, sulfur dioxide (SO_2) emissions under this subchapter.

(c) The owner, or the operator who is authorized to act for the owner, of an EGF is responsible for complying with this subchapter.

(d) A municipal corporation, electric cooperative, or river authority may exclude any EGF with a nameplate capacity of 25 megawatts or less from this subchapter. The municipal corporation, electric cooperative, or river authority must notify the commission by January 1, 2000, of its intent to exclude those EGFs.

(e) Emissions of NO_x shall be permitted under this subchapter for any EGF. Emissions of SO_2 shall be permitted under this subchapter only for coal-fired EGFs. Emissions of other air contaminants from EGFs may be permitted under this subchapter provided the grandfathered facilities meet the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits).

(f) Owners or operators of grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with EGFs subject to this subchapter may include those grandfathered facilities in a permit issued under this subchapter, provided the grandfathered facilities meet the requirements of Chapter 116, Subchapter H of this title.

§116.911. Electric Generating Facility Permit Application.

(a) Any application for an electric generating facility permit (EGFP) must include a completed Form PI-1-U, General Application. The Form PI-1-U must be signed by an authorized representative of the applicant. The Form PI-1-U specifies additional support information which must be provided before the application is deemed complete. In order to be granted an EGFP, the owner or operator of the electric generating facility (EGF) shall submit information to the commission which demonstrates that all of the following are met:

(1) Measurement of emissions and performance demonstration. Measurement of emissions and demonstration of performance shall be conducted consistent with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(2) Control method. EGFs shall use control technology sufficient to ensure that actual emissions from the facility do not exceed the amount of allowances in an EGF's compliance account.

(3) Nonattainment review. If the EGF is located in a nonattainment area, the owner or operator of the EGF shall comply with all applicable requirements under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review).

(4) Prevention of Significant Deterioration (PSD) review. If the EGF is located in an attainment area, the owner or operator of the EGF shall comply with all applicable requirements under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review).

(5) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the EGF is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), the affected source shall comply with all applicable requirements under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6) Air dispersion modeling or ambient monitoring for pollution control projects under §116.915(b)(2) of this title (relating to Emission Control Changes). Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's New Source Review Permits Section where there is an increase in emissions to determine the air quality impacts from the EGF.

(7) Opacity Limitations for coal-fired EGFs. The coal-fired EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(b) Applications must be submitted on or before September 1, 2000.

(c) All applications for an EGFP shall be submitted under the seal of a Texas licensed professional engineer in compliance with §116.110(e) of this title (relating to Applicability).

§116.912. Electric Generating Facility Permit Application for Electing Electric Generating Facilities.

(a) Electing Electric Generating Facilities (EGF) seeking to consolidate existing New Source Review (NSR) authorizations with a permit under this subchapter shall submit an application to authorize nitrogen oxide (NO_x) emissions and, if applicable, sulfur dioxide (SO_2) emissions. The application shall meet the requirements of §116.911 of this title (relating to Electric Generating Facility Permit Application) as well as the following.

(1) The permit application shall contain the following information for the purposes for managing allowances:

(A) Documentation of the actual emissions of that EGF for calendar year 1997.

(B) Documentation of fuel consumption, fuel heating values, and heat input in MMBtu for calendar year 1997.

(2) The permit application shall identify which EGFs are to be included.

(3) Conditions in the electing EGF's NSR permit necessary to ensure compliance with state or federal law will be included in the combined permit.

(4) The combined permit shall include the conditions of the NSR authorization as well as the conditions of the EGFP.

(b) An electing EGF may opt out of the requirements of this subchapter under the following conditions:

(1) The electing EGF must notify the commission of its intent to opt out prior to the beginning of the next control period.

(2) The electing EGF may not opt out during a control period.

(3) All allowances for the electing EGF will be voided by the commission and may not be banked for subsequent use.

(4) No allowances will be allocated for subsequent control periods.

(5) Once an EGF has opted out, the EGF may not participate in the emissions banking and trading of allowances at any future date.

(6) The owner or operator shall request an alteration to the combined permit to remove the conditions pertaining to the EGFP and restore any conditions that existed prior to the consolidation.

§116.913. General and Special Conditions.

(a) The following general conditions shall be applicable to every electric generating facility permit (EGFP) unless otherwise specified in the permit.

(1) A permit issued under this subchapter authorizes the following.

(A) NO_x emissions from all electric generating facilities (EGF).

(B) SO_2 emissions from coal-fired EGFs.

(C) Emissions of all other air contaminants from EGFs meeting the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emissions Reduction Permits).

(2) Owners or operators of grandfathered facilities may consolidate a permit issued under the requirements of Chapter 116, Subchapter H of this title.

(3) The EGF must comply with Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances) including the requirement to maintain allowances in a compliance account. Allowances may be transferred in accordance with §101.335 of this title (relating to Allowance Banking).

(4) Mass emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(5) On May 1 of each year after May 1, 2003, an EGF subject to this subchapter shall hold a quantity of allowances for emissions of NO_x and, where applicable, SO_2, in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period.

(6) Reports of annual actual emissions for NO_x and, where applicable, SO_2, during the control period shall be submitted to the New Source Review Permits Section by June 1 of each year.

(7) Coal-fired EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(8) Removal of or failure to operate existing control technology is not permissible under this subchapter.

(9) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the EPA under authority granted under FCAA, §111, as amended.

(10) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

(11) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(b) Special conditions may be included in the EGFP.

§116.914. Emissions Monitoring and Reporting Requirements.

(a) The EGF shall comply with the following requirements:

(1) For EGFs subject to the requirements of 40 Code of Federal Regulations (CFR) Part 75 (effective June 25, 1999), relating to Continuous Emission Monitoring, all monitoring systems must comply with the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75. EGFs not subject to 40 CFR Part 75 may choose to comply with the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75 or those same requirements in 40 CFR Part 60 (relating to New Source Performance Standards).

(2) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative default data in accordance with the provisions of 40 CFR Part 75, Subpart D, relating to Missing Data Substitution Procedures.

(b) For EGFs subject to 40 CFR Part 75, a certified monitoring system under 40 CFR Part 75 shall be used to demonstrate compliance with this subchapter.

(1) If the EGF has a flow monitor certified under 40 CFR Part 75, nitrogen oxide (NO_x) emissions in pounds per hour shall be determined using a NO_x continuous emission monitoring system (CEMS) and the flow monitor.

(2) If the EGF does not have a certified flow monitor, but does have a NO_x CEMS, NO_x emissions in pounds per hour shall be determined by multiplying pounds of NO_x per million British thermal units (lbs/MMBtu) times heat input in MMBtu per hour (MMBtu/hr). Procedures found in 40 CFR Part 75, Appendix F, concerning Conversion Procedures, Section 3, shall be used to convert the measured concentration of NO_x and a diluent (carbon dioxide (CO_2) or oxygen (O_2)) into an emission rate in lbs/MMBtu. Procedures found in 40 CFR Part 75, Appendix F, Section 5, shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr.

(3) The procedures in 40 CFR Part 75, Appendix E, relating to Optional NO_x Emissions Estimation Protocol for Gas-fired Peaking Units and Oil-fired Peaking Units, may be used to estimate the NO_x emission rate.

(c) For EGFs not subject to 40 CFR Part 75, a certified monitoring system under 40 CFR §60.13, Subpart A; Appendix B Performance Specifications 2 and 3; and Appendix F, §5.1 or 40 CFR Part 75 shall be used to demonstrate compliance with this subchapter. For all CEMS exceeding 10% relative accuracy, actual emissions must be determined by multiplying the CEMS data by 1.1.

(1) Emissions in pounds per hour shall be determined using the NO_x CEMS and one of the following methods:

(A) The owner or operator may elect to comply with subsection (b)(1) or (2) of this section.

(B) The EGF may use a flow monitor certified under 40 CFR Part 60 to determine emissions in pounds per hour.

(C) NO_x emissions in pounds per hour may be determined by multiplying the lbs/MMBtu times the heat input in MMBtu/hr. Procedures found in 40 CFR Part 60, Appendix A, Method 19 shall be used to convert the measured concentration of NO_x and a diluent (CO_2 or O_2) into emission rates in lbs/MMBtu. Procedures found in 40 CFR Part 75, Section 5, Appendix F shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr.

(2) For EGFs with a heat input of less than 100 MMBtu/hr and for peaking units emissions in pounds per hour may be determined using the procedures in Appendix E of 40 CFR Part 75 to estimate the NO_x emission rate.

(d) In lieu of the monitoring required by subsection (c) of this section, the EGFP may authorize alternative monitoring to calculate mass emissions under this section. The permit applicant must submit the following for review of an alternative monitoring proposal:

(1) a description of the monitoring approach to be used;

(2) a description of the major components of the monitoring system, including the manufacturer, serial number of the component, the measurement span of the component, and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values;

(3) an estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined;

(4) a description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy; and

(5) additional information may be requested before approving a request for alternative monitoring. Alternative monitoring shall be incorporated into the EGF permit.

(e) Data collected from monitoring of EGFs shall be used to calculate the actual emissions over a control period. For each control period, EGFs subject to this subchapter must submit a report to the commission detailing the amount of emissions of each allocated air contaminant during the preceding control period. This report must be submitted by June 1 of each year. At a minimum, the report shall contain the following information:

(1) A description of the monitoring protocol;

(2) A completed Form AR-1, Emissions Monitoring Data Form;

(3) Other information as needed.

§116.915. Emission Control Changes.

(a) Emission control changes resulting from pollution control projects designed to reduce emissions of nitrogen oxides (NO_x) or, if applicable, sulfur dioxide (SO_2), are authorized for EGFs provided that the following conditions are met.

(1) Any emission increase of an air contaminant must occur solely as a result of the installation of control equipment or implementation of a control technique authorized under the permit issued under this subchapter.

(2) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, the applicant shall submit information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) The net emission increase may not:

(i) considering the emission reductions that will result from the project, cause or contribute to a violation of any national ambient air quality standard (NAAQS);

(ii) cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) increment; or

(iii) cause or contribute to a violation of a PSD visibility limitation.

(B) For the purposes of this section, "significant net increase" means those emissions increases, resulting solely from the installation of control equipment or implementation of control techniques, that are equal to or greater than:

(i) the major modification threshold listed in §116.12 of this title (relating to Nonattainment Review Definitions), Table I, for air contaminants for which the area is designated as nonattainment, or for precursors to these air contaminants; or

(ii) significant as defined in 40 CFR §52.21(b)(23) (effective July 20, 1993) (relating to Prevention of Significant Deterioration of Air Quality) for air contaminants for which the area is designated attainment or unclassifiable, or for precursors for air contaminants.

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project must

be included in any future netting calculation if they are determined to be otherwise creditable.

(b) Permit holders must submit a PI-1UR registration for emission control changes. The emission control change may be implemented any time after receipt of written notification from the executive director that there are no objections, or 45 days after receipt by the executive director of the registration, whichever occurs first.

(c) The emission control change will not be authorized by the executive director if there are significant health effects concerning the increase in emissions of any air contaminant other than those for which a NAAQS has been established until those concerns are addressed by the registrant to the satisfaction of the executive director.

(d) Increased emissions of any air contaminant, including NO_x or, if applicable, SO_2, other than increases authorized under subsection (a) of this section must obtain preconstruction authorization under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) if nonattainment, PSD, or FCAA, §112(g), relating to Modifications, are applicable.

§116.916. Permits for Electric Generating Facilities in El Paso County.

Electric generating facilities in El Paso County are not required to meet nitrogen oxide allowance requirements if the commission or EPA determines that reductions in nitrogen oxide emissions in the El Paso Region otherwise required by this subchapter would result in increased ambient ozone levels in El Paso County.

§116.920. Public Participation for Initial Issuance.

(a) An applicant for an electric generating facility permit (EGFP) shall publish notice of intent to obtain the permit in accordance with Chapter 39 of this title (relating to Public Notice).

(b) Public notice for an EGFP may be combined with the public notice for a voluntary emission reduction permit, under Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits.)

(c) Electing EGFs are subject to public notice for emissions of nitrogen oxides (NO_x) and, if applicable, sulfur dioxide (SO_2).

(d) Any person who may be affected by emissions from an EGF may request the commission to hold a notice and comment hearing on the EGFP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(e) Any hearing regarding initial issuance of an EGFP shall be conducted under the procedures in §116.921 of this subchapter (relating to Notice and Comment Hearings for Initial Issuance) and not under the APA.

(f) Responses to public comments and the notice of the commission's decision to issue or deny an EGFP shall be conducted under the procedures in §116.922 of this title (relating to Notice of Final Action).

(g) A person affected by a decision of the commission to issue or deny an EGFP may move for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and is entitled to judicial review under TCAA, §382.032 (relating to Appeal of Commission Action).

§116.921. Notice and Comment Hearings for Initial Issuance.

(a) The notice and comment hearing requirements apply only to the initial issuance of a electric generating facility permit (EGFP).

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from an EGF is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from an EGF, and that request is reasonable, the commission shall hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the EGF is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(e) A tape recording or written transcript of the hearing must be made available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The commission shall keep a record of all comments received and issues raised in the hearing. This record is available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission shall respond to comments consistent with §116.922 of this title (relating to Notice of Final Action).

§116.922. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission shall send notice by first-class mail of the final action on the application to any person

who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change;

(3) a statement that any person affected by the decision of the commission may petition for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and may seek judicial review under TCAA, §382.032 (relating to Appeal of Commission Action).

§116.930. Modifications.

The owner or operator planning a modification of a facility permitted under this subchapter must comply with Subchapter B of this Chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

§116.931. Renewal.

Electric generating facility permits (EGFP) shall be renewed in accordance with Chapter 116, Subchapter D of this title (relating to Permit Renewals).

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 August 30, 1999.

TRD-9905503
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 15, 1999
For further information, please call: (512) 239-1932

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Chapter 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

Subchapter J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.324

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.324, concerning Facility Fee Assessment.

EXPLANATION OF PROPOSED RULE

The purpose of this rule is to modify existing rule language to address the need to lower the annual facility fee for facilities which are permitted to manage Class 1 industrial solid waste or hazardous waste, and which are wholly unbuilt. This rulemaking does not propose elimination of the facility fee for unbuilt facilities, but rather proposes the assessment of the minimum fees under existing §335.324(d). The new fees will be applicable until any physical construction of the facility commences, at which time the fee structure currently set forth in §335.324(i) will apply. This rule change is also proposed to retroactively apply to wholly unbuilt facilities for which facility fees were due during the four years prior to the effective date of this rule change. Credit toward future fees will be given, in lieu of a refund, in cases where a fee has been paid in excess of the proposed fees.

On July 30, 1998, the commission considered a Petition for Rulemaking by American Envirotech, Inc., to amend §335.324. The commission decided to initiate rulemaking to propose the prospective assessment of a minimum facility fee for wholly unbuilt facilities which would apply until the commencement of any facility construction. Upon further consideration, it was decided that the facility fee rule in §335.324 should be changed and that the change should be applied prospectively and retroactively. The proposed rule change is intended to reform §335.324 of commission rules to make it consistent with the Texas Health and Safety Code, §361.139. Section §361.139 requires an equitable fee structure and assessment of fees based, in part, upon consideration of the nature and extent of the regulated activities and the variation in the cost of regulating different types of facilities. Currently, §335.324 provides for the assessment of fees up to a maximum of $25,000 even for hazardous waste facilities where no construction has begun. The cost to the commission of regulating a wholly unbuilt facility differs markedly from the cost of regulating a facility where construction has begun. Inspections of wholly unbuilt facilities are required merely to confirm that the facility remains wholly unbuilt. This is in contrast with facilities under construction or in operation which require regular and detailed inspections to ensure that facility construction and operation continues to meet the requirements of commission rules and permits. Section 335.324 does not currently take into account the lesser costs to the commission of regulating wholly unbuilt facilities. The proposed change to §335.324 will correct this mistake of law and lower the annual facility fee for wholly unbuilt facilities.

Section 335.324(d) is proposed to be modified to lower the annual fee for wholly unbuilt Class 1 industrial solid waste facilities from $5,000 (maximum) to $500 and for wholly unbuilt hazardous waste facilities from $25,000 (maximum) to $2,500.

Section 335.324(a) defines a wholly unbuilt facility to be a permitted Class 1 industrial solid waste or hazardous waste facility that has not initiated any physical construction; it does not mean unbuilt storage, processing or disposal units within an existing facility. Physical construction is defined as excavation, movement of earth, erection of forms or structures, or similar activity to prepare a facility to accept industrial solid waste or hazardous waste. This definition of physical construction tracks the language of Title 40, Code of Federal Regulations §270.2, the federal definition of "physical construction" which applies to hazardous waste facilities. Section 335.324(d) explains that a permittee shall be responsible for fees as required by §335.324(i) when physical construction is initiated.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that there will be fiscal implications as a result of administration and enforcement of the amended section. For the first five-year period the section as proposed is in effect there will be a small revenue loss to state government as a result of administration or enforcement of these sections. No change in state government operating cost is expected. The proposed rule would reduce annual waste facility fee assessments for permitted wholly unbuilt hazardous waste facilities from the cur-

rent maximum of $25,000 to $2,500. For permitted wholly unbuilt Class 1 industrial solid waste facilities, the proposed rule would reduce the annual waste facility assessment from the current maximum of $5,000 to $500. A small decrease in revenues to the agency is expected because approximately six of the agency's 198 hazardous waste facility permittees will pay a smaller annual fee than is currently being assessed. Currently, there are no wholly unbuilt Class 1 industrial solid waste facilities, so these proposed rules are not expected to affect annual facility fee revenue the agency has received from Class 1 industrial solid waste facilities.

On an annual basis, the agency's revenue loss associated with the approximately six affected permittees is estimated to total $73,000. In FY98, the commission received $2.26 million in Hazardous Waste Facility Fee revenue from all hazardous facility permittees; a loss of $73,000 in revenue would represent a 3% decline to approximately $2.19 million. This change should not affect the agency's ability to fund its operating budget or legislative appropriation for the Waste Management Account. Credit toward future fees will be given, in lieu of a refund, in cases where a fee has been paid in excess of the proposed fee during the four years prior to the effective date of these rules.

The effect on owners of facilities subject to this amendment will be a potential reduction in cost as a result of the reduction of fees for wholly unbuilt facilities. These cost savings may represent a savings for any person affected by the proposed rules or a part of the costs of any project. Of the approximately six existing facilities that would be affected by these proposed sections, all are hazardous waste facilities, three are currently assessed at the $25,000 maximum for the annual facility fee and three are assessed lower amounts. In addition, any future wholly unbuilt facilities will be subject to the proposed annual fees of $2,500 for a hazardous waste facility and $500 for a Class 1 Industrial Solid Waste facility. The commission anticipates that future wholly unbuilt commercial hazardous waste facilities will be rarely affected because of the unit construction rule found at 30 TAC §305.149 which imposes a two-year time limit on construction of these facilities. This proposed amendment would lower the annual fee assessment for these approximately six unconstructed hazardous facilities to $2,500. The potential cost savings will affect small businesses on the same basis as any larger business. No new costs to operators or owners of Class 1 industrial solid waste or hazardous waste facilities are expected as a result of this rule.

PUBLIC BENEFIT

Mr. Johnson also has determined that for the first five-year period the section as proposed is in effect, the public benefit anticipated as the result of enforcement of and compliance with the section will not change. The effect on owners of facilities subject to this section will be a potential reduction in costs as a result of lowering of annual fees for wholly unbuilt facilities. These cost savings may represent a savings for any person affected by the proposed rules or a part of the costs of any project. The potential cost savings will affect small businesses on the same basis as any larger business. There are no new economic costs anticipated for any owners required to comply with the section as proposed. A small decrease in revenues to the agency is expected due to the proposed reduction in the annual fee for wholly unbuilt facilities.

SMALL BUSINESS ANALYSIS

The proposed rule will not negatively affect small businesses. Small businesses subject to the proposed sections could, in fact, realize a cost savings since this rule proposes to reduce fee rates for wholly unbuilt hazardous waste facilities and Class 1 industrial solid waste facilities.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking is not a major environmental rule because it is not adopted with the specific intent of protecting the environment or reducing risks to human health or the environment.

The specific intent of this rule change is to modify existing rule language to address the need to lower the annual facility fee for facilities which are permitted as a Class 1 industrial solid waste or a hazardous waste facility, and which are wholly unbuilt. The proposal is not directly related to the protection of the environment or human health; it carries out a provision of state law that allows a range of annual fees to be assessed on these facilities.

The rule change does 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 change will merely reduce the fees assessed for wholly unbuilt Class 1 industrial solid waste or hazardous waste facilities. This rule is administrative in nature.

This proposal does not exceed a standard set by federal law and is specifically allowed by state law (§361.135 of the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act). In accordance with Texas Health and Safety Code §361.13(c), the annual facility fee may not be less than $250 and the maximum fee shall not exceed $25,000.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as there is no agreement or contract between the commission and the federal government concerning annual facility fees.

The rule is not proposed solely under the general powers of the commission; instead, it is proposed under a specific state law. The specific state law is Texas Health and Safety Code, Chapter 361, §361.135, Solid Waste Disposal Act.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to modify Chapter 335 to lower the annual facility fee for facilities which are permitted to manage Class 1 industrial solid waste or hazardous waste, and

which are wholly unbuilt. The promulgation and enforcement of this rule will not burden private real property nor adversely affect property values because the proposed rule will merely change a rule regarding the annual facility fee assessed the permittee of a wholly unbuilt facility.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the proposed rules are not subject to the CMP and are consistent with applicable CMP goals and policies. The commission has determined that the proposed rulemaking is consistent with each applicable CMP goal and policy, which are found in 31 TAC §501.12 and 501.14. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rule modifications will have no change on the safe and appropriate storage, management, and treatment of solid waste, and will result in no impact on coastal areas. In addition, the proposed rule will not violate any applicable provisions of the CMP's stated goals and policies. The commission seeks public comment on the consistency of the proposed rules.

Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, and the rule will have a negligible impact upon the coastal area.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal and request for alternatives may be mailed 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. The fax must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. All comments should reference Rule Log Number 98034-335-WS. Comments must be received by 5:00 p.m., September 13, 1999. For further information or questions concerning this proposal, contact Wayne Lee of the Policy and Regulations Division, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6815.

STATUTORY AUTHORITY

The amended section is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The amended section implements Texas Health and Safety Code, §361.135 and §361.139.

§335.324. Facility Fee Assessment.

(a) An annual facility fee is hereby assessed on each permittee who holds one or more Class 1 [I] industrial solid waste or hazardous waste permits and each facility operating a Class 1 [I] industrial solid waste or hazardous waste management unit subject to permit authorization. These fees shall be deposited in the hazardous and solid waste fees fund. The fee for each year is assessed on each facility for which a permit or the requirement to comply with permit authorization is in effect during any part of the fiscal year.For wholly unbuilt permitted facilities, the annual fee shall be assessed according to subsection (d) of this section. A wholly unbuilt facility means a permitted Class 1 industrial solid waste or hazardous waste facility that has not initiated any physical construction and does not mean unbuilt storage, processing or disposal units within an existing facility. Physical construction means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a facility to accept industrial solid waste or hazardous waste.

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

(d) The annual facility fee assessed is the cumulative total of fees for all Class 1 [I] industrial solid waste or hazardous waste management units at the facility which are authorized by permit or subject to authorization on September 1, 1991, and September 1 of each year thereafter. The minimum fee for each hazardous waste facility shall be $2,500. The maximum fee for each hazardous waste facility shall be $25,000. The minimum fee for each facility authorized to manage only nonhazardous waste shall be $500 and the maximum fee $5,000. The annual fee for wholly unbuilt Class 1 industrial solid waste facilities shall be $500 and the annual fee for wholly unbuilt hazardous waste facilities shall be $2,500. A permittee shall be responsible for facility fees as required by subsection (i) of this section when any physical construction is initiated. This rule shall apply retroactively to all facility fees for wholly unbuilt Class 1 industrial solid waste facilities or wholly unbuilt hazardous waste facilities due during the four years preceding the effective date of this rule.

(e)-(i) (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 August 30, 1999.

TRD-9905506
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 239-6087

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 81. INTERACTION WITH THE PUBLIC

37 TAC §81.37

The Texas Youth Commission (TYC) proposes an amendment to §81.37, concerning Public and Media. The amendment to the section will require certain procedures to ensure that the filming and/or interviewing of youth in TYC will be conducted within predetermined parameters. The observation of treatment sessions will only be permitted for training of TYC staff and/or other clinical professionals.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 established parameters for interacting with the media, which will further ensure confidentiality for youth in TYC treatment programs. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.0421, Public Interest Information, which provides the Texas Youth Commission with the authority to prepare information of public interest describing the functions of the commission and describing the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

The proposed rule implements the Human Resource Code, §61.034.

§81.37. Public and Media.

(a) Purpose. The purpose of this rule is to allow for communication between a TYC youth and the public and media subject to rules established by TYC in the interest of order and safety and within limitations of rules of confidentiality.

(b)-(e) (No change.)

(f) Non-TYC personnel shall not be permitted to make audio or visual recordings of any treatment session(s) addressing personal or confidential information. Observation of treatment sessions may be permitted for purposes of training TYC staff or other clinical professionals.

(g) When the news media requests to interview or to film youth, the superintendent shall consult with TYC's public information officer and assistant deputy executive director for rehabilitation services to review the purpose and to determine parameters for filming and/or interviews.

(h) [~~(g)~~] When the news media requests an interview or to film specific youth, the program administrator will make a recommendation to the youth and the youth's parent or guardian, if the youth is under 18 years of age, regarding advisability of youth granting the request. When the recommendation is against granting an interview, the request will be denied by the administrator unless the youth and the youth's parent or guardian, if youth is under 18, signs a written statement acknowledging the recommendation and electing to go forward with the interview (or filming) despite the recommendation. The wishes of the youth's and the youth's parent or guardian, if the youth is under 18, will be honored.

(i) [~~(h)~~] Any interview or filming of individual youth shall be subject to the following conditions.

(1) Prior to each interview or filming, the TYC Publicity Release form shall be explained to the youth and the youth and parent as necessary, shall sign form.

(2) Prior to each interview or filming, the youth shall be informed that the interview is voluntary, that he/she may refuse to answer any questions during the interview, and that he/she may stop the interview at any time.

(3) Prior to each interview or filming the youth shall indicate, on the form whether he/she wants the primary therapist/designee to be present during formal or on-camera interviews.

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 August 25, 1999.

TRD-9905425
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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37 TAC §81.41

The Texas Youth Commission (TYC) proposes an amendment to §81.41, concerning Confidentiality. The amendment to the section will correct a form number as listed in the rule.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 efficiency in state government. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.034, concerning Policies and Rules, which provides the Texas Youth Commission with the authority to adopt policies and make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§81.41. Confidentiality.

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

(g) TYC volunteers, consultants and others permitted access to confidential information or records shall sign a general Confidentiality Agreement (LS-001) [~~(LS-1)~~] with TYC agreeing not to disclose or divulge, unless required or permitted to do so by law, confidential information or records. The Confidentiality Agreements shall be maintained by the appropriate TYC facility.

(h) (No change.)

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

Filed with the Office of the Secretary of State, on August 25, 1999.

TRD-9905423
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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Chapter 85. ADMISSION AND PLACEMENT

Subchapter A. COMMITMENT AND RECEPTION

37 TAC §85.5

The Texas Youth Commission (TYC) proposes an amendment to §85.5, concerning Assessment/Evaluation. The amendment to the section will delete family involvement assessment from the list of routine diagnostic evaluations conducted by intake staff. Family involvement will be assessed in all other diagnostic functions at intake.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 more integrated level of assessment for family involvement. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.071, concerning Initial Evaluation, which provides the Texas Youth Commission with the authority to examine and make a study of each child committed to it as soon as possible after commitment. The study shall be made according to rules established by the commission and shall include long-term planning for the child, including a determination of whether the child will need long-term residential care.

The proposed rule implements the Human Resource Code, §61.034.

§85.5. Assessment/Evaluation.

(a) Purpose. The purpose of this rule is to establish the assessment process of each youth initially admitted to TYC. The assessment process includes summarizing admission information, conducting diagnostic evaluations, identifying classification and developing an initial placement category recommendation by the classification unit.

(b) The youth classification process will be completed within two weeks of receipt of the youth at the Marlin Orientation and Assessment Unit.

(c) Intake staff at the diagnostic units conduct the following routine evaluations:

(1) completion of the Common Application (CCF-002);

(2) social summary;

(3) risk/needs assessment;

[~~(4) family involvement assessment;~~]

(4) [~~(5)~~] religious preference assessment;

(5) [~~(6)~~] recreation interest;

(6) [~~(7)~~] psychological evaluation (if one has not been completed within the last year). Residential treatment centers require an updated clinical interview for current status within six months prior to placement;

(7) [~~(8)~~] physical and dental examinations;

(8) [~~(9)~~] educational assessment;

(9) [~~(10)~~] substance abuse screening and assessment;

(10) [~~(11)~~] career interests and experience;

(11) [~~(12)~~] psychiatric interview of youth who have been on psychotropic medication and/or who have had a diagnosis of a major affective or psychotropic disorder in the past year; and

(12) [~~(13)~~] assessment of behavior while at the facility.

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

Filed with the Office of the Secretary of State, on August 25, 1999.

TRD-9905424
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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Subchapter B. PLACEMENT PLANNING

37 TAC §85.23

The Texas Youth Commission (TYC) proposes an amendment to §85.23, concerning Classification. The amendment to the section will add a few words to clarify that at least three persons must be involved in an incident in order for a participant to be considered for reclassification, i.e., one of the behaviors for which a youth may be reclassified is "intentionally participating with at least two other persons in conduct" that threatens imminent harm.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 greater efficiency in enforcing in TYC discipline rules. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; and order reconfinement or renewed release as often as conditions indicate to be desirable.

The proposed rule implements the Human Resource Code, §61.034.

§85.23. Classification.

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

(d) Classifications.

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

(3) Type B - Violent Offender. A type B violent offender is a youth whose classifying offense is the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition for each offense listed in (A-V) of this subsection in its entirety except where TYC policy limits the applicability to specific subsections or under the conditions named.

(A)-(V) (No change.)

(W) intentionally participating with at least two other [~~or more~~] persons in conduct at a contract program or TYC operated facility that threatens imminent harm to persons or property and substantially obstructs the performance of facility operations or a program therein.

(X) (No change.)

(4)-(8) (No change.)

(e) (No change.)

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

Filed with the Office of the Secretary of State, on August 25, 1999.

TRD-9905421
Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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37 TAC §85.33

Texas Youth Commission (TYC) proposes an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders. Sentenced offenders have been grouped by offense for the purpose of establishing certain internal review procedures. To the group named "category 1 sentenced offenders" the offense aggravated sexual assault is being added and the offense aggravated assault is being removed.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 assurance that youth who may pose greater risk to the public receive the highest level of internal review prior to any decision concerning a sentenced offender's movement. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.081, concerning Release Under Supervision, which provides the Texas Youth Commission authority to release a youth under supervision, who is committed to the commission under a determinate sentence, and §61.084, concerning Termination of Control, which provides TYC authority to discharge sentenced offender youth from its custody.

The proposed rule implements the Human Resource Code, §61.034.

§85.33. Program Completion and Movement of Sentenced Offenders.

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

(c) Explanation of Terms Used.

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

(5) Category 1 offenses - The offenses, specifically the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit: murder, capital murder, sexual assault, or aggravated sexual assault, the commission of which was on or after January 1, 1996, and for which a youth has been given a determinate sentence.

(6) (No change.)

(d)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on August 25, 1999.

TRD-9905429
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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Chapter 87. TREATMENT

Subchapter B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.79

The Texas Youth Commission (TYC) proposes an amendment to §87.79, concerning Discharge of Mentally Ill and Mentally Retarded Youth. The amendment to the section will provide specific guidelines for TYC staff to follow in determining the effective dates of discharge of youth that have a mental disability, including mental retardation and mental illness.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 compliance with legal options and provision for appropriate discharge and treatment of a mentally ill and mentally retarded youth. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.077, concerning Children with Mental Illness or Mental Retardation, which provides the Texas Youth Commission with the authority to discharge a child who is mentally ill or mentally retarded from its custody if: the child has completed the minimum length of stay for the child's committing offense; and the commission determines that the child is unable to progress in the commission's rehabilitation programs because of the child's mental illness or mental retardation.

The proposed rule implements the Human Resource Code, §61.034.

§87.79. Discharge of Mentally Ill and Mentally Retarded Youth.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby the agency discharges from custody youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation.

(b) Applicability.

(1) Requirements in this policy do not apply to sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) for policies relating to sentenced offenders.

(2) See (GAP) §85.61 of this title (relating to Discharge) for discharge requirements for youth qualified herein and all other TYC youth.

(c) Youth, except sentenced offenders, who meet specific criteria herein, shall be discharged.

(d) Youth considered to be mentally ill or mentally retarded are those who have a current diagnosis of mental illness or mental retardation by a licensed psychologist and/or psychiatrist as required.

(e) Discharge Eligibility Criteria.

(1) Youth with a mental illness who are unable to progress in rehabilitation programs and therefore shall be discharged are those who meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with a primary brain disorder (e.g., psychotic disorder, bipolar disorder, major depression, organic disorder, severe neurological deficit);

(C) a licensed psychologist and/or psychiatrist has determined that the mental illness has not stabilized and that the mental illness is the reason for the youth's inability to engage in productive interaction as required by the agency's resocialization program; and

(D) a licensed psychologist and psychiatrist has determined that as a result of mental illness, the youth:

(i) is likely to cause serious harm to himself; or

(ii) is likely to cause serious harm to others; or

(iii) will, if not treated for the mental illness, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently, and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(2) Youth with mental retardation who are unable to progress in rehabilitation programs and therefore, shall be discharged, are those who meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with an IQ below 62.5 with accompanying deficits in adaptive behavior;

(C) a licensed psychologist and/or psychiatrist has determined that the mental retardation is the reason for the youth's inability to engage in productive interaction as required by the agency's resocialization program; and

(D) a licensed psychologist and/or psychiatrist has determined that because of retardation, the youth:

(i) represents a substantial risk of physical impairment or injury to himself or others; or

(ii) is unable to provide for and is not providing for his/her most basic personal physical needs.

(f) Procedure for Discharge of Youth with Mental Disability.

(1) Mental Illness.

[(1) For youth who meet discharge criteria, the agency will file an application in the youth's committing county for determination of appropriate mental health services. See (GAP) §87.69 of this title (relating to Commitment to State Mental Hospitals) for relevant procedures.]

[(2) Discharge shall occur thirty days after the filing of the application.]

(A) For youth who meet discharge criteria for mental illness, the agency will file a sworn application for court-ordered mental health services as provided in Subchapter C, Chapter 574, Health and Safety Code in the youth's committing county, where the youth resides, or where the youth is found for determination of appropriate mental health services. See (GAP) §87.69 of this title (relating to Commitment to State Mental Hospitals) for relevant procedures.

(B) If a child is not receiving court-ordered mental health services, discharge is effective the date the court enters an order regarding an application for court-ordered mental health services, or the 30th day after the application is filed, whichever occurs first.

(C) If a child is receiving court-ordered mental health services, discharge is effective immediately upon becoming eligible for discharge under subsection (e) of this section.

(D) At the time of discharge if a child is receiving mental health services outside the child's home county, the commission shall notify the Mental Health Authority (MHA) located in that county of the discharge not later than the 30th day after the date the child's discharge is effective.

(i) "Home county" is defined as the county the child is anticipated to be discharged to.

(ii) "Notify" means a letter, on agency letterhead, by the appropriate administrator or designee from the agency's facility or program, which was responsible for the child immediately prior to their commitment for mental health services, of their discharge.

(2) Mental Retardation.

(A) If a child is not receiving mental retardation services, but meets discharge criteria for mental retardation under subsection (e) of this section and under Chapter 593, Health and Safety Code, the agency will determine if the child is mentally retarded and notify the Mental Retardation Authority (MRA) in the child's home county and provide a copy of the determination report. "Home county" is defined as the county the child is anticipated to be discharged to.

(B) The appropriate administrator or designee from the agency's facility or program where the child is assigned will send a letter, on agency letterhead, requesting an Interdisciplinary Team Evaluation for mental retardation services.

(C) Discharge is effective on the date any action by the home county MRA is taken on the agency's notification requesting an Interdisciplinary Team Evaluation for mental retardation services or 30 days from the date of the request, whichever occurs first.

(D) If the child is receiving mental retardation services, discharge is effective immediately upon becoming eligible for discharge under subsection (e) of this section.

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

Filed with the Office of the Secretary of State, on August 25, 1999.

TRD-9905416
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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37 TAC §87.89

The Texas Youth Commission (TYC) proposes new §87.89, concerning Use of Clinical Polygraph in the Sex Offender Treatment Program. The new section will provide clinical oversight for the use of the clinical polygraph in the treatment of sex offenders who meet specific qualifications.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 greater protection for the public through aggressive treatment of youth committed to TYC who are sex offenders. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new rule is proposed under the Human Resources Code, §61.076, concerning Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to as a means of correcting the socially harmful tendencies of a child committed to it, the commission may provide any medical of psychiatric treatment that is necessary.

The proposed rule implements the Human Resource Code, §61.034.

§87.89. Use of Clinical Polygraph in the Sex Offender Treatment Program.

(a) Purpose. The purpose of this rule is to provide clinical oversight for use of the clinical polygraph in treatment of sex offenders.

(b) The Texas Youth Commission approves the use of a polygraph for certain selected youth involved in treatment in the agency's approved Sex Offender Treatment Program (SOTP). Use of the clinical polygraph is strictly controlled and must be approved in each instance by qualified clinical professionals.

(c) All polygraphs are administered by a licensed polygraph examiner and in accordance with the state guidelines for clinical polygraph examination of sex offenders in a setting ensuring dignity and as much privacy for the youth as possible.

(d) A youth may be considered a candidate for a polygraph if the youth:

(1) has been adjudicated for a sexual offense;

(2) has been admitted to the sex offender treatment program and has completed the initial SOTP evaluation; and

(3) is not making substantial progress in the treatment program.

(e) A youth will not be considered for a polygraph if the youth:

(1) is self-abusive;

(2) is suicidal;

(3) has been diagnosed with a major psychiatric disorder such as psychosis, major depression or bipolar disorder; or

(4) is younger than age 14.

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 August 25, 1999.

TRD-9905417
Steve Robinson
Executive Director
Texas Youth Commission
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Chapter 91. PROGRAM SERVICES

Subchapter B. HEALTH CARE SERVICES

37 TAC §91.86

The Texas Youth Commission (TYC) proposes new §91.86, concerning Infirmary Admission. The new section will establish conditions and procedures for use of infirmaries in TYC facilities for those youth who require increased medical observation or care, but who are not in need of hospitalization.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 increased structure within the TYC medical provisions programs. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The new section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

§91.86. Infirmary Admission.

(a) Purpose. The purpose of this rule is to establish conditions and procedures for use of infirmaries in Texas Youth Commission (TYC) facilities.

(b) Nursing care will be provided in the infirmary at each institution through contract health care staff for youth who are not in need of hospitalization, but who need increased observation or medical care. Infirmary admissions includes youth who are acutely ill, injured, or are recovering from surgery or illness; or youth who need increased observation as result of a psychiatric crisis (identified by a Ph.D. level psychologist or psychiatrist).

(c) Juvenile Corrections Officers (JCO's) shall at all times, supervise youth admitted to the infirmary for a psychiatric crisis. JCO's shall provide supervision as needed for youth admitted to the infirmary for medical conditions.

(d) Physician's orders shall be received only by nursing staff directly from the physician.

(e) Infirmary Admission for Medical Diagnosis.

(1) Admission to the infirmary for youth in need of observation or treatment for a medical diagnosis or condition is determined by facility health care staff.

(2) Discharge from the infirmary may be ordered by a physician or initiated by nursing staff when the youth is well enough to participate in daily program activities.

(f) Infirmary Admission for Psychiatric Crisis.

(1) Admission to the infirmary for youth needing close observation for a psychiatric crisis may be authorized by a psychiatrist. The director of psychology may authorize the admission when a psychiatrist is not on-site, and will immediately notify the psychiatrist and document the notification. Physician's orders shall be obtained for youth admitted to the infirmary within two hours of admission.

(2) In obtaining physician's orders for mental health disorders, nursing staff should provide to the psychiatrist any medical data, observations, information from the medical file as relevant, and any other objective data, such as vital signs. The psychiatrist's order should include instructions regarding any observations that nursing staff must make about the youth's mental status, as well as instructions for any other type of monitoring or medications that are to be administered.

(3) A Ph.D. level psychologist will evaluate the youth at least once a day.

(4) Disposition (discharge or referral) will be made by the psychiatrist.

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 August 25, 1999.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6244

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Subchapter D. HEALTH CARE SERVICES

37 TAC §91.89

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

The Texas Youth Commission (TYC) proposes the repeal of §91.89, concerning Suicide Alert. The repealed section will allow for the publication of a new section.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be increased protection for youth in TYC and contracted facilities who may be at risk for suicide. 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 repealed. No private real property rights are affected by the repeal of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The repeal is proposed under the Human Resources Code, §61.076, concerning Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to, as a means of correcting the socially harmful tendencies of a child committed to it, the commission may: require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public; and provide any medical or psychiatric treatment that is necessary.

The proposed repeal implements the Human Resource Code, §61.034.

§91.89. Suicide Alert.

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 August 25, 1999.

TRD-9905419
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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The Texas Youth Commission (TYC) proposes new §91.89, concerning Suicide Alert. The new section will allow the Directors for Psychology and other clinicians serving TYC halfway houses and contracted programs to have some flexibility in the assessment of youth. Staff will use an assessment instrument to assist in evaluating suicidal actions. The new rule further identifies and clarifies staff responsibility for placing a youth on all suicide alert or suicide alert-pending levels in instances where suicide may be a risk. The rule is shorter, more concise, and easier to understand.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 increased protection for youth in TYC and contracted facilities who may be at risk for suicide. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The new section is proposed under the Human Resources Code, §61.076, concerning Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to, as a means of correcting the socially harmful tendencies of a child committed to it, the commission may: require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public; and provide any medical or psychiatric treatment that is necessary.

The proposed rule implements the Human Resource Code, §61.034.

§91.89. Suicide Alert.

(a) Purpose. The purpose of this rule is to establish procedures for the identification, assessment, and treatment of youth that may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently assigned to placement in TYC institutions, halfway houses, and contract residential facilities. This policy does not apply to youth living at home or in a home substitute except where specifically stated.

(c) Explanation of Terms Used.

(1) Mental Health Professional (MHP)–An individual who is a Psychiatrist, doctoral level Psychologist, Associate Psychologist (masters level), or a Licensed Social Worker with an Advanced Clinical Practitioner (LMSW-ACP) designation.

(2) Designated Mental Health Professional (DMHP)–The individual having the primary responsibility and accountability for the evaluation, monitoring, and treatment of a youth referred as a suicide risk. This DMHP shall be a Psychiatrist or a doctoral level Psychologist.

(d) Initial Identification of a Youth at Risk for Suicide. Any staff member that hears potentially suicidal statements or observes any potentially dangerous behavior must immediately respond in a manner that protects the youth's safety. Appropriate staff member action will result in an assessment by a mental health professional.

(e) Suicide Alert-Pending. Youth identified as at risk for suicide in subsection (d) of this section, are considered to be on suicide alert-pending status until they are assessed by an MHP and a recommendation has been made. While on suicide alert-pending, youth safety will be the primary consideration of staff.

(f) Initial Suicide Focused Interview and Disposition.

(1) An MHP or DMHP shall conduct an initial face-to-face, structured interview:

(A) with any youth who expresses suicidal intent either verbally, or through action; or

(B) with any youth arriving at a new placement if the record indicates a history of prior suicidal actions or placement on suicide alert within the previous six months.

(2) If the structured interview is conducted by an MHP, the MHP will consult with a DMHP to review the results and recommendations. The consultation may be in person or by telephone.

(g) Suicide Alert.

(1) If the MHP determines the youth to be at risk for suicide, he or she will place the youth on suicide alert. As soon as possible, the MHP will assign a level of observation, develop a plan of treatment, and review both with a DMHP. The DMHP will approve the continuation of the status or remove the youth from suicide alert status.

(2) After consultation with the MHP, the DMHP may accept or modify the plan recommendations made by the MHP. The DMHP may schedule a face-to-face meeting with the youth if deemed appropriate.

(3) The MHP that placed the youth on suicide alert status may remove the youth from that status only after consultation and approval by a DMHP, except as noted in paragraph (4)(B) of this subsection.

(4) Youth who are on suicide alert status may not be moved to another placement unless:

(A) the receiving placement is a TYC institution, residential treatment center, or other placement having on-site psychiatric or psychological staff; and

(B) the director of psychology at the sending site approves the transfer after consulting with the director of psychology at the receiving site and coordinating the transfer of clinical responsibility. In halfway houses and contract sites without a director of psychology, the DMHP will consult on the transfer.

(h) Implementation Rules.

(1) All staff, including parole officers, are responsible for reporting a youth believed to be at risk for suicide to an MHP or a specific designated staff member.

(2) If the initial structured interview is conducted by an MHP, the MHP shall consult, either by phone or face to face contact with a DMHP as soon as possible after the interview has been completed.

(3) The DMHP may modify the disposition, level of observation or plan of care made by the MHP and shall approve or modify all recommendations.

(4) Appropriate facility staff shall be informed when a youth is place on or removed from suicide alert-pending and suicide alert. Each facility shall identify the individual with notification responsibility. If no individual is specified, the MHP making the decision shall notify appropriate staff.

(5) All direct care staff in TYC operated facilities and in contract residential settings will receive suicide prevention training.

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

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6244

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Chapter 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.1

The Texas Youth Commission (TYC) proposes an amendment to §93.1, concerning Basic Youth Rights. The amendment to the section will allow for the inspection of all outgoing youth mail, except for certain mail to special correspondents as specified in (GAP) §93.15 of this title (relating to Youth Mail).

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 increased safety and security for youth and staff in TYC facilities. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission authority to order confinement under conditions believed best designed for the youth's welfare and interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

§93.1. Basic Youth Rights.

(a)-(g) (No change.)

(h) Right of Access to Mail and Telephone. Youth have the right to correspond freely through the mails except when correspondence among [~~between~~] youth presents a risk to facility security and order. Staff may not read incoming or outgoing mail . Staff [~~,~~ ~~but~~] may open incoming mail in the youth's presence to inspect it for contraband. Staff will not inspect and youth may seal outgoing mail to special correspondents only. Other outgoing mail from youth may be inspected for contraband prior to sealing. [~~Youth may seal outgoing correspondence.~~] For additional information and an explanation of the term special correspondents, refer to [~~See~~] (GAP) §93.15 of this title (relating to Youth Mail). Youth will be provided access to telephones to the extent possible within plant limitations, with equal opportunities for telephone use being provided

to all residents within a facility. Youth will have access to a telephone in the event of an emergency. TYC does not have a responsibility to pay for incoming or outgoing long-distance calls, except in an emergency. See (GAP) §93.13 of this title (relating to Use of Telephone).

(i)-(p) (No change.)

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

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TRD-9905415
Steve Robinson
Executive Director
Texas Youth Commission
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Chapter 97. SECURITY AND CONTROL

Subchapter A. SECURITY AND CONTROL

37 TAC §97.29

The Texas Youth Commission (TYC) proposes an amendment to §97.29, concerning Escape/Abscondence and Apprehension. The amendment to the section will delete the term attempted escape from the list of terms used in the rule addressing escapes from TYC placement assignments. Major rule violations addressed in (GAP) §95.3 of this title (relating to Rules of Conduct, Contraband and Dress) include youth escape and attempted escape.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 better efficiency and management. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children based on the level of children's needs and the degree of risk they present to the public.

The proposed rule implements the Human Resource Code, §61.034.

§97.29. Escape/Abscondence and Apprehension.

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

(c) Definition of Terms Used.

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

(3) Escape occurs when a youth assigned to a minimum, medium or high level restriction facility:

(A) leaves the property of a TYC facility or contract program or other designated location without permission of staff; or

(B) fails to return at the designated time unless excused by the facility/program administrator.

~~[(4) Attempted Escape occurs when a youth is seen attempting to escape, but is apprehended before he or she can leave the property of a TYC facility or contract program.]~~

(d)-(e) (No change.)

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

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

TRD-9905463
Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6244

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37 TAC §97.41

The Texas Youth Commission (TYC) proposes an amendment to §97.41, concerning Detention. The amendment to the section will decrease the age of a TYC youth eligible to be referred to detention in an adult jail from 18 years old to 17 years.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 increased safety and security for the public. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.093, concerning Escape and Apprehension, which provides the Texas Youth Commission with the authority to refer a child who has been committed to the commission and placed by it in any institution or facility has escaped or has been released under supervision and broken the conditions of release, to an appropriate sheriff, deputy sheriff, constable, or police officer for the purposes of arrest.

The proposed rule implements the Human Resource Code, §61.034.

§97.41. Detention.

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

(d) Youth in TYC custody who have escaped/absconded from a TYC placement or violated a condition of parole who are age 17 [~~18~~] or older may be referred to detention in an adult jail. Youth who are younger than age 18, may be referred to juvenile community detention facilities with the consent of local authorities.

(e)-(g) (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 August 25, 1999.

TRD-9905418
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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Chapter 119. AGREEMENTS WITH OTHER AGENCIES

37 TAC §119.3

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

The Texas Youth Commission (TYC) proposes the repeal of §119.3, concerning the Provision of Services for Mentally Ill and Mentally Retarded Youth Committed to the Texas Youth Commission. This section is being repealed because it is no longer necessary and the legal authority was repealed by the 75th legislature.

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeals will be efficiency in state government. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§119.3. Provision of Services for Mentally Ill and Mentally Retarded Youth Committed to the Texas Youth 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 August 25, 1999.

TRD-9905422
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 2. TEXAS REHABILITATION COMMISSION

Chapter 103. VOCATIONAL REHABILITATION SERVICES PROGRAM

Subchapter E. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §103.56

The Texas Rehabilitation Commission (TRC) proposes new §103.56, concerning training and supervision of counselors.

The section is being proposed to provide by rule for training and supervision of counselors.

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 a provision regarding training and supervision of counselors. 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 new section 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.

§103.56. Training and Supervision of Counselors.

The Deputy Commissioner for Field/External Operations is accountable for the monitoring and oversight of Vocational Rehabilitation Counselor performance and decision making in the following areas listed in paragraphs (1)-(5) of this section:

(1) the selection of vocational objectives according to a client's skills, experience, and knowledge;

(2) the documenting of a client's impediment to employment;

(3) the selection of rehabilitation services that are reasonable and necessary to achieve a client's vocational objective;

(4) the measurement of client progress toward the vocational objective, including the documented, periodic evaluation of the client's rehabilitation and participation; and

(5) the determination of eligibility of employed and unemployed applicants for rehabilitation services using criteria defined by board rule to document whether a client is substantially underemployed or at risk of losing employment.

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 August 30, 1999.

TRD-9905459
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 424-4050

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Part 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

Chapter 700. CHILD PROTECTIVE SERVICES

Subchapter C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.339

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.339, concerning determination of adoption assistance benefits, in its Child Protective Services chapter. The purpose of the amendment is to clarify the current rule since, as presently worded, it has been interpreted in fair hearings decisions to allow adoption assistance payments higher than the level- of-care 1 foster care rate. By specifying in the rule that the ceiling for adoption assistance payments tracks with level-of-care 1 foster care rates, increases in foster care will automatically apply to adoption assistance benefits.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the amendment. The effect on state government for the first five-year period the amendment will be in effect is an estimated additional cost of $1,498,245 for fiscal year 2000, $3,883,737 in fiscal year 2001, $4,608,908 in fiscal year 2002, $4,608,908 in fiscal year 2003, and $4,608,908 in fiscal year 2004. There will be no fiscal implications for local government.

Ms. Fields 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 the rule will clearly specify the maximum adoption assistance payment amount. The payment ceiling will track any increases to the level-of-care 1 foster care rate, which will continue to promote adoptions and the achievement of permanency for children. There will be no effect on small businesses since adoption assistance payments are made only to individual adoptive families.

Questions about the content of the proposal may be directed to Susan Klickman at (512) 438-3302 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-261, 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), Title 2, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.339. Determination of Adoption Assistance [~~Subsidy~~] Benefits.

(a) Adoption assistance benefits may consist of Medicaid coverage or a monetary assistance payment, or both. The monetary assistance [~~subsidy~~] paid to adoptive parents is negotiated and determined on a case-by-case basis. The assistance, together with the parents' resources, is expected to help meet the ordinary and special needs of the child. The determination of the assistance payment is based on the [~~current~~] service needs of the child, the child's income, and the [~~financial~~] ability of the parents to provide for the child's [~~financial~~] needs. [~~The maximum amount of subsidy payment available to a child in a continuous 12-month period may not exceed the yearly cost of foster family care minus the child's income. Income deducted from the subsidy payment ceiling includes RSDI, VA, and any other dependent or survivor's benefits the child receives related to his biological family.~~]

(b) Negotiation of the adoption assistance amount should focus on the needs of the child, taking into account the circumstances of the adopting parent(s) and the resources available to the child. Although the adoptive parents' income does not determine eligibility for assistance, when negotiating the amount of assistance needed, the Texas Department of Protective and Regulatory Services (TDPRS) and the parents must consider the following:

(1) The adoptive parents' ability to contribute to the child's needs and what additional assistance may be needed. The adoptive parents must apply their own financial resources towards meeting the ordinary and special needs of the child.

(2) The child's need for services and the costs of services. If actual cost figures are unavailable, TDPRS will consider projected reasonable estimates of costs.

(3) Any and all sources of income, assistance, and support designated for the child from any source. Income designated for the child is expected to be applied to the child's needs. [~~Income such as child support and RSDI the child receives related to his adoptive family or employment is not deducted from the payment ceiling.~~]

(c) The maximum amount or ceiling of the monthly adoption assistance payment provided by TDPRS cannot exceed the level-of-care (LOC) 1 foster care rate, converted to a whole dollar amount.

(1) This payment ceiling is determined by multiplying the daily LOC 1 rate by 365 days, dividing that amount by 12 months, and rounding to the nearest whole dollar amount.

(2) This ceiling applies to all adoption assistance agreements, including those in existence as of the effective date of this rule. Exception: For existing agreements where the adoption assistance payment exceeds the LOC 1 foster care rate, the ceiling will be the amount of the monthly adoption assistance payment being paid by the agency as of the effective date of this rule. [~~When negotiating the amount of subsidy needed, the Texas Department of Protective and Regulatory Services (PRS) and the parents must also consider the following:~~]

[~~(1) The adoptive parents' ability to contribute to the child's needs and what additional assistance may be needed. The adoptive parents must apply their income and resources toward meeting the child's needs.~~]

[~~(2) The adoptive parents' documentation of the child's need for services and costs of services if they request a subsidy for services for the child. If the parents cannot provide actual cost figures, PRS accepts projected reasonable cost figures. PRS does not provide subsidies to cover the cost of medical services for children who are Medicaid recipients if Medicaid covers the cost of the services. PRS also does not provide subsidies for the cost of medical services if the services are reimbursable from other health coverage available to the parents or child.~~]

(d) TDPRS does not provide assistance payments to cover the cost of medical services for children who are Medicaid recipients if Medicaid covers the cost of the services. TDPRS also does not provide assistance payments for the cost of medical services if the services are reimbursable from other health coverage available to the parents or child. [~~When a subsidy is needed primarily for routine support, the subsidy must not exceed 90% of the monthly foster family care rate minus the child's income.~~]

(e) When assistance is needed only for medical care and the Medicaid program can meet those needs, no monetary payment is provided. [~~When a subsidy is needed only for medical care and the child is eligible under Title IV-E policy, no money payment is provided.~~]

[~~(f) PRS uses a 30-day month to calculate subsidy payments. Payment amounts are determined in whole dollars.~~]

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 August 30, 1999.

TRD-9905464
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 438-3765

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Chapter 725. GENERAL LICENSING PROCEDURES

Subchapter S. ADMINISTRATIVE PROCEDURES

40 TAC §725.1808

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §725.1808, concerning posting requirements for corrective action plan forms, probation notices, notices of intent to revoke or suspend, and letters of revocation and suspension, in its General Licensing Procedures chapter. The purpose of the amendment is to add new requirements regarding posting corrective action plan forms, notices of intent to revoke or suspend letters, and the notice of revocation or suspension letters in facilities regulated by TDPRS.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Fields 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 parents and others entering facilities regulated by TDPRS can easily obtain information regarding corrective or adverse actions taken by TDPRS. There will be no effect on small or micro-businesses because the proposed amendment requires that facilities post information which is already available to the public and can be obtained from TDPRS. 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 Cathren Kennedy at (915) 691-8260 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-245, 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), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code, which grants rulemaking authority to the department.

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

§725.1808. Posting Requirements for Corrective Action Plan Forms, Probation Notices, Notices of Intent to Revoke or Suspend, and Letters of Revocation or Suspension [~~of the Probation Notice~~].

(a) This section applies to all facilities [~~and family homes~~] regulated by the Texas Department of Protective and Regulatory Services (TDPRS) as listed in the Human Resources Code, Chapter 42.

(b) TDPRS's Corrective Action Plan form must be posted while in effect in a prominent place where parents and others may view it.

(c) [~~(b)~~] TDPRS's Probation Notice form must be posted during the probation period in a prominent place where parents and others may view it. Information about the noncompliances, the corrections needed, and the conditions of probation are included in the letter of notification from TDPRS. The facility [~~facility/family~~

~~home~~] must make the letter of notification available to parents and others who request to read it.

(d) [~~(c)~~] TDPRS's Probation Notice form will be provided by TDPRS to the facility [~~or family home~~] when the facility [~~or family home~~] is being placed on probation. The facility [~~or family home~~] will be advised of the time frame for posting the notice at the time the notice is provided.

(e) TDPRS's Notice of Intent to Revoke or Suspend letter must be posted when received in a prominent place where parents and others may view it. The letter must remain posted pending the outcome of the administrative review and the State Office of Administrative Hearings (SOAH) appeal process. Once this appeal process is completed, the Letter of Revocation or Suspension must be posted until all operations cease.

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 August 30, 1999.

TRD-9905465
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part 1. TEXAS DEPARTMENT OF TRANSPORTATION

Chapter 9. CONTRACT MANAGEMENT

Subchapter B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §§9.10-9.20

The Texas Department of Transportation proposes amendments to §§9.10-9.20, concerning Highway Improvement Contracts.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, Chapter 223, Subchapter A, prescribes the method by which the Texas Department of Transportation receives competitive bids for the improvement of highways that are a part of the state highway system. Pursuant to this authority, the commission has previously adopted §§9.10-9.20 to specify the process by which the department will administer and manage highway improvement contracts.

All statutory references contained in §§9.10-9.20 have been revised to refer to the current amended or new statutory citations. In addition, several wording and grammatical revisions have been incorporated for clarification. Where sections have been added or deleted, the remaining sections have been renumbered accordingly.

All references to electronic bidding contained in §§9.10-9.20 have been removed, as they are now obsolete. Transportation Code, §223.013 provides authority for the department to develop an electronic bidding system. Pursuant to this authority, the department is developing a new automated system to facilitate electronic bidding. This system is based on emerging technology that will require the adoption of new administrative procedures when the automated system is completed.

Section 9.10

This section has been amended to refer to the proper statutory citation.

Section 9.11

Definitions have been added, revised, and numbered to provide clarification, reference proper statutory authority, and conform to the Texas Register numbering style. The definition for a disadvantaged business enterprise (DBE) has been revised in accordance with new federal regulations contained in Title 49, Code of Federal Regulations, §26.5.

Section 9.12

New federal regulations, contained in Title 49, Code of Federal Regulations, Part 26 will require the department to develop and maintain a listing of all contractors and subcontractors that bid on all department contracts. The department will adopt new administrative procedures outlining this requirement once federal approval has been obtained. For this rulemaking, the title of §9.12 and all references and requirements relating to the registration of subcontractors are being deleted since they are not inclusive of all contract types and have not received federal approval.

In subsection (a)(1)(A)(i), the deadline for the submittal of a confidential questionnaire relating to contractor bidding requirements has been shortened from 15 days to 10 days prior to the last day of bid opening. This revision is expected to facilitate a more competitive bidding process by providing an extended opportunity for more contractors to become eligible to bid.

Reference to a public accountant in subsection (a)(1)(A)(ii) has been removed, as the term is now obsolete. In order to be eligible to practice as a public accountant rather than a certified public accountant, an individual must have been in practice prior to the passage of the Public Accountancy Act of 1945.

The increased technical nature of many department contracts now requires a higher than normal degree of bidder competence. Examples of these types of highly technical contracts include installation of fiber optic cables, maintenance of video monitoring equipment, computerized traffic monitoring systems, etc. Therefore, subsection (a) been revised to allow for the inclusion of bidder technical qualification requirements in certain bid proposals, including those for building contracts.

New subsection (b) has been added describing what a potential bidder must do to be eligible to bid on a building contract. The department will determine when to include in a bid proposal any additional requirements and the necessary information to be submitted by prospective bidders in order to demonstrate compliance. Additional requirements will be based upon the complexity and scope of the work included in the bid proposal.

Since federal requirements no longer mandate that prospective bidders submit a Certification of Eligibility Status form with each request for a bid proposal, information related to the completion of the form has been moved from §9.13 (Notice of Letting and Issuance of Proposals) to §9.12(a)(2)(B)(iv) (Qualification of Bidders). This revision moves the point of evaluation for eligibility certification to the bidder qualification

stage, thereby reducing the impact of information collection on both the department and prospective bidders.

Subsection (a)(1)(D)is further revised to allow for an automatic three month grace period of qualification prior to the expiration date of the bidder's statement in order to allow for preparation and submittal of current audited information. Potential bidders will no longer be required to request the three month grace period. Revisions to the department's automated processes have made this requirement obsolete.

Instances when the department may require current audited information have been clarified in subsection (a)(1)(E). This information may be required at any time if circumstances develop which may be considered as factors that could alter the firm's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern. The department will make the determination regarding whether the circumstances may affect the potential bidder's capability to perform work for the department.

Waiver of the bidder financial qualification requirements in subsection (a)(2)(A) has been amended to apply to contracts with an engineer's estimate of $300,000 or less rather than $250,000 or less. This increase is necessary as the previous estimate amount subject to the waiver is insufficient for the type and size of projects now bid under this type of qualification. This revision is also expected to facilitate bidding opportunities for small businesses. The level of authority to deny the waiver of a project otherwise subject to the waiver has been modified to reflect changes in the department's organizational structure and to allow dissemination of authority to the appropriate level within the department as determined by the executive director.

As with the increase in the engineer's estimate amount subject to the waiver of the financial qualification requirements, the bidding capacities established by the department for highway improvement contract bidders have likewise been increased. Therefore, subsection (a)(2)(C)(i)-(ii) is amended as follows. For those bidders with no prior experience in construction or maintenance, the bidding capacity will be established at $300,000 in lieu of $100,000. This revision is expected to facilitate bidding opportunities for small businesses. Bidding capacity levels for those bidders with sufficient working capital and financial capability, as determined by the department, and which meet the experience and number of satisfactorily completed project requirements, have been increased from $300,000, $500,000, and over $500,000 to $500,000, $1,000,000, and over $1,000,000, respectively. These revisions are necessary, as the previous estimate amounts were insufficient for the size and type of projects now being bid with the department.

For those bidders subject to a bidding capacity of over $1,000,000, the bidding capacity will be established by multiplying the net working capital by a factor determined by the department. This multiplication factor will be based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. This revision is necessary in order to ensure a competitive bidding process by enabling a sufficient number of eligible bidders the opportunity to bid on highway improvement contracts.

Section 9.13

The department's advertising procedures and detailed information relating to the department's Notice to Contractors mailing list has been deleted in subsection (a)(1). These procedures and requirements are presently listed in various statutes. Therefore, in order to allow for future statutory revisions, only the appropriate statutory citations regarding the mailing list and advertising requirements will be referenced in this section.

Subsection (a) has been further revised to increase the fee for receiving the Notice to Contractors by mail from $25 to $65 per year. This increase is necessary due to the increased costs incurred by the department associated with mailing the notices to those persons who have applied to have their name placed on the Notice to Contractors mailing list.

In addition, since federal requirements no longer mandate that requests for proposals for federally funded projects be made in writing, subsection (d)(2)(B) has been deleted. Subsection (d)(2) is further revised to indicate that requests for a proposal form for any highway improvement contract, regardless of funding source, may be made either orally or in writing. This revision will reduce unnecessary paperwork for both the department and prospective bidders.

When submitting a bid proposal to the department, a bidder is assuring that the unit price bid for each item of work represents the actual cost for performing that item of work plus additional amounts for reasonable overhead and profit. A contract that is mathematically and materially unbalanced would not represent the lowest cost to the state. Due to the inflated payments associated with the unbalanced bid items, the state would experience a loss of interest revenue. Subsection (e)(1)(B) has therefore been revised to prohibit a bidder who previously submitted a mathematically and materially unbalanced bid from being issued a proposal for the same project when it is re-bid. This additional reason for non-issuance of a proposal is necessary in order to protect the integrity of the competitive bidding process by creating a deterrent regarding the submittal of mathematically and materially unbalanced bids.

Clarification is also being provided in paragraph (1)(C) of subsection (e) regarding issuance of a proposal to a bidder who is in the process of satisfying the requirements for qualification as a bidder. A bidder may be issued a temporary approval to submit a bid if the bidder qualification process has been initiated and information submitted to date is determined to be acceptable by the department.

Subsection (e)(2) has been added regarding issuance of a proposal for a building contract to a bidder who is in compliance with bidder qualifications described in §9.12(b) which includes financial, experience, technical, or other requirements. Instances for non-issuance of a building contract proposal have also been added to this section. A building contract proposal will not be issued if the bidder is disqualified from program participation by the federal government, is suspended or debarred by the commission, or is prohibited from re-bidding a specific project because of default of the first awarded contract. These revisions are necessary in order to maintain uniformity with bid issuance for construction and maintenance contracts.

Section 9.14

As mentioned previously, all references to electronic bidding have been removed from this section. The provisions in new subsection (d)(1) regarding proposal guaranty checks and money orders have been revised to provide clarification. The face of the check or money order must indicate the type of instrument (i.e. cashier's check, teller's check, official check, money order, etc.). In addition, checks or money orders more

than 90 days old will not be accepted. These revisions are necessary because of the proliferation of the types of banking instruments currently being used by the banking industry and the increased possibility of a check not being honored that is more than 90 days old. This new requirement regarding the date of the check is intended to protect the integrity of the proposal guaranty check.

Subsection (d)(2) has been added to allow for the acceptance of bid bonds for those contracts estimated to involve less than $300,000. This revision provides for a new form of proposal guaranty that is expected to enable bidders more flexibility regarding the submittal of a proposal guaranty. The threshold of $300,000 was determined in an effort to enable a greater number of small businesses the ability to compete on department maintenance contracts as the majority of these contracts fall below $300,000. This threshold will enable the department, on a limited scale, to evaluate the effectiveness of bid bonds as an alternate form of proposal guaranty. Future policy regarding proposal guaranties may be revised based on the department's evaluation of bid bonds as a form of proposal guaranty on contracts estimated at less than $300,000.

Paragraph (4) of subsection (d) has been added which states that the commission will establish by order proposal guaranty amounts for checks, money orders, and bid bonds. Amounts established for bid bonds may be greater than amounts for checks or money orders due to the increased administrative costs associated with bid bonds. While checks and money orders are payable on demand, bid bonds may require additional procedures to secure collection. These additional procedures will result in an increase in administrative costs for the department.

Section 9.15

The department's procedures regarding the public reading of bids have been deleted from subsection (a)(1). These procedures and requirements are presently listed in Transportation Code, §223.004 and §223.005. Therefore, in order to allow for future statutory revisions, only the appropriate statutory citation is referenced.

SB 178, passed by the 76th Legislature, 1999, revised Chapter 2161, Government Code, concerning historically underutilized businesses. One of the requirements associated with this new subchapter involves the inclusion of a historically underutilized business subcontracting plan in certain bids in order for the bid to be considered responsive. Pursuant to this statutory amendment and to maintain conformity with the state historically underutilized business program, subsection (b) has been revised to include instances when the bid does not include a historically underutilized business subcontracting plan if such plan is required.

Subsection (b) is further revised to remove the requirement that a proposal will not be read if the proprietor, partner, majority shareholder, or substantial owner is 30 or more days delinquent in providing child support under a court order or a written repayment agreement. Family Code, §231.006, provides that a delinquent child support obligor is ineligible to receive payments under a state contract, but does not prohibit the award of a contract to the obligor.

Instances when the bidder fails to properly acknowledge receipt of all addenda has also been added to subsection (b) as a reason for not reading a proposal. This additional reason is necessary to ensure that those bids considered by the department are based on the most recent bidding information.

This section has been further revised by adding new subsection (e) prohibiting bidders determined by the department to have submitted a mathematically and materially unbalanced bid from being considered on future bids for the same project. As stated previously in this preamble, a contract that is mathematically and materially unbalanced would not represent the lowest cost to the state. This revision is necessary in order to protect the integrity of the competitive bidding process by creating a deterrent regarding the submittal of mathematically and materially unbalanced bids.

Section 9.16

All references to electronic bidding have been deleted from this section.

Section 9.17

SB 555, passed by the 76th Legislature, 1999, amended Transportation Code, Chapter 223, to allow the department to award a maintenance contract involving an amount less than $100,000 to the second lowest bidder if the lowest bidder withdraws its bid prior to contract award or fails to execute the contract. Contract award may be made to the second lowest bidder only if the second lowest bidder agrees to accept the unit bid prices of the lowest bidder. This amended statute further directs the department to adopt rules governing the conditions under which the withdrawal of the bid of the lowest bidder and consideration of contract award to the second lowest bidder will be allowed. Pursuant to this statutory amendment, subsection (d) has been added to allow for contract award to the second lowest bidder in certain instances.

In order to preserve as much as possible the competitive aspect of the bidding process, the rules place strict limitations on awards to second lowest bidders. The second lowest bidder must agree to perform the work at the unit bid prices of the lowest bidder, so as to prevent collusion between the two bidders. The executive director will recommend award to the second lowest bidder only when the need to preserve competition is outweighed by the need to avoid certain detrimental effects of delay. The executive director may make such recommendation only when the delay associated with reletting the contract would have detrimental effects on the cost, health and safety of the traveling public, or structural integrity of the highway itself.

Section 9.18

Subsection (a)(1) has been revised to add that, when required, the successful bidder submit within 15 days from written notification of contract award, written evidence of current good standing from the Comptroller of Public Accounts. In the past, the department required a bidder to self-certify good standing status with the comptroller in the bid proposal. However, the comptroller has advised that this process is not producing the desired results. The comptroller further requires state agencies to verify with her office the current standing of any successful bidder prior to contract execution. The department will therefore verify a successful bidder's status with the comptroller subsequent to contract award but prior to contract execution. If the comptroller advises that the successful bidder is not in good standing with her office, the department will require written evidence of current good standing with the comptroller from the successful bidder prior to executing the contract.

Subsection (a)(3) is further revised to specify that information required of the successful bidder concerning the DBE or HUB goal be submitted within the time specified in the contract rather than within 15 days after contract award. In addition, this section is further revised to refer to the appropriate section within Subchapter D of Chapter 9, concerning Business Opportunity Programs for DBE or HUB contract requirements. These revisions are necessary to ensure uniformity with DBE or HUB program requirements as may be revised within this chapter.

References to unbalanced bids have also been deleted from this section. The paragraph concerning unbalanced bids has been revised and moved to §9.15

Section 9.19

Subsection (a) has been revised to refer to the proper statutory citation of the Transportation Code. In addition, the level of authority required for emergency certification associated with the award of a contract utilizing emergency contracting procedures in subsection (b) has been amended to limit delegation of authority to a level not below the level of deputy executive director. This revision is necessary in order to maintain uniformity with the remainder of this section regarding delegation of authority.

Section 9.20

Transportation Code, §223.010, requires the department to retain 5.0% of the contract price until the entire improvement has been completed and accepted. The department is further permitted to deposit this retained amount under a trust agreement with a state or national bank domiciled in this state provided the interests of the state are protected.

SB 1195, passed by the 76th Legislature, 1999, amended Transportation Code, §223.010 to require the department to retain 4.0% of the contract price until the entire improvement has been completed and accepted on any construction and preventive maintenance contract that includes the use of recycled materials. Section 9.20(2) is amended to reflect this statutory revision. In order to protect the health and safety of the traveling public, this paragraph is further amended to restrict recycled material utilization to those materials that the department has determined to be nonhazardous and meet contract specification and special provision requirements.

HB 2159, passed by the 76th Texas Legislature, 1999, amended Transportation Code, §223.010 to allow the department to release a portion of the retained amount prior to acceptance of the entire improvement provided the amount retained is sufficient to ensure compliance with the contract. This partial release of the retained amount applies only to contracts involving a separate vegetative establishment, maintenance, or performance period following the construction of an improvement. Section 9.20(3) is amended to reflect this statutory revision.

This statutory amendment will ensure that the retained amount withheld on certain contracts is sufficient to ensure completion of separate vegetative establishment, maintenance, or performance periods while increasing the working capital of contractors bidding on department contracts, thereby increasing competitiveness and ultimately lowering contract costs. Partial release of the retained amount by the department is also expected to facilitate prompt payment of retained amounts to subcontractors performing on department projects.

HB 2066, passed by the 76th Legislature, 1999, amended Transportation Code, §223.010 to allow the department, at the request of the contractor and with the approval of the department and the comptroller of public accounts, to deposit the amount retained for a construction contract under a trust agreement with a state or national bank that has its main office or a branch office in this state. Previously, this section only required that the amount retained be deposited under a trust agreement with a state or national bank domiciled in Texas. Section 9.20 is amended to comply with HB 2066.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five-year period the amended sections are in effect, there will be fiscal implications to the state. The department may experience an impact regarding the acceptance of bid bonds. The proposed revisions provide flexibility for a bidder to furnish a bid bond in lieu of a guaranty check. Currently, in the event of default of an awarded contract, the department is able to deposit a guaranty check immediately. A bid bond will require the department to notify the surety issuing the bond that a default has occurred and payment is sought. By law, the surety has various courses of action that may delay collection and/or reduce the desired amount sought. The possibility of collection delay, amount reduction, and the additional steps necessary to collect on the bond will increase administrative and other costs for the department.

Utilization of a bid bond or a guaranty check is the bidder's option. Since the department has never before accepted bid bonds, the number of bidders that will use a bid bond cannot be based on historical information. Consequently, any estimation of the number of bidders submitting a bid bond would be speculative. Without the number of bidders that will use bid bonds, the expected increase in costs cannot be determined at this time. Provisions within the proposed rule amendment provide for the collection of the increased administrative and other costs by order of the commission.

The proposed amendments to §9.13 are expected to increase state revenue by approximately $8,000 per year thereby compensating for the additional costs incurred by the department for mailing the Notice to Contractors. This amount is based on the increase of $40 per year times the approximate number of applicants, presently estimated at 200. There is no expected impact to local governments. The impact to individuals is not expected to be significant as application to receive the Notice to Contractors by mail is voluntary. In addition, the Notice to Contractors is available on the department's Internet website and may be downloaded and printed at no charge to the user. Further, a free copy of the Notice to Contractors may be obtained by making a request in person at a department office.

The remaining proposed amendments to §§9.10-9.20 are either not expected to have a fiscal impact or are required by statute. There will be no fiscal implications to local governments as a result of implementing the proposed amendments.

Thomas R. Bohuslav, Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended sections.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing and administering the amended sections will be to increase the working capital of con-

tractors bidding on construction contracts with the department, thereby increasing competition and ultimately lowering contract costs. Utilization of nonhazardous recycled materials will also be increased thereby decreasing the amount of waste entering into costly landfills and extending the availability of scarce natural, virgin resources. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Thomas R. Bohuslav, Director, Construction Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on October 11, 1999.

STATUTORY AUTHORITY

The amendments are 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, §§223.001-223.013, which authorize the Texas Department of Transportation to competitively bid highway improvement contracts.

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

§9.10. Purpose.

The sections under this subchapter prescribe the policies and procedures governing bidder qualification, bidding, award, and execution of a contract entered under Transportation Code, Chapter 223, Subchapters A-C [~~Texas Civil Statutes, Article 6674a, et seq.~~].

§9.11. Definitions.

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

(1) Available bidding capacity - Bidding capacity less uncompleted work under contract.

(2) Bidder - An individual, partnership, limited liability company, corporation or any combination submitting a proposal.

(3) Bidding capacity - The maximum dollar value a contractor may have under contract at any given time.

(4) Building contract - A contract entered under Transportation Code, Chapter 223, Subchapter A [~~Texas Civil Statutes, Article 6674a et seq.,~~] for the construction or maintenance of a department building or appurtenant facilities.

(5) Certification of Eligibility Status form - A notarized form describing any suspension, voluntary exclusion, ineligibility determination actions by an agency of the federal government, indictment, conviction, or civil judgment involving fraud, official misconduct, each with respect to the bidder or any person associated with the bidder in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, covering the three-year period immediately preceding the date of the qualification statement.

(6)[~~(5)~~] Commission - The Texas Transportation Commission.

(7) Confidential Questionnaire - A prequalification form reflecting detailed financial and experience data.

(8)[~~(6)~~] Construction contract - A contract entered under Transportation Code, Chapter 223, Subchapter A [~~Texas Civil Statutes, Article 6674a et seq.~~], for the construction or reconstruction of a segment of the state highway system.

(9)[~~(7)~~] Department - The Texas Department of Transportation.

(10)[~~(8)~~] Deputy executive director - Any [~~one of six~~] second tier manager [~~managers~~] appointed by the executive director [~~to the position of deputy executive director or assistant executive director~~].

(11) Disadvantaged business enterprise (DBE) - As defined in Title 49 Code of Federal Regulations (CFR) §26.5, a for-profit small business concern, certified by the department, that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51% of the stock is owned by one or more such individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

[~~(9) Disadvantaged business enterprise - As defined in 49 Code of Federal Regulations (CFR) §23.5, a small business concern, certified by the department, which is 51% owned by one or more minorities or women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more such individuals.~~]

(12)[~~(10)~~] District engineer - The chief executive officer in each of the designated district offices of the department. [~~Electronic bid - The submission of bid information on a computer diskette as a supplement to the proposal for use in the bid tabulation.~~]

(13)[~~(12)~~] Emergency - Any situation or condition of a designated state highway, resulting from a natural or man-made cause, that [~~which~~] poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce.

(14)[~~(13)~~] Executive director - The executive director of the Texas Department of Transportation.

(15)[~~(14)~~] Highway improvement contract - A construction, maintenance, or building contract.

(16)[~~(15)~~] Historically underutilized business (HUB) - A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit, certified by the General Services Commission in accordance with Government Code, Chapter 2161 [~~, in which 51% of the company is owned by one or more persons who are socially disadvantaged because of their identification as a member of certain groups including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans, and have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; and have a proportionate interest and demonstrate active participation in the control, operation, and management of the business affairs~~].

(17)[~~(16)~~] Maintenance contract - A contract entered under Transportation Code, Chapter 223, Subchapter A [~~Texas Civil Statutes, Article 6674a, et seq.~~], for the maintenance of a segment of the state highway system.

(18)[~~(17)~~] Materially unbalanced bid - A bid which generates a reasonable doubt that award to the bidder submitting a

mathematically unbalanced bid will result in the lowest ultimate cost to the state.

(19)[(18)] Mathematically unbalanced bid - A bid containing lump sum or unit bid items that [~~which~~] do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(20)[(~~19~~)] Preventive maintenance contract - Contracts let through the construction contracting procedure to preserve and prevent further deterioration of the roadways and rights of way, with all its components.

(21)[(~~20~~)] Proposal - The offer of the bidder, made out on the prescribed form, giving bid prices for performing the work described in the plans and specifications.

(22)[(~~21~~)] Proposal guaranty - The security designated in the proposal and furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(23)[(~~22~~)] Routine maintenance contract - Contracts let through the routine maintenance contracting procedure to preserve and repair roadways and rights of way, with all its components, to its designed or accepted configuration.

§9.12. Qualification of Bidders [~~and Registration of Subcontractors~~].

(a) Audited financial qualification of construction and maintenance bidders. Unless waived under paragraph (2) of this subsection, to be eligible to bid on a construction or maintenance contract a potential bidder must be prequalified in accordance with paragraph (1) of this subsection.

(1) Requirements.

(A) To be qualified to bid on a construction or maintenance contract, a potential bidder must:

(i) submit a confidential questionnaire to the department's Construction [~~and Maintenance~~] Division in Austin 10 [~~15~~] days prior to the last day of bid opening [~~letting~~], in a form prescribed by the department, which shall include certain information concerning the bidder's equipment and experience as well as financial condition; [~~and~~]

(ii) have its certified public accountant [~~or public accountant~~] submit the audited and other financial information required by the current edition of the department's Bulletin Number 2, titled "Contractor's Financial Resources";[~~.~~]

(iii) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(iv) for the purpose of bidding on federal-aid projects, properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire.

(B) The department will make its examination and determination based on the information submitted, and advise the bidder of its approved bidding capacity. Information adverse to the potential bidder contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids on federal-aid projects.

(C) Satisfactory audited financial information will grant a 12-month period of qualification from the date of the financial statement.

(D) A three month grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted[~~, if requested,~~] prior to the expiration date of the financial statement.

(E) The department may require current audited information at any time if circumstances develop which are factors that could [~~may~~] alter the firm's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(2) Waiver.

(A) The department will waive the audited financial qualification requirements of paragraph (1) of this subsection if the engineer's estimate is $300,000 [~~$250,000~~] or less, or the project pertains to specialty items not normal to the department's roadway projects program unless the executive director or the director's designee [~~department's director of Construction and Maintenance Division~~] determines that audited financial qualification should be required due to:

(i) safety considerations;

(ii) the complexity of the work; or

(iii) the potential impact of the work on adjacent property owners.

(B) To be eligible to bid on a contract for which the audited financial qualification requirements have been waived under subparagraph (A) of this paragraph, or on a contract to be awarded under §9.19 of this title (relating to Emergency Contract Procedures), a bidder must [~~submit~~]:

(i) submit a bidder's questionnaire, in a [~~the~~] form prescribed by the department, which includes certain information concerning a bidder's equipment and experience; [~~and~~]

(ii) submit unaudited and other [~~financial~~] data as required in the instructions to the bidder's questionnaire;[~~.~~]

(iii) satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(iv) for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the bidder's questionnaire (Information adverse to the potential bidder contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids on a federal-aid project).

(C) The department will make its examination and determination based on the information submitted, and advise the bidder of its approved bidding capacity.

(i) A bidder with no prior experience in construction or maintenance will receive a bidding capacity of $300,000 [~~$100,000~~].

(ii) An experienced bidder with sufficient working capital and financial capability, as determined by the department, will receive a bidding capacity of:

(I)[~~(i)~~] $500,000 [~~$300,000~~] for a bidder submitting compiled financial information if the principals of the bidder have at least one year experience in construction and/or maintenance and have satisfactorily completed at least two projects in these fields;

(II)[~~(ii)~~] $1,000,000 [~~$500,000~~] for a bidder submitting compiled financial information if the principals of the bidder have at least two years experience in construction and/or

maintenance and have satisfactorily completed at least four projects in these fields; and

(III) [~~(iii)~~] over $1,000,000 [~~$500,000~~] for a bidder submitting reviewed financial information if the principals of the bidder have at least three years of experience in construction and/or maintenance and have satisfactorily completed at least six projects in these fields (The amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. In the event that this calculation does not result in an amount greater than $1,000,000, the bidder will receive a bidding capacity equal to the amount listed in subclause (II) of this clause).

(b) Building contracts. To be eligible to bid on a building contract, a potential bidder must satisfactorily comply with any financial, experience, technical, or other requirement contained in the governing specifications applicable to the project.

[~~(b) Registration of subcontractors. To be eligible as a subcontractor for a construction or maintenance contract entered by the commission under Texas Civil Statutes, Article 6674a, et seq., a subcontractor must submit a completed subcontractor's questionnaire.~~]

[~~(c) Building contracts. A bidder and a subcontractor do not have to comply with this section to be eligible to bid or be a subcontractor on a building contract.~~]

(c)[~~(d)~~] Financial statements. For purposes of this section, an audited financial statement involves an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements in conformity with generally accepted accounting principles. A reviewed financial statement is substantially less in scope than an audited financial statement, and consists primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the auditor, meaning the auditor is not aware of any material modifications that should be made in order for the financial statements to conform to generally accepted accounting principles. A compiled financial statement is limited to presenting in the form of financial statements information that is the representation of management. No opinion or any other form of assurance is expressed on the statements by the auditor.

§9.13. Notice of Letting and Issuance of Proposals.

(a) Notice to bidders [~~and advertisements~~]. A person may apply to have his or her name placed on a mailing list to receive the Notice to Contractors for a fee of $65 per year to cover costs of mailing the notices.

[~~(1) Notice.~~]

[~~(A) Mailing list. The department will maintain mailing lists of all registered subcontractors and bidders approved to bid under §9.12 of this title (relating to Qualification of Bidders and Registration of Subcontractors). The department will also maintain a mailing list of parties who have purchased a notice subscription for $25 per year to cover costs of mailing the notices.~~]

(b) [~~(B)~~] Fee exemption. The following entities are not required to pay the notice subscription fee:

(1) [~~(i)~~] qualified bidders [~~and registered subcontractors~~] approved under §9.12 of this title (relating to Qualification of Bidders [~~and Registration of Subcontractors~~]);

(2) [~~(ii)~~] other state agencies;

(3) [~~(iii)~~] other state departments of transportation;

(4) [~~(iv)~~] disadvantaged business enterprises and historically underutilized businesses;

(5) [~~(v)~~] offices of the federal government; and

(6) [~~(vi)~~] organizations performing work under supportive service contracts awarded by the commission.

[~~(C) Distribution. The department will send to prepaid subscribers and entities on the mailing list who are waived from paying the fee written notice of projects to be let.~~]

(c) Advertising. Contracts will be advertised in accordance with Transportation Code, §223.002, Government Code, §2155.074(h)(1), and Title 23, Code of Federal Regulations, §635.112(b).

[~~(2) Advertising.~~]

[~~(A) Notice of the time, when, and place where contracts will be let and bids opened will be published in a newspaper in the county where the work is to be done once a week for at least two weeks prior to the time set for the letting of the contract and in two other newspapers designated by the department. If there is no newspaper published in the county in which the work is to be done, the advertising shall be for publication in a newspaper published in the county nearest the county seat of the county in which the work is to be done.~~]

[~~(B) Notice of the time, when, and place where contracts with an engineer's estimate of involving less than $300,000 will be let and bids opened will be published in two successive issues of a newspaper published in the county in which the work is to be done, and if there is no newspaper published in the county in which the work is to be done, the advertising shall be for publication in a newspaper in the county nearest the county seat of the county in which the work is to be done.~~]

(d) [~~(b)~~] Proposal form.

(1) Proposal form content. A proposal form will include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request.

[~~(A)~~] A request for a proposal form on a highway improvement [~~building contract or a state funded construction or maintenance~~] contract may be made orally or in writing.

[~~(B)~~] A request for a proposal form on a federal aid construction or maintenance contract must be submitted in writing, and must include a statement in a form prescribed by the department certifying whether the bidder is currently disqualified by an agency

of the federal government as a participant in programs and activities involving federal financial and nonfinancial assistance and benefits.]

(e) [~~(c)~~] Issuance of proposal form.

(1) Construction and maintenance contracts.

(A) Issuance. Except where prohibited under subparagraph (B) of this paragraph, the department will, upon receipt of a request, issue a proposal form for a construction or maintenance contract as follows:

(i) for a project on which audited financial prequalification is not waived, only to a prequalified bidder, and only if the estimated cost of the project is within that bidder's available bidding capacity; and

(ii) for a project on which audited financial qualification is waived under §9.12(a)(2) [~~§9.3(a)(2)~~] of this title [~~(relating to Qualification of Bidders and Registration of Subcontractors)~~], only if the estimated cost of the project is within that bidder's available bidding capacity.

(B) Non-issuance. Except as provided in subparagraph (C) of this paragraph, the department will not issue a proposal form requested by a bidder for a construction or maintenance contract if at the time of the request the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project;

(ii) is suspended or debarred by order of the commission;[~~, or~~]

(iii) is prohibited from rebidding a specific project because of default of the first awarded contract; [~~bid; or~~]

(iv) [~~(iii)~~] has not fulfilled the requirements for qualification under §9.12 [~~§9.3~~] of this title [~~(relating to Qualification of Bidders and Registration of Subcontractors)~~]; or

(v) is prohibited from rebidding that project as a result of having previously submitted a mathematically and materially unbalanced bid resulting in the rejection of the bid by the commission.

(C) Exception. The department may issue a proposal under a temporary approval to a bidder who would be [~~is~~] ineligible under subparagraph (B)(iv) [~~(iii)~~] of this paragraph if the bidder has substantially complied with the requirements of §9.12 [~~§9.3~~] of this title [~~(relating to Qualification of Bidders and Registration of Subcontractors)~~].

(2) Building contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph, the department will issue, upon request, a proposal form to a bidder having complied with §9.12(b) of this title.

(B) Non-issuance. The department will not issue a proposal form requested by a bidder for a building contract if, at the time of the request, the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;

(ii) is suspended or debarred by order of the commission; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

[~~(2) Informational proposal. The department will issue an information proposal form upon request.~~]

[~~(3) Building contracts. Except as provided in paragraph (4) of this subsection, the department will, upon request, issue a proposal form to any bidder for a building contract.~~]

(3) [~~(4)~~] All contracts. The department will not issue a proposal form for a highway improvement contract to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.14. Submittal of Proposal.

(a) Delivery.

[~~(1)~~] The bidder shall place each completed proposal form in a sealed envelope marked to show its contents. When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received on or before the hour and date set for the receipt and opening of bids and must be in the hands of the department letting bid receipt official by that time.

[~~(2) In addition to the proposal form submitted under paragraph (1) of this subsection, and when authorized in the proposal, a bidder may submit an electronic bid in the same manner. A bidder delivering an electronic bid shall submit the proposal in accordance with paragraph (1) of this subsection, and must:~~]

[~~(A) include the computer diskette containing the electronic bid data in a separate sealed envelope;~~]

[~~(B) state the exact qualified name of the bidder on the envelope;~~]

[~~(C) state on the computer diskette the exact qualified name of the bidder and the job number as taken from the order of tabulation of projects, for which electronic bids are being submitted;~~]

[~~(D) submit a computer diskette containing bid data for those projects which are to be opened and read for that letting day only, as reflected in the notice; and~~]

[~~(E) provide the electronic bid information on a computer diskette, free of virus, which has been prepared through the electronic bidding system utilized by the department.~~]

[~~(3)~~ Electronic bids are not accepted for building contracts.]

(b) Proposal content. The bidder shall submit the proposal on the form furnished by the department and in compliance with the following requirements.

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the blank spaces for each item as required in the proposal form shall be filled in by writing in words in ink.

(2) The bidder shall submit a unit price for each item for which a bid is requested (including a zero if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates.

(3) The proposal shall be executed with ink in the complete and correct name of the bidder making the proposal and be signed by the person or persons authorized to bind the bidder.

(4) Except in the case of regular bid item that has an alternate bid item, unit prices shall be stated in dollars and/or cents for each bid item listed in the proposal.

(c) Computer printouts.

(1) In lieu of writing in words in ink, a bidder may submit an original computer printout sheet bearing the required certification by and signature for the bidder. The unit prices shown on acceptable printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded by the commission.

(2) Computer printouts are not acceptable on building contracts.

(d) Proposal guaranty. A bidder must submit a proposal guaranty with the proposal form.

(1) Except as provided in paragraph (2) of this subsection, the proposal guaranty must be in the amount specified by the proposal form, made payable to the order of the commission, and in the form of a cashier's check, money order, or teller's check drawn by or on a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as a "bank"). The check must be payable at or through the institution issuing the instrument, or must be drawn by a bank on a bank, or by a bank and payable at or through a bank. The form of the instrument must be identified on the instrument's face.

(2) When the department estimates a project to involve less than $300,000, a bidder may submit a bid bond, in lieu of providing the guaranty required in paragraph (1) of this subsection. The bid bond shall be on the form and in the amount specified by the department. A bid bond will only be accepted from a surety company authorized to execute a bond under and in accordance with state law.

[~~(d) Electronic bids. Electronic bid data must be in the form outlined under subsection (a)(2) of this section. The electronic bid information will be a supplement to the proposal for the purposes of tabulation only. Each proposal submitted must be accompanied by a computer printout meeting the requirements under subsection (c) of this section. The computer diskette will remain the property of the department.~~]

[~~(e) Proposal guaranty.~~]

[~~(1) A bidder must submit a proposal guaranty with the proposal form in the amount specified by the proposal form. The proposal guaranty shall be payable to the commission and shall be a cashier's check, money order, or teller's check drawn by or on a state or national bank or savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank")~~].

[~~(2) A check must be payable at or through the institution issuing the instrument, or must be drawn by a bank:~~]

[~~(A) on a bank; or~~]

[~~(B) payable at or through a bank~~].

(3) The department will not accept as a proposal guaranty:

(A) personal checks or certified checks;

(B) other types of money orders; or

(C) checks or money orders more than 90 days old [~~bid bonds~~].

(4) The commission will establish by order proposal guaranty and bid bond amounts. The commission may require a greater amount for a bid bond in order to compensate for increased administrative costs associated with bid bonds.

[~~(f) Certification.~~]

[~~(1) A bidding proposal on a federal-aid project shall include, in a form prescribed by the department, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/ supervisor, manager, auditor, or a position involving the administration of federal funds; and shall cover the three-year period immediately preceding the date of the proposal.~~]

[~~(2) Information adverse to the bidder as contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder~~].

§9.15. Acceptance, Rejection, and Reading of Proposals.

(a) Public reading. Bids will be opened and read in accordance with Transportation Code, §223.004 and §223.005.

[~~(1) Bids will be opened and read at a public meeting conducted by the director of the department's Construction and Maintenance Division, or his or her designee on behalf of the commission. Each meeting shall be in the City of Austin, at a time and location specified in the advertisement.~~]

[~~(2)~~] Bids for contracts with an engineer's estimate of less than $300,000 may be filed with the district engineer at the headquarters for the district, and opened and read at a public meeting conducted by the district engineer, or his or her designee on behalf of the commission. [~~Each such meeting shall be held at the district headquarters in the district in which the work is to occur.~~]

(b) Proposals not read.

(1) The department will not accept and will not read a proposal if:

(A) the proposal is submitted by an unqualified bidder;

(B) the proposal is in a form other than the official proposal form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the proposal was received after the time or at some location other than that specified in the advertisement;

(E) the unit prices are written in the proposal in numerals;

(F) the proposal guaranty, when required, does not comply with §9.14(d) [~~§9.14(e)~~] of this title (relating to Submittal of Proposal);

(G) the bidder did not attend a specified mandatory pre-bid conference;

(H) the bid does not include a historically underutilized business subcontracting plan when required [~~the proprietor, partner, majority shareholder, or substantial owner is 30 or more days delinquent in providing child support under a court order or a written repayment agreement~~];

(I) a computer printout proposal, when used, does not have the unit bid prices entered in designated spaces, does not include

the proper certification, is not signed in the name of the firm or firms to whom the proposal was issued, or omits required bid items or includes items not shown in the proposal;

(J) the bidder was not authorized to be issued a proposal under §9.13(e) [~~§9.13(c)~~] of this title (relating to Notice of Letting and Issuance of Proposals); [~~or~~]

(K) the proposal did not otherwise conform with the requirements of §9.14 of this title [~~(relating to Submittal of Proposal)~~]; or

(L) the bidder fails to properly acknowledge receipt of all addenda.

(2) If more than one proposal involving a bidder under the same or different names is submitted on the same project, the department will not accept and will not read any of the proposals submitted by that bidder for that project.

(c) Revision bid by bidder.

(1) A bidder may change a bid price before it is submitted to the department by changing the price and initialing the revision in ink.

(2) A bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone or telegraph, but will accept a properly signed telefacsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(d) Withdrawal of bid. A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone or telegraph requests, but will accept a properly signed telefacsimile request.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation, the department will presume the same retainage percentage for all bidders. In the event that the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced, the bidder will not be considered in future bids for the same project.

§9.16. Tabulation of Bids.

(a) Official bid amount. Except for lump sum building contract [~~contracts~~] bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts.

(b) Department interpretations.

(1) Proposal entries such as no dollars and no cents or zero dollars and zero cents will be interpreted to be one-tenth of a cent ($.001) and will be entered in the bid tabulation as $.001. Any entry less than $.001 will be interpreted and entered as $.001.

(2) If a bidder submits both a completed proposal form and a properly completed computer printout, the department will use the computer printout to determine the total bid amount of the proposal. If the computer printout is incomplete, the department will use the completed proposal form to determine the total bid amount of the proposal.

(3) If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the department will use the lowest tabulation.

(4) If a unit bid price is illegible, the department will make a documented determination of the unit bid price for tabulation purposes.

(5) If a unit bid price has been entered for both the regular bid and a corresponding alternate bid, the department will determine the option that results in the lowest total cost to the state and tabulate as such. If both the regular and alternate bids result in the same cost to the state the department will select the regular bid item or items.

~~[(6) If a bidder submits an electronic bid and the diskette furnished is unusable by the department, then the required computer printout will be used to determine the total bid amount of the proposal.]~~

~~[(7) If the unit bid prices or the total bid amount reflected by the electronic bid differs from the amounts reflected on the required computer printout, then the amounts reflected on the printout will be used to determine the total bid amount.]~~

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this title (relating to Acceptance, Rejection, and Reading of Proposals, and Tabulation of Bids). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the low bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid; or

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces.

(b) Except as provided in subsection (c) or (d) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with the Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

(d) For a maintenance contract involving a bid amount of less than $100,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public, or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's proposal guaranty upon execution of that contract. The lowest bidder may be considered in default and will be subject to debarment under §29.21, et seq.

(e) [~~(d)~~] Contracts with an engineer's estimate of less than $300,000 may be awarded or rejected by the executive director or the [~~executive~~] director's designee under the same conditions and limitations as provided in subsections (a)-(c) of this section.

§9.18. After Contract Award.

(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) [~~paragraph (2)~~] of this subsection [~~and subparagraph (C) of this paragraph~~], within 15 days after written notification of award of a contract, the successful bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by the Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law; [~~and~~]

(B) a certificate of insurance showing coverages in accordance with contract requirements; and

(C) when required, written evidence of current good standing from the Comptroller of Public Accounts.

(2)[~~(C)~~] [~~Exception.~~] A successful bidder on a routine maintenance contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the department's order to begin work.

(3) [~~(2)~~] Within the time specified in [~~15 days after award of~~] the contract, the successful bidder on a construction contract containing a DBE or HUB goal, who is not a DBE or HUB, must submit all the information required by the department in accordance with §9.58(d) of this title (relating to Contract Compliance) [~~relating to the DBE or HUB participation to be used to achieve the contract's DBE or HUB goal~~]. The successful bidder must comply with paragraph (1) [~~(1)(A) and (B)~~] of this subsection within 15 days after written notification of acceptance by the department of the successful bidder's documentation to achieve the DBE or HUB goal.

~~[(b) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred.]~~

(b) [~~(c)~~] Proposal guaranty.

(1) Apparent low bidder. The department will retain the proposal guaranty of the successful bidder until after the contract has been awarded, executed, and bonded. If the successful bidder does not comply with subsection (a) of this section, the proposal guaranty will become the property of the state, not as a penalty but as liquidated damages; provided, however, the department may, based on documentation submitted by the contractor, grant a 15-day extension to comply with the requirements under subsection (a)(3) [~~(a)(2)~~] of this section. A bidder who forfeits a proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the proposal guaranty.

(2) Other bidders. Not later than 72 hours after bids are opened, the department will mail the proposal guaranty of all bidders except the apparent low bidder to the address specified on each bidder's return bidder's check form included in the proposal.

§9.19. Emergency Contract Procedures.

(a) Purpose. In accordance with Transportation Code, Chapter 223, Subchapter C [~~Texas Civil Statutes, Article 6674h-2~~], the department is authorized under certain conditions to award highway improvement contracts in cases of emergency. This section provides for an alternate procedure for the expedited award of highway improvement contracts to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with other laws, this subchapter, or other sections of Part I of this title.

(b) Certification of emergency.

(1) A district engineer who identifies an emergency situation in the geographic area under his or her jurisdiction and determines that expedited action is required shall immediately notify the executive director or the director's [~~his~~] designee not below the level of deputy executive director to describe the fact and nature of the emergency. Upon receiving authorization to proceed, the district engineer may initiate procedures for the award of an emergency contract. All such notification will be documented in writing.

(2) Examples of types of work which may qualify for emergency contracts include but are not limited to emergency repair or reconstruction of streets, roads, highways, and bridges; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards; provided, however, that in each instance, the proposed work must satisfy the requisites of emergency as defined in this subchapter.

(3) Before the contract is awarded, the executive director or the director's [~~his~~] designee not below the level of deputy executive director must certify in writing the fact and nature of the emergency giving rise to the award.

(c) Contractor eligibility. To be eligible to bid on an emergency contract [~~project~~], a contractor must be included in the department's list of prequalified bidders pursuant to §9.12 of this title (relating to Qualification of Bidders [~~and Registration of Subcontractors~~]) or must complete a bidder's questionnaire in a form prescribed by the department.

(d) Notification of prospective bidders.

(1) After an emergency is certified, the district engineer will review the department's file of eligible bidders and, if there is a sufficient number of firms, notify at least three of those firms [~~the purpose emergency contractors~~].

(2) Consistent with and contingent upon the nature of the emergency, the district engineer may contact prospective bidders by telephone, letter, telefacsimile, or other appropriate form of communication.

(3) The district engineer will inform each prospective bidder of the nature of the emergency and furnish specifications for the remedy, including time constraints, bonding and insurance requirements, and any additional information needed for the prospective bidder to prepare a work plan and calculate the cost.

(4) If no eligible contractor is able to provide the required type of service, the district engineer may take any measure necessary to identify and locate an available contractor who is able to provide the required service. If selected, the prospective contractor thus identified must complete the bidder's questionnaire prior to final approval of the award.

(e) Bidding requirements.

(1) A prospective bidder's proposal [~~response~~] must be in writing and must include:

(A) a price for performing the work; and

(B) a response to each item in the district engineer's specifications if the price is based on other than unit price.

(2) If the district engineer so authorizes, the prospective bidder may submit an oral bid which must be confirmed in writing within 24 hours.

(f) Letting procedures.

(1) The district engineer will review the bids and, if awarded, shall award the contract to the best bidder and document the basis for the award. As used in this subsection, the best bidder is that firm best able to respond to the emergency in a timely manner and fulfill the state's priority needs as determined by the district engineer.

(2) Each bidder will be notified as soon as possible after the award is made, with written confirmation to follow.

(g) Contract.

(1) The department shall prescribe the form of the emergency contract and may include therein such matters and specifications as it deems advantageous to the state, including but not limited to provisions which address the specifications for completion of work, cost to perform the work, the basis for payment, time period needed to complete the work, control of work, insurance and bonding requirements, and any general or special conditions mutually agreed upon by the department and the contractor.

(2) Each such contract shall be made in the name of the State of Texas, signed by the executive director or the director's [~~his~~] designee not below the level of district engineer on behalf of the department, and signed by the contracting party.

(3) The contractor must furnish satisfactory proof of insurance and bonds before any work is performed.

(4) The contract must be fully executed before any work is begun.

(5) The certification required in subsection (b) [~~(a)~~] of this section must be attached to the contract.

(h) Exceptions. If the district engineer determines that the magnitude and extremity of the emergency require instantaneous action by the contractor in order to alleviate an immediate detrimental impact on public health and safety, and the executive director has so noted in the certification of the emergency, the following exceptions are permitted.

(1) The district engineer may authorize the contractor to begin work:

(A) without a signed contract, provided the contract is signed within 24 hours after work begins; and

(B) without bonds and proof of insurance, provided they are furnished not more than three days after work begins.

(2) The executive director or deputy executive director may authorize the waiving of bonds or insurance requirements if it is determined that such requirements cannot be met prior to completion of the work or would prevent the timely performance of work to the detriment of public health, safety, or welfare.

(i) Reports to the commission. Not later than 24 hours after the contract is awarded, the district engineer shall notify the executive director of the award of the emergency contract. Not later than the fifth working day following the date on which the contract is awarded, the executive director shall furnish each member of the commission written notification of the details of the emergency conditions and the award.

§9.20. Partial Payments.

Highway improvement contracts may provide for partial payments.

(1) Construction and preventive maintenance contracts. Construction contracts and preventive maintenance contracts will provide for partial payments of an amount not exceeding 95% of the value of the work done, except as provided in paragraph (2) of this section. The department will retain 5.0% of the contract price until the entire work has been completed and accepted, except as provided in paragraphs (2) and (3) of this section.

(2) Construction and preventive maintenance contracts involving the use of nonhazardous recycled materials. Construction contracts and preventive maintenance contracts involving the use of nonhazardous recycled materials as listed in the contract specifications will provide for partial payments of an amount not exceeding 96% of the value of the work done. Nonhazardous recycled materials will be as defined in the contract specifications and special provisions. Prior to beginning of work, the contractor must identify the quantities of nonhazardous recycled materials to be used as prescribed in the contract specifications. Once the contractor's commitment to utilize nonhazardous recycled materials has been established, the department will retain 4.0% of the contract price until the entire work has been completed and accepted, except as provided in paragraph (3) of this section.

(3) Construction and preventive maintenance contracts involving separate vegetative establishment, maintenance, or performance periods. The department may release a portion of the amount retained under paragraph (1) or (2) of this section when the work is completed, provided a sufficient amount of the contract price is retained to ensure satisfactory completion of the separate vegetative establishment, maintenance, or performance period.

(4) At the request of a contractor and with the approval of the department and the comptroller of public accounts [~~state treasurer~~], the retained amount may be deposited under the terms of a trust agreement with a state or national bank that has its main office or a branch office [~~domiciled~~] in Texas as selected by the

contractor, provided that the contract price exceeds $300,000. The trust agreement shall provide that:

(A) interest earned on deposited funds will be paid to the contractor unless otherwise specified under the terms of the agreement;

(B) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(C) the department may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(D) any other terms and conditions prescribed by the department and the comptroller of public accounts [~~state treasurer~~] as necessary to protect the interests of the state.

(5) [~~(2)~~] Routine maintenance and professional services contracts. The department will not retain funds for routine maintenance contracts or contracts for the making of all necessary plans and surveys preliminary to construction, reconstruction, or maintenance.

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

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Richard Monroe
General Counsel
Texas Department of Transportation
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Chapter 18. MOTOR CARRIERS

Subchapter G. VEHICLE STORAGE FACILITIES

43 TAC §18.87, §18.96

The Texas Department of Transportation proposes amendments to §18.87 and §18.96, concerning Vehicle Storage Facilities.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 1376, 76th Legislature, 1999, amended Texas Civil Statutes, Article 6687-9a, Vehicle Storage Facility Act, to permit vehicle storage facility owners to provide notice by publication for certain impounded vehicles that are registered outside of Texas.

This bill also requires vehicle storage facility owners to maintain records in the same manner as if notice had been provided by registered or certified mail.

On July 15, 1999, the statutory Vehicle Storage Facility/Tow Truck Rules Advisory Committee met and waived preliminary and final review of proposed amendments to §18.87 and §18.96.

Amendments to §18.87 establish a new statutory option for notice by publication for vehicles registered outside Texas. These amendments specify the statutory criteria that must be met before notice by publication may be used.

These amendments also delete subsection (b)(3), which requires vehicle storage facility owners to provide notice by publication to owners or lienholders of vehicles registered in Texas, but whose names or addresses could not be determined. Notice to the last registered owner or lienholder of a Texas registered vehicle may only be made through registered or certified mail. Additionally, subsection (c) is deleted due to the amendments to the statute indicating notification in a newspaper is only valid for vehicles registered out of state and only when owner notification cannot be obtained. These deletions comply with the legislative intent as expressed by HB 1376. The remaining subsections (d) through (f) have been renumbered accordingly.

Amendments to §18.96, update statutory references and require vehicle storage facilities to keep a copy of all notices, whether mailed or published.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications to the state and local governments as a result of implementing the proposed amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Lawrance R. Smith, Director, Motor Carrier Division, has certified that there will be minimal impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed amendments will be to facilitate compliance with the newly-adopted statutory requirements for the notification of owners of stored vehicles. The effect on small businesses is the increased efficiency in the notification of stored vehicles as well as the benefit of improved record maintenance by vehicle storage facilities.

SUBMITTAL OF COMMENTS

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

STATUTORY AUTHORITY

The amended sections are 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 Texas Civil Statutes, Article 6687-9a, which provides for department regulation of vehicle storage facilities.

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

§18.87. Notifications Regarding Towed Vehicles.

(a) Applicability. If a vehicle is removed by the owner within 24 hours from the time the operator receives the vehicle, notification as described in subsections (b)-(d) [~~(e)~~] of this section does not apply.

(b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF must notify the

vehicle's last registered owner and all recorded lienholders by certified or registered [~~certified/registered~~] mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles registered outside of Texas. After accepting for storage a vehicle registered outside of Texas, or outside of the United States, the VSF must notify the vehicle's last registered owner and all recorded lienholders [~~by certified/registered mail~~] within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle, by:

(A) certified or registered mail; or

(B) notice by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(i) the vehicle is registered in another state;

(ii) the operator of the storage facility submits a written request that is correctly addressed, with sufficient postage, and is sent by certified mail, return receipt requested, to the governmental entity by which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(iii) the identity of the last known registered owner cannot be determined;

(iv) the registration does not contain an address for the last known registered owner; and

(v) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(3) It shall be a defense to an action initiated by the department for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the governmental entity where the vehicle is registered.

[~~(3) Vehicle registrant unknown. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.~~]

[~~(c) Unclaimed or undeliverable notices. Regardless of place of vehicle registration, if the certified/registered letter is returned unclaimed, refused, or moved, left no forwarding address, publication in a newspaper is not required.~~]

(c) [~~(d)~~] Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark upon the written notice or on the date of newspaper publication of the notice.

(d) [~~(e)~~] Form of notifications. All mailed notifications must be correctly addressed and mailed with sufficient postage. Notices published in a newspaper may contain information for more than one vehicle. All mailed and published notifications shall state:

(1) the full registered name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(2) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released."

(3) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred, if the operator will be transferring a vehicle to a second lot due to the vehicle not being claimed within a certain time period;

(4) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(5) the VSF number preceded by the words "Texas Department of Transportation Vehicle Storage Facility License Number" or "TxDOT VSF Lic. No.;"

(6) a notice of the towed vehicle owner's right under Transportation Code, Chapter 685, to challenge the legality of the tow involved; and

(7) the name, mailing address, and toll-free telephone number of the Motor Carrier Division for purposes of directing questions or complaints.

(e) [~~(f)~~] Non-consent towed vehicle towed from private property. A VSF accepting a non-consent towed vehicle towed from private property must report that tow to the local law enforcement agency from the area where the vehicle was towed. This report must be made within two hours of receiving the vehicle, giving the vehicle's license plate number and issuing notification of state, vehicle identification number, and location from which it was towed. Facility records must indicate specifically to whom the stated information was reported and in what manner, as well as the time and date of the report.

§18.96. Disposal of Certain Vehicles.

(a) Applicability. No vehicle may be disposed of unless the vehicle storage operator has complied with all provisions of the Act, including but not limited to §13 and §14B concerning notification and disposal of abandoned vehicles.

(b) Notification of proposed disposal. A vehicle storage facility operator shall notify the vehicle owner and all recorded lienholders of the proposed disposal of the vehicle in accordance with §13(j) [~~§13(d)~~] of the Act concerning notification.

(c) Documentation and records. A vehicle storage facility operator shall keep under its care and custody complete and accurate records of any vehicle disposed of under §14B of the Act concerning abandoned vehicles. These records shall include, but are not limited, to:

(1) a copy of the VTR-265VSF form completed by the vehicle storage facility operator and provided to the vehicle buyer; and

(2) copies of all notifications issued to the vehicle owner and all recorded lienholders, regardless of whether the notifications were mailed or published.

(d) Public sale. A vehicle storage facility operator may dispose of a vehicle through a public sale in compliance with §14B of the Act concerning abandoned vehicles. Disputes over the sale or dispersal of proceeds from the sale of the vehicle may be pursued through a court of appropriate jurisdiction.

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

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

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Richard Monroe
General Counsel
Texas Department of Transportation

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Chapter 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

Subchapter B. GENERAL PERMITS

43 TAC §28.13

The Texas Department of Transportation proposes amendments to §28.13, concerning Time Permits.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments are necessary to implement the provisions of House Bill 1147 and House Bill 1538, 76th Legislature, 1999, and to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

Section 28.13 is amended to implement House Bill 1147 which requires proper lighting procedures for certain overlength loads transporting utility poles. Section 28.13 is also amended to implement House Bill 1538. The amendment in subsection (e)(4)(B) authorizes the department to issue an annual envelope permit that may be transferred between vehicles for certain superheavy or oversize equipment.

Section 28.13(e)(6)(G) is also amended to allow vehicles transporting utility poles to travel during hazardous road conditions, as described in §28.11(l)(1)(A) and (B), to restore electric services that have been interrupted or to prevent electric services from being interrupted. The public service provided by allowing these permitted vehicles to travel during emergency situations outweighs any potential hazards. Furthermore, subsection (d)(4) is amended to allow permitted vehicles to travel with one rear escort vehicle as opposed to both a front and rear escort vehicle. The amendment to remove the requirement for a front escort vehicle for certain overlength loads is being done at a customer's request. It has been determined that it will not pose any additional risk to the traveling public by not requiring a front escort for vehicles transporting utility poles. These amendments are necessary to improve services provided to the public and to enhance business practices for the department's customers.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments 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 amendments.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering or enforcing the amendments as proposed will be increased efficiency and effectiveness in the issuance of oversize and overweight permits, and streamlining the process for moving oversize and overweight vehicles and loads. There will be no impact on small businesses. Persons who choose to purchase annual permits as a replacement for single trip permits may realize time and cost savings, depending upon the number of single trip permits a permittee would have otherwise purchased.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments 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 October 11, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission 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 amendments.

§28.13. Time Permits.

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

(d) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of this section and the following conditions.

(1)-(3) (No change.)

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle is accompanied by [~~has a front and~~] a rear escort vehicle.

(e) Annual permits.

(1)-(3) (No change.)

(4) Envelope vehicle permits [~~permit~~].

(A) The department may issue an annual permit under Transportation Code, §623.071(c), to a specific vehicle [~~§623.071(3)~~], for the movement of superheavy or oversize equipment that cannot reasonably be dismantled. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(i) [~~(A)~~] Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

(I) [~~(i)~~] 12 feet in width;

(II) [~~(ii)~~] 14 feet in height;

(III) [~~(iii)~~] 110 feet in length; or

(IV) [~~(iv)~~] 120,000 pounds gross weight.

(ii) [~~(B)~~] Superheavy or oversize equipment operating under an annual envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(iii) [~~(C)~~] The fee for an annual envelope vehicle permit is $2,000, and is non-refundable.

(iv) [~~(D)~~] The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(v) [~~(E)~~] This permit authorizes operation of the permitted vehicle only on the state highway system.

(vi) [~~(F)~~] The permitted vehicle must comply with §28.11(d)(2) and (3) of this title.

(vii) [~~(G)~~] The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(viii) [~~(H)~~] A permit issued under this paragraph is non-transferable between permittees.

(ix) [~~(I)~~] A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) [~~(i)~~] the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) [~~(ii)~~] the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) [~~(J)~~] A single trip permit, as described in §28.12 of this title (relating to Single Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of $30 for the single trip permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that cannot reasonably be dismantled. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraph (A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(5) (No change.)

(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and distribution lines. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A)-(F) (No change.)

(G) The permitted vehicle may not travel during hazardous road conditions as stated in §28.11(l)(1)(A) and (B) except to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(H) [~~(G)~~] The speed of the permitted vehicle may not exceed 50 miles per hour.

(I) The permitted vehicle must display on the extreme end of the load:

(i) two red lamps visible at a distance of at least 500 feet from the rear;

(ii) two red reflectors that indicate the maximum width and are visible, when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet from the rear when directly in front of lawful lower beams of headlamps; and

(iii) two red lamps, one on each side, that indicate the maximum overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

[~~(H) There must at all times be displayed at the extreme rear end of the permitted vehicle a red flag or cloth of not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.~~]

(7) (No change.)

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

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Subchapter C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §28.30

The Texas Department of Transportation proposes amendments to §28.30, concerning Permits for Over Axle and Over Gross Weight Tolerances.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments are necessary to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

Section 28.30 is amended to clarify existing procedures for submitting permit applications by phone, by fax, and through the Internet. By striking language that specifically states a written application must be submitted and eliminating the requirement for a registration receipt, the department is enabling customers to submit applications by means other than mail. The section is also amended to allow the department to accept permit fees by additional methods of payment, which will include credit cards, escrow accounts, permit account cards, and cash.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments 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 amendments.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering or enforcing the amendments as proposed will be increased efficiency and effectiveness in the issuance of oversize and overweight permits, and streamlining the process for moving oversize and overweight vehicles and loads. There will be no impact on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments 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 October 11, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission 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, and Transportation Code, §201.932, which authorizes the Texas Transportation Commission to establish rules to provide for the filing of a license application by electronic means.

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

§28.30. Permit for Over Axle and Over Gross Weight Tolerances.

(a)-(d) (No change.)

(e) Application for permit.

(1) A person who desires to permit a vehicle as provided in this section, must submit an [~~a written~~] application to the MCD.

(2) (No change.)

(3) The application shall be accompanied by [~~the following documents or information~~]:

[~~(A) a copy of the current registration receipt of the power unit showing that the vehicle is currently registered for the maximum amount allowable for such vehicles;~~]

(A) [~~(B)~~] a base fee of $75 and an administration fee of $5.00; [~~and~~]

(B) [~~(C)~~] an original bond or letter of credit as required in subsection (d) of this section, unless previously filed by the applicant; and

(C) [~~(4) An applicant shall remit the total fees, which are nonrefundable, in the form of a check, cashier's check, or money order made payable to the State Highway Fund. In addition to the fees listed in paragraph (3) of this subsection, the applicant must also include~~] an additional fee based on the following schedule:
Figure: 43 TAC 28.30(e)(3)(c)
[~~Figure 1: 43 TAC §28.30(e)(4)~~]

(4) Payment of fees. Fees for permits issued under this subchapter are payable as required by §28.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(f) Issuance of permit and windshield sticker.

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

(5) Within 14 days of issuance of the permit, the department shall notify the county clerk of each county indicated on the application, and such notification shall contain or be accompanied by the following minimum information:

(A) (No change.)

(B) the vehicle identification number, license plate number, and registration state of the vehicle, and the permit number.

(g)-(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.

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Subchapter D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §§28.41-28.45

The Texas Department of Transportation proposes amendments to §§28.41-28.45, concerning Permits for Oversize and Overweight Oil Well Related Vehicles.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments are necessary to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

Sections 28.41-28.45 are amended to clarify existing procedures authorized by the department to allow applicants to submit applications through the Internet and also to clarify existing registration requirements for permits for oversize and overweight oil well related vehicles. These amendments are necessary to help streamline and provide consistency for the process of submitting applications electronically.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amend-

ments. There are no anticipated economic costs for persons required to comply with the amendments 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 amendments.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering or enforcing the amendments as proposed will be increased efficiency and effectiveness in the issuance of oversize and overweight permits, and streamlining the process for moving oversize and overweight vehicles and loads. There will be no impact on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments 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 October 11, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission 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, and Transportation Code, §201.932, which authorizes the Texas Transportation Commission to establish rules to provide for the filing of a license application by electronic means.

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

§28.41. General Requirements.

(a) General information.

(1) Permits issued under this subchapter, with the exception of permits issued under §28.45 of this title (relating to Permits for Vehicles Transporting Liquid Products Related to Oil Well Production), are subject to the requirements of this section.

(2) (No change.)

(b) Prerequisites to obtaining an oversize/overweight permit.

[~~(1) Registration requirements.~~] A unit permitted under this subchapter must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, or have the distinguishing license plates as provided by Transportation Code, §502.276, if applicable to the vehicle [~~licensed with:~~]

[~~(A) a permit plate;~~]

[~~(B) 72-hour or 144-hour temporary registration; or~~]

[~~(C) a truck license as specified in Transportation Code, Chapter 502~~].

[~~(2) Trailer-mounted units. A trailer-mounted unit must be towed by a truck-tractor licensed in accordance with Transportation Code, Chapter 502.~~]

(c)-(h) (No change.)

§28.42. Single-Trip Mileage Permits.

(a) General information.

(1) (No change.)

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) routes the vehicle [~~is routed~~] from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

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

(b) Maximum permit weight limits.

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

(5) A unit that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," as shown in subsection (f) of this section, will be eligible, on an individual case-by-case [~~case by case~~] basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) (No change.)

(c) Permit application and issuance.

(1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the MCD by telephone, [~~or~~] facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i)-(vii) (No change.)

(B) (No change.)

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the MCD will advise the applicant of the permit number, and will provide [~~fax~~] a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) (No change.)

(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by the following formula.
Figure: 43 TAC §28.42(d)(2)

(A)-(B) (No change.)

(C) Registration reduction.

[~~(i)~~] A unit registered [~~licensed~~] for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

[~~(ii)~~ ~~A unit licensed with a permit plate or 72/144 hour temporary registration will not receive a registration reduction in the computation of the permit fee.~~]

(D) (No change.)

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

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

§28.43. Quarterly Hubometer Permits.

(a) General information.

(1)-(5) (No change.)

~~[(6) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.]~~

(b) Maximum permit weight limits.

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

(5) A unit that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," as shown in §28.42(f) of this title, will be eligible, on an individual case-by-case [~~case by case~~] basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) (No change.)

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) The applicant for an initial quarterly hubometer permit must submit a completed application to the MCD by telephone, facsimile, [~~or~~] mail, or Internet. The application shall include, at a minimum, the following information:

(i)-(vi) (No change.)

(B) (No change.)

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the MCD will provide [~~fax~~] the permit to the applicant if requested, and will also provide [~~mail the permit and~~] a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) (No change.)

(2) Upon receipt of the renewal application, the MCD will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees and refunds.

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

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by the following formula.

Figure: 43 TAC §28.43(e)(3)

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

(D) Registration reduction.

~~[(i)]~~ A unit registered [~~licensed~~] for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

~~[(ii)~~ ~~A unit licensed with a permit plate or a 72/144 hour temporary registration does not receive a registration reduction in the computation of the permit fee.]~~

(E) (No change.)

(4)-(5) (No change.)

(f) (No change.)

§28.44. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §28.41 of this title (relating to General Requirements).

(1) Annual self-propelled oil well servicing unit permits.

(A) A unit that does not exceed legal size and weight limits and is registered [~~licensed~~] with a permit plate must purchase an annual permit issued under this section.

(B) (No change.)

(2) Annual oil field rig-up truck permits.

(A) (No change.)

(B) An oil field rig-up truck, operating under an annual permit, must be registered [~~licensed~~] in accordance with Transportation Code, Chapter 502.

(C)-(D) (No change.)

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

(b) Permit application and issuance.

(1) Initial permit application. An applicant for an annual permit under this section must submit a completed application by telephone, facsimile, [~~or~~] mail, or Internet. The application shall include, at a minimum, the following information:

(A)-(F) (No change.)

(2) Permit issuance. Upon receipt of the application and the appropriate fees, the MCD will provide [~~fax~~] the permit to the applicant if requested, and will also provide [~~mail the permit and~~] a renewal application form to the applicant.

§28.45. Permits for Vehicles Transporting Liquid Products Related to Oil Well Production.

(a) General provisions. This section applies to the following vehicles which may secure an annual permit issued under provisions of Transportation Code, Chapter 623, Subchapter G, to haul liquid loads over all state-maintained highways.

(1) A vehicle combination consisting of a truck-tractor and semi-trailer specifically designed with a tank and pump unit for transporting:

(A) (No change.)

(B) unrefined liquid petroleum products or liquid oil well waste products [~~product~~] from an oil well not connected to a pipeline.

(2) (No change.)

(b) Application for permit.

(1) A request for an annual permit issued under Transportation Code, Chapter 623, Subchapter G, and this section, must be submitted to the MCD by telephone, facsimile, mail, or Internet.

(2) (No change.)

(c)-(e) (No change.)

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

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

TRD-9905485

Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 463-8630

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Subchapter E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §§28.62-28.64

The Texas Department of Transportation proposes amendments to §§28.62-28.64, concerning Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments are necessary to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

Sections 28.62-28.64 are amended to clarify existing procedures authorized by the department for submitting applications through the Internet. In addition, §§28.62-28.64 are being amended to clarify and streamline existing registration requirements for permits for oversize and overweight unladen lift equipment motor vehicles.

FISCAL NOTE

Thomas Doebner, Interim Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments 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 amendments.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering or enforcing the amendments as proposed will be increased efficiency and effectiveness in the issuance of oversize and overweight permits, and streamlining the process for moving oversize and overweight vehicles and loads. There will be no impact on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments 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 October 11, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission 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, and Transportation Code, §201.932, which authorizes the Texas Transportation Commission to establish rules to provide for the filing of a license application by electronic means.

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

§28.62. Single Trip Mileage Permits.

(a) General information.

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

(3) A crane permitted under Transportation Code, Chapter 623, Subchapter J, must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101 or have the distinguishing license plates as provided by Transportation Code, Section 502.276 if applicable to the vehicle [~~licensed with either:~~]

[~~(A) a permit plate;~~]

[~~(B) a 72-hour or 144-hour temporary registration; or~~]

[~~(C) a truck license as specified in Transportation Code, Chapter 502~~].

(4)-(6) (No change.)

(b) Maximum permit weight limits.

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

(5) A crane that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," shown in subsection (f) of this section, will be eligible, on an individual case-by-case [~~case by case~~] basis, for a single-trip mileage permit only. Permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) (No change.)

(c) Permit application and issuance.

(1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the MCD by telephone, [~~mail or~~] facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i)-(vii) (No change.)

(B) (No change.)

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the MCD will advise the applicant of the permit number, and will provide [~~fax~~] a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) (No change.)

(2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by the following formula:
Figure: 43 TAC §28.62(d)(2)

(A)-(B) (No change.)

(C) Registration reduction.

(i) A crane registered [licensed] for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

[(ii) A crane licensed with a permit plate or 72/144-hour temporary registration does not receive a registration reduction in the computation of the permit fee.]

(D) (No change.)

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

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

§28.63. Quarterly Hubometer Permits.

(a) General information.

(1)-(3) (No change.)

(4) A crane permitted under this section must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101, or have the distinguishing license plates as provided by Transportation Code, Section 502.276, if applicable to the vehicle [licensed with either:]

[(A) a permit plate;]

[(B) 72-hour or 144-hour temporary registration; or]

[(C) a truck license as specified in Transportation Code, Chapter 502].

(5)-(10) (No change.)

(b) Maximum permit weight limits.

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

(5) A crane that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," shown in §28.62(f) of this title, will be eligible, on an individual case-by-case [case by case] basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) (No change.)

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) A completed application for an initial quarterly hubometer permit must be submitted to the MCD by telephone, facsimile, [or] mail, or Internet. The application shall include, at a minimum, the following information:

(i)-(vi) (No change.)

(B) (No change.)

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the MCD will provide [fax] the permit to the applicant upon request, and will also provide [mail the permit and] a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) [Application for renewal or closeout of quarterly hubometer permit.]

(A) The applicant must complete and submit a renewal application form to the MCD for each permit that is to be renewed or closed out.

[(i) The renewal application form must be submitted not more than 14 days prior to the expiration date of the original permit.]

[(ii) An applicant with two or more permits that expire on the same day must renew each permit that is expiring or close out each permit that is not being renewed.]

(2) [(B)] Upon receipt of the renewal application, the MCD will verify crane information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

[(2) Issuance of renewed quarterly hubometer permit. Upon receipt of the permit fee, the MCD will fax the renewed permit to the applicant if requested, and will mail the permit and a renewal application form to the applicant.]

(e) Permit fees and refunds.

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

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by the following formula:

Figure: 43 TAC §28.63(e)(3)

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

(D) Registration reduction.

(i) A crane registered [licensed] for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

[(ii) A crane licensed with a permit plate or a 72/144-hour temporary registration does not receive a registration reduction in the computation of the permit fee.]

(E) (No change.)

(4)-(5) (No change.)

§28.64. Annual Permits.

(a) (No change.)

(b) Permit application and issuance.

(1) Initial permit application. An applicant for an annual permit under this section must submit a completed application and the appropriate fees by telephone, facsimile, [or] mail, or Internet. The application shall include, at a minimum, the following information:

(A)-(F) (No change.)

(2) Permit issuance. Upon receipt of the application and the appropriate permit fee, the MCD will verify the application information, provide [fax] the permit to the applicant if requested, and also provide [will mail the permit and] a renewal application form to the applicant.

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 August 30, 1999.

TRD-9905486
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 1999
For further information, please call: (512) 463-8630

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Chapter 30. AVIATION

Subchapter E. REGULATION OF AIRCRAFT ON WATER

43 TAC §§30.401-30.405

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Department of Transportation proposes new §§30.401-30.405, concerning regulation of aircraft on water. These actions are necessary to conform with statutory changes and are simultaneously being adopted on an emergency basis.

EXPLANATION OF PROPOSED NEW SECTIONS

House Bill 1620, 76th Legislature, 1999, enacted Transportation Code, Chapter 26, relating to the regulation of aircraft on water. House Bill 1620 provides that a governmental entity that owns, controls, or has jurisdiction over a navigable body of water may not, in an area in which motorized boats are permitted, prohibit the takeoff, landing, or operation of an aquatic aircraft, or regulate or require a permit or fee for the operation of an aquatic aircraft, without approval of the Texas Department of Transportation. Proposed new §§30.401-30.405 implement and administer the department's responsibilities under Chapter 26.

Section 30.401 describes the purpose for the regulation of aquatic aircraft operations on water.

Section 30.402 provides definitions for words and terms used in this subchapter.

Section 30.403 describes the application procedures for governmental entities applying to the department for approval of a prohibition or limitation of aquatic aircraft operations on waters within their jurisdiction. The information required is necessary to enable the department to evaluate the approval criteria described under §30.404.

Section 30.404 provides that the commission will, as provided by Transportation Code, Chapter 26, approve the proposed prohibition or limitation by order if it determines that safety concerns justify the prohibition or limitation. In making this determination, the commission will consider various criteria prescribed by statute. The section also provides that the commission will consider the recommendation of the executive director and, to ensure comprehensive consideration of all safety-related factors, any other factors that relate to the safe operation of aquatic aircraft, such as migratory waterfowl patterns, seasonal hunting, fishing, and tourism.

To comply with House Bill 1620 and to ensure proper notice to all interested parties, §30.405 provides that the commission will publish notice of the approval of a prohibition or limitation in the Texas Register, and requires the governmental entity to publish the approved prohibition or limitation in a local daily newspaper and notify the Federal Aviation Administration.

FISCAL NOTE

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

David Fulton, Director, Aviation Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Fulton has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing or administering the new sections will be the effective implementation of newly enacted legislation that ensure the safe operation of aquatic aircraft on certain bodies of water. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to David Fulton, Director, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on October 11, 1999.

STATUTORY AUTHORITY

The new sections are proposed 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 more specifically, Transportation Code, Chapter 26, which requires the department to adopt rules for the regulation of aircraft on water.

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

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 August 30, 1999.

TRD-9905491
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 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 1. ADMINISTRATION

Part 12. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 251. REGIONAL PLANS–STANDARDS

1 TAC §251.11

The Advisory Commission on State Emergency Communications (ACSEC) has withdrawn from consideration for permanent adoption proposed new §251.11, which appeared in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4113). The new section is being reproposed elsewhere in this issue of the *Texas Register*.

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 August 23, 1999.

TRD-9905342
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: August 23, 1999
For further information, please call: (512) 305-6933

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TITLE 22. EXAMINING BOARDS

Part 15. TEXAS STATE BOARD OF PHARMACY

Chapter 309. GENERIC SUBSTITUTION

22 TAC §309.10

The Texas State Board of Pharmacy has withdrawn from consideration for permanent adoption the new §309.10, which appeared in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2593).

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

TRD-9905449
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: August 27, 1999
For further information, please call: (512) 305-8028

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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 5. GENERAL SERVICES COMMISSION

Chapter 123. FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION

Subchapter B. BUILDING CONSTRUCTION ADMINISTRATION

1 TAC §123.18

The General Services Commission adopts amendments to Title 1, T.A.C. §123.18 concerning bidding procedures to state construction contracts, without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register (24 TexReg 5093)* and will not be republished.

The adoption of the amendments to Title 1, T.A.C. §123.18 create a more efficient and streamlined bidding procedure.

The adoption of the amendments to Title 1, T.A.C. §123.18 will eliminate the requirement for a contractor to receive permission from the Commission to obtain bidding documents.

No comments were received regarding amendments to Title 1, T.A.C. §123.18.

The amendments to Title 1, T.A.C. §123.18 are adopted under the authority of the Texas Government Code, Title 10, Subtitle D, Chapter 2166, §2166.062, which provides the General Services Commission with the authority to promulgate rules consistent with the code.

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 August 26, 1999.

TRD-9905444
Judy Ponder
General Counsel
General Services Commission
Effective date: September 15, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–3960

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Part 12. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 251. REGIONAL PLANS-STANDARDS

1 TAC §251.10

The Advisory Commission on State Emergency Communications (ACSEC) adopts §251.10, concerning Guidelines for the Implementation of 9-1-1 Wireless Services, with changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4108).

The rule will assist local governments in the procurement, installation, and implementation of wireless E9-1-1 services to support or facilitate the delivery of a wireless emergency call to an appropriate emergency response agency. The proposed guidelines will provide direction for implementing wireless E9-1-1 services funded with 9-1-1 funds.

The ACSEC received comments from XYPoint Corporation and Casey, Gentz & Sifuentes, L.L.P., on behalf of their client, PrimeCo Personal Communications; and Greater Harris County 9-1-1 Emergency Network, on behalf of the following Emergency Communications Districts: Bexar Metro; Brazos County; Calhoun County; DENCO Area 9-1-1; 9-1-1 Network of East Texas; El Paso County; Galveston County; Harris County; Henderson County; Howard County; Kerr County; Lubbock County; McLennan County; Montgomery County; Potter-Randall; Tarrant County; and, Texas Eastern Network.

XYPoint's comments question the ACSEC's authority regarding wireless implementation, and outline concerns regarding compliance with legislative intent, dictating technological solutions, as well as third party relationships. PrimeCo's comments also center around compliance with federal mandates and state legislation, objections to delays and lack of time frames relating to the review and amendment process, concerns that ACSEC will dictate technological solutions, as well as challenging the ACSEC's authority to define allowable costs. Xypoint and PrimeCo also comment about the Commission's authority and the enabling legislation's intent. These companies' comments were reiterations of the detailed comments submitted in a prior comment period, and are not incorporated into the proposed rule.

Based upon the enabling legislation, the Commission is within its realm of authority in providing the structure and rules by which to implement wireless service in Texas. As stated in House Bill 1983 (HB), Section 13, 771.051, Powers and Duties of the Commission, states that "the Commission is the state's

authority on emergency communications." The legislation continues that the Commission has the authority and responsibility to develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans under Section 771.055, including requirements that the plans provide for features the Commission considers appropriate. Section 36, of HB 1983 further clarifies the Commission's role as it relates to wireless service stating that the Commission shall implement Phase I of the wireless E9-1-1 enhancements set forth in FCC Docket 94-102 for at least 75 percent of the population provided with 9-1-1 service. Further, Section 13. 9a) 9 and 10, clarifies the Commission's authority and responsibility to coordinate emergency communication services and providers, and to arrange cooperative purchases of equipment and services for emergency communications authorities. While the Commission's power, authority and responsibilities involve the 24 regional planning commissions, other 9-1-1 entities, such as Emergency Communications Districts and Home Rule Cities may voluntarily adopt Commission rules and policy; however, it is a local decision and beyond the realm of the Commission's authority.

The Greater Harris County District and above-named Districts' comments were made in order to promote parity in reimbursement of wireless and wireline services and to clarify how the Commission may consider allowable costs. Their comments were considered and language was added to the rule in order to promote parity in reimbursement of wireless and wireline services, and to avoid inconsistencies between ACSEC rules and the Public Utility Commission's (PUC) final decisions in pending and future PUC dockets.

The new section is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

§251.10. Guidelines for Implementing Wireless E9-1-1 Service.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in this section, unless the context and use of the word or terms clearly indicates otherwise.

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

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

(3) 9-1-1 Equipment - Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) 9-1-1 Governmental Entity - An RPC or District, as defined in Texas Health and Safety Code Chapter 771.055, and Chapter 772, Subchapter B, C, or D, that administers the provisioning of 9-1-1 service.

(5) 9-1-1 Governmental Entity Jurisdiction - As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(6) 9-1-1 Operator - The PSAP operator receiving 9-1-1 calls.

(7) 9-1-1 Network Provider - The current operator of the selective router/switching that provides the interface to the PSAP for 9-1-1 service.

(8) Automatic Location Identification (ALI) Database - A computer database used to update the Call Back Number information of wireless end users and the Cell Site/Sector information for Phase I call delivery, as well as the X, Y coordinates for longitude and latitude for Phase II call delivery.

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

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

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

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

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

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

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

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

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

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

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

(20) FCC - The Federal Communications Commission.

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

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

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

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

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

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

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

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

(27) National Emergency Number Association (NENA).

(28) NENA 02-001 - A standard set of protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee (June 1998 revision).

(29) NENA 03-002 - A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol, referenced in paragraph (24) of this subsection, is the corollary protocol of NENA 03-002.

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

(31) Phase I E9-1-1 Service - The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number and Cell Site/Sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 Governmental agency.

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

(33) Phase I E9-1-1 Service Area(s) - Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service. Collectively, all such geographic portions of the 9-1-1 Governmental Entity's Jurisdiction subject to this rule shall be referred to herein as the "Phase I E9-1-1 Service Areas".

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

(35) Regional Strategic Plans - Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of Section 771.056(d), the Advisory Commission on State Emergency Communications (ACSEC) shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

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

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

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

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

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

(41) WSP - The named wireless service provider and all its affiliates (collectively referred to as "WSP").

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

(43) Wireless 9-1-1 call - A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1"

(and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(44) Wireless End User - Any person or entity receiving service on a WSP Wireless System.

(45) WSP Wireless System - Those mobile switching facilities, Cell Sites, and other facilities that are used to provide wireless Phase I & II E9-1-1 service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771.051, the Advisory Commission on State Emergency Communications (Commission) shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation and operation of equipment, database and network services and facilities designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. As mandated by FCC Order, and as authorized by Chapter 771, section .0711, of the Texas Health and Safety Code, the ACSEC shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee to provide for the automatic number identification and automatic location identification of wireless E9-1-1 calls. Furthermore, the Commission recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Automatic number and location information is crucial data in facilitating the delivery of an emergency call. It is the policy of the Commission that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of wireless E9-1-1 services funded in part or in whole by the 9-1-1 funds referenced above. Prior to the Commission considering allocation and expenditure of 9-1-1 funds for implementation of wireless Phase I and/or Phase II wireless E9-1-1 services, a COG and/or District receiving 9-1-1 fees and/or equalization surcharge funds from the Commission shall meet the following requirements listed in paragraphs (1)-(15) of this subsection:

(1) Commission Survey and Review - Prior to any wireless E9-1-1 Service implementation in any regional council (COG) area, the Commission shall solicit in writing from all WSPs within the State of Texas a detailed description of its technical approach to implementing Phase I and/or Phase II (where applicable); and, the cost associated with that implementation. The Commission will review and evaluate this information and consider its appropriateness for implementation. Upon completion of this process, the Commission will communicate these WSP evaluations to the regional councils (COGs), and notify the COGs that they may request and implement wireless E9-1-1 service as described in paragraphs (2)-(15) of this subsection.

(2) Phase I E9-1-1 Implementation - The provisioning for delivery of a caller's mobile directory number and the location of a cell site receiving a 9-1-1 call to the designated PSAP. Implementation of Phase I service must be accomplished within 6-months of written request according to the FCC Order. Prior to implementing Phase I wireless E9-1-1 service, the following conditions must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) sufficient funding mechanism for the recovery of all reasonable costs relating to the provisioning of such service is in place;

(B) the PSAPs administered by the 9-1-1 entity are capable of receiving and using the data associated with such service;

(C) 9-1-1 entity requests such service in writing from the service provider;

(D) an executed contract between 9-1-1 entity and WSP for such service, and which includes a wireless service work plan, fee schedule and standards.

(3) Phase II E9-1-1 Implementation - provisioning for delivery of a caller's mobile directory number and the caller's location, within 125 meters RMS level of accuracy, to the designated PSAP. Implementation of Phase II service will be consistent with the FCC Order. Prior to implementing Phase II wireless E9-1-1 service, the following conditions, in addition to those listed in paragraph (2) of this subsection must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) provision for digital base map and graphical display, in conjunction with approved Strategic Plan and Commission §251.7 of this title (relating to Guidelines for Implementing Integrated Services);

(B) demonstrate, and provide in writing, that the location determination technology and digital base map are capable of identifying the caller's location within 125 meters in at least 67% of calls delivered, or the degree of accuracy as required by FCC Order;

(C) a revised executed contract between 9-1-1 entity and WSP for such service and which includes a wireless service work plan, fee schedule and standards.

(4) Responsibilities - It shall be the responsibility of the 9-1-1 entity, the WSP and any necessary third party (including, but not limited to, 9-1-1 Network Provider/Local Exchange Carrier, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) to fully cooperate for the successful implementation and provision of Phase I and Phase II E9-1-1 service. These same parties are also responsible for ensuring that the deployment and implementation of their wireless E9-1-1 solution is thoroughly interoperable with other wireless E9-1-1 solutions, including permitting the proper and seamless transfer of wireless E9-1-1 emergency call information to PSAPs between differing wireless E9-1-1 solutions. The Commission acknowledges that the successful and timely provision of such service is dependent upon the timely and effective performance and cooperative efforts of all of the parties listed in this section. All parties shall comply with FCC Order, Texas laws and Commission Rules.

(5) Deployment - Unless otherwise approved by the Commission, the 9-1-1 entity and the WSP will agree upon one of the following methods of wireless call delivery listed in subparagraphs (A)-(D) of this paragraph:

(A) Call Associated Signaling (CAS);

(B) Non-Callpath Associated Signaling (NCAS);

(C) Hybrid CAS/NCAS Architecture;

(D) Exceptions to CAS, NCAS, or Hybrid CAS/NCAS, as in the case of standalone ALI environments - specific solution should be illustrated and demonstrated prior to execution of contract.

(6) Data Delivery - Unless otherwise approved by the Commission, the 9-1-1 entity and the WSP will agree upon one of the following methods for the delivery of data elements necessary for Phase I E9-1-1 service. The 9-1-1 entity and WSP shall provision for redundancy within all methods.

(A) SS7/ISUP - WSP will deliver the twenty digits of information necessary for Phase I services by sending SS7 signaling messages in ISUP format to the 9-1-1 selective router;

(B) Feature Group D - WSP will deliver the twenty digits of information necessary for completion of Phase I services to the 9-1-1 selective router in the standard format required;

(C) Service Control Point (SCP) - WSP will route all necessary information directly to the 9-1-1 entity's ALI database through an independent service control point.

(7) Standards - Unless an exception is approved by the Commission, the 9-1-1 entity, the WSP and any third party/vendor, will ensure that all appropriate and applicable industry standards be adhered to in provisioning E9-1-1 wireless service. These standards shall include, but not be limited to:

(A) J-Std 34 and NENA 03-002 for CAS and Hybrid CAS/NCAS deployments;

(B) NENA 02-001 as benchmark data standards. All parties shall cooperate fully in the development and maintenance of all wireless data, such as cell site locations, Emergency Service Routing Digits, selective routing databases, and timely updates of any such data;

(C) Any and all modifications to these standards, currently under development by appropriate standards bodies, for CAS, NCAS, Hybrid CAS/NCAS, and Phase II/LDT deployments. Any such pending standard should be adhered to upon adoption;

(D) The Commission hereby establishes a standard Class of Service (COS) to be used by the 9-1-1 entity's PSAPs and the WSPs to identify calls delivered to the PSAP as WRLS (wireless), or until a standard is established by NENA;

(E) Commission §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment) for provisioning of TTY/TDD equal access consistent with FCC rules and orders;

(F) All applicable standards shall be agreed upon by both parties to the wireless service contract.

(G) The Commission may approve exceptions to the standards listed in this section upon demonstration by the WSP and PSAP of valid reasons and comparable efficiency and cost.

(8) Reasonable Cost Elements - The Commission will consider that the reasonable costs incurred by the WSP to be reimbursed by the 9-1-1 entity may include the following listed in subparagraphs (A)-(F) of this paragraph:

(A) Trunking - To provide network connectivity between the necessary network elements, the following costs listed in clauses (i)-(vi) of this subparagraph shall be allowed:

(i) From mobile switching center (MSC) to selective router;

(ii) From selective router to PSAP;

(iii) From PSAP to ALI Database;

(iv) From mobile switching center (MSC) to service control point (SCP);

(v) From service control point (SCP) to ALI Database;

(vi) From ALI Database to PSAP.

(B) Network - To provision the transference of necessary digits from the selective router to the PSAP in a CAS deployment, an upgrade or modification to the selective router will be necessary. The Commission will not consider this as an allowable cost.

(C) Database - To provision and deliver the necessary data through the network and to the PSAP for Phase I compliance, the following costs listed in clauses in (i)-(ii) of this subparagraph will be allowed:

(i) Non-recurring costs associated with initial emergency service routing digits (ESRD) load into selective router or SCP;

(ii) Monthly recurring costs associated with maintaining ESRD data in the selective router or SCP.

(D) CPE - To provision the 9-1-1 entity's PSAP equipment to have the capability to receive and display information necessary to comply with Phase I call delivery requirements, the Commission has previously funded software upgrades to CPE for 20-digit and two 10-digit capability. These costs should be accommodated within the regional council's currently, or previously, approved strategic plan.

(E) Map Display - The cost to provision the 9-1-1 entity's PSAP equipment to have the capability to receive and graphically display caller's cell site/sector location information, as well as the X, Y (longitude, latitude coordinates).

(F) Training - The cost to train COG and/or PSAP personnel to efficiently and effectively receive and process Phase I & Phase II wireless E9-1-1 calls. This training shall be conducted by the COG, WSP, local service provider, and/or third party, as necessary, upon initial deployment of wireless service and at regularly scheduled intervals. Training plans and any associated costs shall be proposed to COG within WSP written proposal of service, submitted to the Commission for approval via the strategic plan amendment review process as outlined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation), and included in an executed standardized contract for wireless E9-1-1 service.

(9) Testing - The COG, WSP, local service provider and any third party shall conduct initial and regularly scheduled network, database and equipment testing to ensure the integrity of the existent and proposed wireline/wireless 9-1-1 system operated by the COG, for any Phase I and/or Phase II wireless E9-1-1 service deployment. These tests shall include, at a minimum:

(A) network connectivity;

(B) call setup times;

(C) equipment capabilities of receiving and displaying callback number and cell site/sector information;

(D) ability to transfer the wireless E9-1-1 call. The COG shall submit the initial testing documentation and findings to the Commission within the strategic plan amendment approval process as referenced in paragraph (8) of this subsection, Reasonable Cost Elements. The COG shall maintain documentation of regularly

scheduled testing and notify the Commission of any on-going, negative outcomes.

(10) Fair and Equitable Provisioning of Wireless E9-1-1 Service - The COG shall establish the level of wireless E9-1-1 service required within its region, and shall ensure that each WSP operating within its region provides comparable levels of wireless E9-1-1 service to all wireless subscribers within the region, within reasonable implementation parameters. In determining the reasonableness of costs, the Commission may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers. No single WSP shall be reimbursed for costs above the comparable costs of the other WSP within the COG region.

(11) Uninitialized Calls - Must be passed through the wireless 9-1-1 network, and uniformly identified to the PSAP.

(12) Third Party Contracts - Any and all subcontracts between WSP and third party vendors, for the deployment of Phase I & II wireless E9-1-1 service deployments, shall adhere to the primary contract as executed between COG and WSP.

(13) Proposals for Wireless E9-1-1 Service - All proposals by WSPs for wireless 9-1-1 service should be presented to the COG in writing and shall include a complete description of network, database, equipment display requirements, training and accessibility elements. Such proposals should include detailed cost information, as well as technical solutions, network diagrams, documented wireless 9-1-1 call set-up times, deployment plans and timelines, specific work plans, WSP network contingency and disaster recovery plans, escalation lists, trouble call response times, as well as any other information required by the COG. Unless otherwise confidential by law, all information provided to the COG becomes a matter of public record and is subject to the Texas Public Information Act.

(14) Strategic Plan Amendment Review and Approval Process - Upon demonstration of compliance with paragraphs (2)(A) and (3)(A) of this subsection, and prior to executing a standardized contract for wireless 9-1-1 service, the COG shall submit such proposals, as described in paragraph (13) of this subsection, to the Commission for approval, via the strategic plan review and/or amendment process described in §251.6 of this title. Strategic Plan amendment requests should include all of the information provided by WSP to COG, as well as complete information regarding the geographic areas as well as the tandems, exchanges and PSAPs effected by the proposed deployment.

(15) Standardized Contract - Upon review and approval by ACSEC, COG and WSP shall enter into a standardized Wireless E9-1-1 Service Agreement. The standard contract shall be provided by the Commission, and shall include all of the information contained in the proposal and amendments reviewed and approved by the Commission. Commission staff shall review all such contracts before they are executed. COG shall provide the Commission a copy of all fully executed contracts.

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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Advisory Commission on State Emergency Communications
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For further information, please call: (512) 305–6933

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TITLE 7. BANKING AND SECURITIES

Part 2. TEXAS DEPARTMENT OF BANKING

Chapter 25. PREPAID FUNERAL CONTRACTS

Subchapter B. REGULATION OF LICENSES

7 TAC §25.11

The Texas Department of Banking (the department) adopts an amendment to §25.11, concerning record-keeping requirements for trust-funded contracts. The section is adopted with minor changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4654).

The amendment to §25.11 simplifies and clarifies record-keeping requirements by deleting obsolete requirements, adding explanations and other details, specifying optional records that can satisfy certain requirements, and by rewording certain specifications.

No comments were received expressing approval of or objection to the proposed section as a whole. One comment was received which addressed two aspects of the proposed section and suggested substitute language. In addition, the department is adding a clarifying word to subsection (c)(3)(C).

If a funeral is performed pursuant to a prepaid funeral contract by someone other than the permit holder or an affiliate, the permit holder's files must evidence the request from the purchaser (or purchaser's representative) to deliver the funds to the servicing funeral home and the actual payment of those funds to the servicing funeral home. Former §25.11 required a certificate of performance signed by the funeral home representative and the deceased next of kin. As proposed, §25.11(c)(3)(C) required "a statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral home and evidence of payment to the servicing funeral home." In the adoption, the department is adding the word "signed" before "statement from the purchaser" to avoid unintentionally deleting the signature requirement that independently verifies the underlying transaction, while still permitting options regarding the records that can satisfy this requirement. This edit is viewed as nonsubstantive because it does not create any additional recordkeeping burden on permit holders.

The commentor first requested that subsection (c)(3)(A) of the proposed section be modified to provide that, where the preneed funeral contract relates only to the opening or closing of a grave, the matured contract file must contain the "interment order and/or other documents, which denote the balance due on the preneed contract, if any, and the charges for any services or merchandise sold on an at-need basis after maturity of the preneed contract." The department accepts this proposed change in part and has adopted language which will permit this file to contain either or both the interment order and other documents that are signed by the decedent's representative; however, the department believes such documents must also state the preneed discount if there is one. Notation of this discount is necessary to evaluate possible overcharges. The

commentor's recommended addition of charges for certain services and merchandise sold on an at-need basis is not included because the focus of the section is required records for examining preneed sales and related activities.

The commentor requested that subsection (d)(1)(F) of the proposed section clarify that more than one record separate from the historical contract register may contain the required listing of information about the matured and canceled contracts. After consideration, the department declines to make the requested change. In the department's view, the multiple records could increase inconsistency between data and add to the potential for error.

The commentor also requested that subsection (d)(1)(F) permit a separate record to reflect the date of the request for withdrawal from the depository, rather than the actual date of withdrawal. After consideration, the department revised this provision to permit a record separate from the register to list either the date of withdrawal or the date the withdrawal is requested. The department believes the suggested alternate date is easily verifiable and supports the purpose behind the requirement.

The amendment is adopted pursuant to Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154, including requirements regarding maintenance of records.

§25.11. Record Keeping Requirements for Trust-Funded Contracts.

(a) Application. This section applies to a permit holder who sells or maintains trust-funded prepaid funeral benefit contracts. Unless the Department of Banking (the department) is petitioned for and agrees to a different location under subsection (f)(3) of this section, all specified records must be made available to the department for examination at the physical location in Texas that the permit holder has designated in written notice to the department on file at the time of the examination.

(b) General file. A permit holder subject to this section must maintain general files regarding its prepaid funeral benefits operations. Such files may be maintained in hard-copy form or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form. These files must contain the original or a copy of the following:

(1) the latest approved renewal permit application for the permit holder and its last filed annual report, if any;

(2) the current permit issued to the permit holder by the department;

(3) each contract form approved for sales transacted within the last three years unless no outstanding contracts exist using such form;

(4) all department-approved depository letters received within the last three years and all depository letters pertaining to active contracts;

(5) the most current consolidated financial statement or, in lieu thereof, the most current financial records and/or tax returns;

(6) each department-approved agent appointment made and resignation given within the last three years and all appointments that are still active;

(7) all examination reports made by the department within the past three years;

(8) all trust agreements approved by the department within the past three years and all trust agreements that are still active, including trustee fee schedules covering deposited funds for the last three years;

(9) all investment plans and reports submitted to the department within the past three years and all such plans and reports that apply to active trust funds;

(10) all preneed abandoned property reports filed with the department and the State Comptroller of Public Accounts within the past three years;

(11) records of the trustee/depository, balanced at least quarterly to the total of the control ledger and the principal of the individual ledgers, reflecting at a minimum all savings account statements, certificate of deposit records (both principal and interest), and/or trust statements for the past three years; and

(12) all correspondence with the department within the past three years, including but not limited to all transfer of funds approval letters issued by the department.

(c) Individual files.

(1) Each permit holder subject to this section shall maintain a prepaid funeral benefits contract file on each purchaser. These files must be maintained separately for outstanding contracts, matured contracts, and canceled contracts. Files may be maintained either chronologically or alphabetically in hard-copy form or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form. Each individual file should contain all correspondence pertaining to the contract for that file.

(2) Each file pertaining to an outstanding contract must contain copies of the prepaid funeral benefits contract and any revocable and irrevocable assignments.

(3) Each file pertaining to a matured contract must be retained for three years. Each such file must contain copies of all documents required for an outstanding contract, a completed department withdrawal form or evidence of department withdrawal approval, and a computation of earnings withdrawal, if applicable, unless computation procedures are otherwise documented in the general file. Each matured contract file must also contain:

(A) the original or copy of the completed at-need contract or funeral purchase agreement, or an itemization of services performed and merchandise transferred signed by the decedent's personal representative; or, if the preneed funeral contract relates only to the opening and closing of a grave, the cemetery interment order and/or other documents signed by the decedent's representative, provided the interment order or other documents must denote the balance that was due on the preneed contract at the time of death, if any, and any preneed discount;

(B) a certified death certificate or a copy of a certified original death certificate; and

(C) if the service is performed by an entity other than the permit holder or a permit holder related by common ownership, a signed statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral home and evidence of payment to the servicing funeral home;

(4) Each file pertaining to a canceled contract must be retained for three years. Each such file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval, a computation of earnings withdrawal, if applicable, unless otherwise

documented in the general file, and evidence of payment of the cancellation benefit.

(d) Other records. Each permit holder subject to this section must maintain the following records regarding its prepaid funeral benefits operations in hard-copy form, or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form:

(1) an historical contract register, maintained either chronologically or by contract number, indicating:

(A) the contract number;

(B) the date of purchase;

(C) the purchaser's name;

(D) the beneficiary's name (if different from the purchaser's name);

(E) the amount of the contract; and

(F) final disposition of the contract, including notations as to whether the contract is matured or canceled, the date of withdrawal from the depository or date withdrawal requested from the depository, and the amount of funds withdrawn, or in lieu thereof, a record separate from the register, listing matured and canceled contracts for the examination period and setting out the contract number, contract purchaser, date of withdrawal from the depository or date withdrawal was requested from the depository, and amount of the withdrawal;

(2) cash receipts records reflecting payments collected;

(3) deposit records reflecting payments deposited;

(4) individual ledgers for each contract purchaser, balanced at least quarterly to the control ledger and to the records of the trustee/depository, reflecting the:

(A) contract purchaser's name;

(B) contract number;

(C) the date of purchase;

(D) the face amount of the prepaid funeral contract;

(E) total finance charges payable under the contract, if any;

(F) total retention allowable under the contract, if any;

(G) beginning contract balance;

(H) amounts paid on the contract itemized to reflect retention, finance charges and principal paid with individual cumulative totals;

(I) earnings on deposits, if any; and

(J) total amount of the trust; and

(5) a control ledger for all purchasers, balanced at least quarterly to the principal total and contract count total of the individual ledgers and in total to the records of the trustee/depository, reflecting:

(A) the net cumulative total of outstanding contracts;

(B) deposits of payments;

(C) withdrawal of payments;

(D) net amount of payments on deposit;

(E) earnings of deposit accounts;

(F) earnings withdrawn on deposit accounts; and

(G) net amount of earnings.

(e) Corporate records. Corporate records of a permit holder subject to this section pertaining to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency and all corporate minutes must be maintained and made available to the department at each examination.

(f) Exceptions.

(1) A permit holder that sells only trust-funded contracts is not required to maintain records that are applicable only to insurance-funded contracts.

(2) With respect to contracts sold prior to the effective date of this section or amendments hereto, a permit holder will not violate this section if it cannot produce records required under this section which were not previously required by statute or rule.

(3) A permit holder may apply to the Commissioner for an exception to the record keeping requirements other than as provided under this subsection. An exception may be granted only for good cause by prior written approval of the Commissioner.

(g) Relocation of Records. Prior to changing the location where required records are maintained or where the examination is to be performed, a permit holder must notify the department, specifying the new address in writing, and, if the change in location requires the granting of an exception, comply with subsection (f)(3) of this section.

(h) Maintenance of Files. Documents and records required to be maintained under this section must be filed within thirty days of receipt. Cash received must be posted within 30 days of receipt, and cash withdrawn on death maturity must be posted within 30 days of the actual withdrawal.

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 August 27, 1999.

TRD-9905450
Everette D. Jobe
General Counsel
Texas Department of Banking
Effective date: September 16, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 475–1300

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TITLE 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 12. COAL MINING REGULATIONS

The Railroad Commission of Texas adopts the repeals of §12.379, relating to air resources protection for surface mining; §12.389, relating to regrading or stabilizing rills and gullies for surface mining; §12.546, relating to air resources protection for underground mining; and §12.554, relating to regrading or

stabilizing rills and gullies for underground mining; adopts new §12.389, relating to stabilization of surface areas for surface mining; and §12.554, relating to stabilization of surface areas for underground mining; and adopts amendments to §12.143, relating to air pollution control for surface mining; §12.145, relating to the general requirements of the reclamation plan for surface mining; §12.187, relating to the general requirements of the reclamation plan for underground mining; §12.199 relating to an air pollution control plan for underground mining; and §12.651, relating to coal processing plants performance standards, without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5102) and will not be republished.

Amendments to §§12.143, 12.145, 12.187, 12.199, and 12.651 are nonsubstantive and update internal references.

Sections 12.379 and 12.546 are repealed because the federal counterparts to these state regulations have been repealed. Air resources protection is generally subject to regulation by the United States Environmental Protection Agency at the federal level and the Texas Natural Resource Conservation Commission at the state level. Overlapping regulations for air resource protection within the coal mining regulatory program are unnecessary.

Sections 12.389 and 12.554 are repealed and replaced with new §12.389 and §12.554 to offer more general performance standards to provide operators with more flexibility in meeting the goal of surface stabilization.

The commission received one comment on the proposed repeals, amendments, and new sections from Texas Utilities Mining Company which strongly supported the proposal because it would ensure natural resource protection and provide appreciable environmental benefits. No changes were made in response to this comment. No group or association commented on the proposed repeals, amendments or new sections.

Issued in Austin, Texas, on August 24, 1999.

Subchapter G. SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS

Division 6. SURFACE MINING PERMIT APPLICATIONS- MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.143, §12.145

The repeals, amendments, and new sections are adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted repeals, amendments, and new sections.

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 August 25, 1999.

TRD-9905430

Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: September 14, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–7008

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Division 9. UNDERGROUND MINING PERMIT APPLICATION- MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.187, §12.199

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted repeals, amendments, and new sections.

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-9905431
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Subchapter K. PERMANENT PROGRAM PERFORMANCE STANDARDS

Division 2. PERMANENT PROGRAM PERFORMANCE STANDARDS- SURFACE MINING ACTIVITIES

16 TAC §12.379, §12.389

The repeals are adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted repeals, amendments, and new sections.

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-9905432
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas

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For further information, please call: (512) 463–7008

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16 TAC §12.389

The new section is adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted new section.

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 August 25, 1999.

TRD-9905433
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Division 3. PERMANENT PROGRAM PERFORMANCE STANDARDS- UNDERGROUND MINING ACTIVITIES

16 TAC §12.546, §12.554

The repeals are adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted repeals.

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-9905434
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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16 TAC §12.554

The new section is adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted new section.

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-9905435
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Division 7. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS- COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINESITE OR NOT WITHIN THE PERMIT AREA FOR A MINE

16 TAC §12.651

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: September 14, 1999
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For further information, please call: (512) 463–7008

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Part 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

Chapter 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.50

The Texas Department of Licensing and Regulation adopts amendments to §70.50 concerning industrialized housing and buildings. The section is adopted with change to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3677)

The amendments to §70.50 simplify the reporting requirements for builders. The change to the proposed text is a grammatical

change. The justification for the changes in §70.50 is to eliminate confusion caused by present reporting requirements.

The section will function by increasing program integrity.

No comments were received concerning this amendment.

The amendments are adopted 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 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 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 that 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.

(3) the decal and insignia numbers and unit identification numbers of all modules or modular components assembled or installed at a building site during the month;

(4) any other information the department may require on the form or by separate instruction letter; and

(5) an indication of zero units if there was no activity for the reporting month.

(c) The manufacturer's and industrialized builder's monthly reports must be filed with the department no later than the 10th day of the following month.

(d) Any change in destination (from that reported on the manufacturer's or builder's monthly report) of a module or modular component prior to installation of the module or modular component must be reported to the Department by the manufacturer or builder responsible for the change. The change shall be reported on the manufacturer's or builder's monthly report and shall clearly indicate that this is a change in destination for a previously reported module or modular component. The report shall include the serial or identification number of the unit, the decal or insignia number, the site to which the unit was originally shipped, the new destination information, and the registration number of the industrialized builder responsible for the installation if the unit was transferred or sold to another industrialized builder.

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 August 24, 1999.

TRD-9905345
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 13, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 463-7348

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16 TAC §70.100, §70.101

The Texas Department of Licensing and Regulation adopts amendments to §70.100 and §70.101 concerning industrialized housing and buildings. Both sections are being adopted with changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3677).

The amendments to §70.100 adopt the current editions of the model building codes. Article 5221f-1 gives the Industrialized Building Code Council the authority to adopt more recent editions of the building code if the Council determines that the revision is in the public interest and consistent with the purposes of the Act.

Comments were submitted by a representative of the the Southern Building Code Congress International regarding the proposed amendments. The commenter stated that the code group designated as "Southern Building Code Conference International" should be "Southern Building Code Congress Interna-

tional" and more current editions of the National Electrical Code and the Standard Building Code were available. The Council elected to adopt the 1999 edition of the National Electrical Code. The Council did not elect to adopt the 1999 edition of the Standard Building Code.

The amendments to §70.101 change the editions of the Uniform Building Code and Standard Building Code in accordance with amendments to §70.100 and adopt the latest edition of the International Energy Conservation Code, the latest edition of American Society of Civil Engineers (ASCE) 7 as referenced by the One and Two Family Dwelling Code, amended the International Plumbing Code by deleting Appendix A, and amended the International Mechanical Code by deleting Appendix A. The commenter stated that the 1998 edition of the International One and Two Family Dwelling Code were available and it has taken the place of the Council of American Building Officials (CABO) One and Two Family Dwelling Code. He also indicated that the CABO Model Energy Code and the CABO One and Two Family Dwelling Code should be deleted from Chapter 35 of the Standard Building Code. The Council agreed with the comments and elected to adopt the changes. §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. §The amendments will function by ensuring clearer implementation of the statute.

The amendments are adopted 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 amendments are Texas Civil Statutes Annotated, article 5221f-1 (Vernon 1989) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991).

§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, 1999 Edition;

(2) either:

(A) the Uniform Building Code, 1997 Edition, published by the International Conference of Building Officials; or

(B) the Standard Building Code, 1997 Edition, published by the Southern Building Code Congress International; and

(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 Congress 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 Congress 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 Congress International.

§70.101. Amendments to Mandatory State Codes.

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICBO or SBCCI, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local building official, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at such later date as set by the council.

(c) The 1999 Edition of the National Electrical Code shall be amended as follows.

(1) Add to Article 310-1 the following statement: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy; aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add to Article 110-14 the following statement: "Aluminum and copper-clad aluminum conductors shall be terminated using approved compression-type crimp lugs with approved inhibitors."

(d) The 1997 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."

(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, Section 68.21(a) and (c) 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 International One and Two Family Dwelling code, 1998 Edition (as it applies to detached one and two family dwellings), as promulgated by the International Code Council."

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

(1) Amend Appendix E as follows.

(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 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, Section 68.21 (a) and (c) 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) Delete "CABO/ANSI A117.1-92, Accessible and Usable Building, and Facilities, delete CABO One and Two Family Dwelling Code, 1995 edition, and delete CABO Model Energy Code, 1995 edition.

(B) Add Texas Accessibility Standards (TAS), dated April 1, 1994, add International One and Two Family Dwelling Code, 1998 edition, and International Energy Conservation Code, 1998 edition.

(4) Delete Appendix B, Recommended Schedule of Permit Fees.

(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 International One and Two Family Dwelling Code as promulgated by the International Code Council. 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

(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 Chapter 49 of the 1998 edition of the International 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 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 August 24, 1999.

TRD-9905344
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
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Proposal publication date: May 14, 1999
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

Part 15. TEXAS STATE BOARD OF PHARMACY

Chapter 291. PHARMACIES

Subchapter B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31, 291.32, 291.36

The Texas State Board of Pharmacy adopts amendments to §291.31, concerning Definitions, §291.32, concerning Personnel, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals with changes to the proposed text in the July 9, 1999, edition of the *Texas Register* (24 TexReg 5118).

Adoption of the amendments increases safety of the prescription drug supply by clarifying the qualifications, duties, and supervision of pharmacy technicians. Specifically, adoption of the amendments: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) update identification requirements for pharmacy personnel.

Comments: The Texas Pharmacy Association (TPA) Section of Pharmacy Technicians, the Texas Society of Health-System Pharmacists (TSHP), and the American Pharmaceutical Association made comments supporting the National Pharmacy Technician Certification Exam as the sole exam for technician certification. The Texas Federation of Drug Stores (TFDS), TPA, Brookshire Grocery Company, and H.E. Butt Grocery Company made comments requesting the Board allow for other Board approved exams for technician certification. In addition, H.E. Butt Grocery Company made several suggestions for exam alternatives. The Board reviewed both sets of comments and decided not to restrict technician certification to the one national exam but to allow other examinations approved by the Board. This allows the Board greater flexibility to rapidly respond to new certification exams. This change has been incorporated into the rule language.

The TPA Section of Pharmacy Technicians made a comment that the Board should not exempt pharmacy technicians with at least 10 years experience as a pharmacy technician from certification. The Board believes that these individuals have already shown an acceptable skill level to perform the work of a pharmacy technician. Therefore, these pharmacy technicians should be exempted from certification provided the 10 years of experience is within the same pharmacy and the exemption exists for service as a pharmacy technician at this one pharmacy site. However, it is the opinion of the Board that the addition of this exemption constitutes a substantive change and must be considered separately from these rules.

The TPA Section of Pharmacy Technicians and TSHP made a comment that the Board should not exempt pharmacy technicians working in a county of less than 50,000 population from certification. The Board agrees with this comment and believes that simply working in a county of less than 50,000 population does not establish competency as a pharmacy technician. Since this exemption is not addressed in the proposed rules, no action is necessary.

The TPA, TFDS, and TSHP made comments requesting that the January 1, 2001, implementation date for the change to a 3 to 1 technician to pharmacist ratio be deleted to allow the change to take effect upon the effective date of the rule. The Board agrees with this comment provided at least one of the pharmacist technicians is certified. This change has been incorporated into the rule language.

The TPA and TFDS made comments requesting that the Board clarify that a pharmacy technician trainee could remain a trainee for one full year of training regardless of the trainee's pass/fail history on the certification exam during that one year period. The Board agreed with this comment and made appropriate changes to allow a pharmacy technician trainee to remain a trainee for one year from the start of training or until successfully passing a certification exam, whichever comes first.

One individual and the TSHP requested that the Board clarify that pharmacy technician trainees include students that are enrolled in accredited pharmacy technician training programs. In addition, TSHP made a comment that the trainee status while enrolled in an accredited pharmacy technician training program should not count towards the one year limit for designation as a pharmacy technician trainee. The Board agrees with both comments because of the closely supervised training environment and made appropriate changes to the rule language.

The Texas Pharmacy Congress and TPA made a comment that the Board should exempt pharmacy students from the requirement to be certified as pharmacy technicians. This suggested change only applies to pharmacy students in their first year in the professional sequence towards a degree in pharmacy. During the second professional year a pharmacy student can become a pharmacist-intern meeting an entirely different set of requirements. During the first professional year, the student can be a pharmacist trainee and since a person can be a pharmacist trainee for up to one year, the Board disagrees with the need for an exemption from certification.

The amendments are adopted under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.31. Definitions.

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

(1) Accurately as prescribed–Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including §40 of the Texas Pharmacy Act.

(2) Act–The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended.

(3) Advanced practice nurse–A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes a nurse practitioner, a nurse midwife, a nurse anesthetist, and a clinical nurse specialist.

(4) Automated drug dispensing system–An automated device that measures, counts, packages, and/or labels a specified quantity of dosage units for a designated drug product.

(5) Board–The Texas State Board of Pharmacy.

(6) Carrying out or signing a prescription drug order–The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

(A) patient's name and address;

(B) name, strength, and quantity of the drug to be dispensed;

(C) directions for use;

(D) the intended use of the drug, if appropriate;

(E) the name, address, and telephone number of the physician;

(F) the name, address, telephone number, and identification number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

(7) Certified Pharmacy Technician–A pharmacy technician who:

(A) has completed the pharmacy technician training program of the pharmacy;

(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and

(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(8) Component–Any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

(9) Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(10) Confidential record–Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(11) Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) Dangerous drug–Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) Data communication device–An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(14) Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under the Medical Practice Act, §3.06(d)(5) or (6) (Texas Civil Statutes, Article 4495b).

(16) Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) Dispensing pharmacist–The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(19) Downtime–Period of time during which a data processing system is not operable.

(20) Drug regimen review–An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) Electronic prescription drug order–A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(23) Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(24) Manufacturing–The production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons but does not include compounding.

(25) Medical Practice Act–The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(26) Medication order–A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(27) New prescription drug order–A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(28) Original prescription–The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(29) Part-time pharmacist–A pharmacist who works less than full-time.

(30) Patient counseling–Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(31) Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(32) Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(33) Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(34) Pharmacy technician trainee–A pharmacy technician:

(A) participating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(35) Physician assistant–A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under the Medical Practice Act, §3.06(d), and issued an identification number by the Texas State Board of Medical Examiners.

(36) Practitioner–

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(37) Prepackaging–The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(38) Prescription drug order–

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to the Medical Practice Act, §3.06(d(5) and (6)

(39) Prospective drug use review–A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(40) Texas Controlled Substances Act–The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(41) Written protocol–A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act, (Texas Civil Statutes, Article 4495b).

§291.32. Personnel.

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class A pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(B) The pharmacist-in-charge shall comply with the provisions of 291.17 of this title (relating to Inventory Requirements).

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) dispensing of drugs, including:

(i) packaging, preparation, compounding, and labeling; and

(ii) ensuring that drugs are dispensed safely, and accurately as prescribed;

(B) delivery of drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely, and accurately as prescribed;

(C) assuring that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in §291.33(c) of this title (relating to Operational Standards);

(D) assuring that a pharmacist communicates to the patient or the patient's agent on their request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(E) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(F) education and training of pharmacy technicians;

(G) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(H) disposal and distribution of drugs from the Class A pharmacy;

(I) bulk compounding of drugs;

(J) storage of all materials, including drugs, chemicals, and biologicals;

(K) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(L) establishment and maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(M) maintenance of records in a data processing system such that the data processing system is in compliance with Class A (community) pharmacy requirements; and

(N) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

(b) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. Each pharmacist:

(i) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians; and

(ii) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(D) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selection of drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews; and

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act (Texas Civil Statutes, Article 4495b).

(3) Special requirements for nonsterile compounding.

(A) All pharmacists engaged in compounding shall possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised. Continuing education shall include training in the art and science of compounding and the legal requirements for compounding.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(c) Pharmacy technicians.

(1) Qualifications.

(A) General.

(i) All pharmacy technicians shall:

(I) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

(III) Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(ii) For the purpose of this subsection, pharmacy technicians are those persons who perform nonjudgmental technical duties associated with the dispensing of a prescription drug order.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(ii) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within

this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists.

(C) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(2) Duties.

(A) General.

(i) pharmacy technicians may not perform any of the duties listed in subsection (b)(2) of this section.

(ii) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist conducts in-process and final checks; and

(II) pharmacy technicians are under the direct supervision of and responsible to a pharmacist.

(B) Labeling.

(i) A pharmacist may not delegate the act of affixing a label to a prescription container unless the pharmacy technician has completed the education and training requirements outlined in paragraphs (1) and (4) of this subsection.

(ii) Effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(3) Ratio of pharmacist to pharmacy technicians.

(A) The ratio of pharmacists to pharmacy technicians may not exceed 1:2

(B) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified.

(4) Training.

(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affix a label to a prescription container;

(ii) may be designated a pharmacy technician trainee for no longer than one year; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in- charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(i) Orientation;

(ii) Job descriptions;

(iii) Communication techniques;

(iv) Laws and rules;

(v) Security and safety;

(vi) Prescription drugs:

(I) Basic pharmaceutical nomenclature;

(II) Dosage forms;

(vii) Prescription drug orders:

(I) Prescribers;

(II) Directions for use;

(III) Commonly-used abbreviations and symbols;

(IV) Number of dosage units;

(V) Strengths and systems of measurement;

(VI) Routes of administration;

(VII) Frequency of administration;

(VIII) Interpreting directions for use;

(viii) Prescription drug order preparation:

(I) Creating or updating patient medication records;

(II) Entering prescription drug order information into the computer or typing the label in a manual system;

(III) Selecting the correct stock bottle;

(IV) Accurately counting or pouring the appropriate quantity of drug product;

(V) Selecting the proper container;

(VI) Affixing the prescription label;

(VII) Affixing auxiliary labels, if indicated; and

(VIII) Preparing the finished product for inspection and final check by pharmacists;

(ix) Other functions;

(x) Drug product prepackaging;

(xi) Compounding of non-sterile pharmaceuticals;

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians.

(d) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) Purpose. The purpose of this section is to provide standards for the preparation, labeling, and distribution of compounded sterile pharmaceuticals by licensed pharmacies, pursuant to a prescription drug order. The intent of these standards is to provide a minimum level of pharmaceutical care to the patient so that the patient's health is protected while striving to produce positive patient outcomes.

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

(1) ACPE–The American Council on Pharmaceutical Education.

(2) Act–The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended.

(3) Accurately as prescribed–Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including §40 of the Texas Pharmacy Act.

(4) Advanced practice nurse–A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes a nurse practitioner, a nurse midwife, a nurse anesthetist, and a clinical nurse specialist.

(5) Airborne particulate cleanliness class–The level of cleanliness specified by the maximum allowable number of particles per cubic foot of air as specified in Federal Standard 209E, et seq. For example:

(A) Class 100 is an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air;

(B) Class 10,000 is an atmospheric environment which contains less than 10,000 particles 0.5 microns in diameter per cubic foot of air; and

(C) Class 100,000 is an atmospheric environment which contains less than 100,000 particles 0.5 microns in diameter per cubic foot of air.

(6) Ancillary supplies–Supplies necessary for the administration of compounded sterile pharmaceuticals.

(7) Aseptic preparation–The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

(8) Automated compounding or drug dispensing system–An automated device that compounds, measures, counts, packages, and/or labels a specified quantity of dosage units for a designated drug product.

(9) Batch preparation compounding–Compounding of multiple sterile-product units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile-product units pursuant to patient specific medication orders.

(10) Biological Safety Cabinet–Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(11) Board–The Texas State Board of Pharmacy.

(12) Carrying out or signing a prescription drug order–The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

(A) patient's name and address;

(B) name, strength, and quantity of the drug to be dispensed;

(C) directions for use;

(D) the intended use of the drug, if appropriate;

(E) the name, address, and telephone number of the physician;

(F) the name, address, telephone number, and identification number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

(13) Certified Pharmacy Technician–A pharmacy technician who:

(A) has completed the pharmacy technician training program of the pharmacy;

(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and

(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(14) Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(15) Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(16) Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(17) Confidential record–Any health related record maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication drug order.

(18) Controlled area – A controlled area is the area designated for preparing sterile pharmaceuticals.

(19) Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(20) Critical areas–Any area in the controlled area where products or containers are exposed to the environment.

(21) Cytotoxic–A pharmaceutical that has the capability of killing living cells.

(22) Dangerous drug–Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(23) Data communication device –An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(24) Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(25) Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Medical Practice Act, Article 4495b, §3.06(d)(5) or (6).

(26) Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(27) Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(28) Dispensing pharmacist–The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(29) Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(30) Downtime–Period of time during which a data processing system is not operable.

(31) Drug regimen review–An evaluation of prescription drug or medication orders and patient medication records for:

(A) known allergies;

(B) rational therapy–contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(32) Electronic prescription drug order–A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(33) Expiration date–The date (and time, when applicable) beyond which a product should not be used.

(34) Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(35) Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(36) Medical Practice Act–The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(37) New prescription drug order–A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(38) Original prescription–The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(39) Part-time pharmacist–A pharmacist who works less than full-time.

(40) Patient counseling–Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(41) Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(42) Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(43) Pharmacy technicians–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(44) Pharmacy technician trainee–a pharmacy technician:

(A) participating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(45) Physician assistant–A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under the Medical Practice Act, §3.06(d), and issued an identification number by the Texas State Board of Medical Examiners.

(46) Practitioner–

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(47) Prepackaging–The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(48) Prescription drug–

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(49) Prescription drug order–

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order pursuant to the Medical Practice Act, §3.06(d)(5) or (6).

(50) Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(51) Quality assurance–The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(52) Quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(53) Sample–A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(54) Sterile pharmaceutical–A dosage form free from living micro-organisms.

(55) Texas Controlled Substances Act–The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(56) Unit-dose packaging–The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(57) Unusable drugs–Drugs or devices that are unusable for reasons such as they are adulterated, misbranded, expired, defective, or recalled.

(58) Written protocol–A physicians order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act (Texas Civil Statutes, Article 4495b).

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General.

(i) Each Class A pharmacy compounding sterile pharmaceuticals shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(ii) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) ensuring that drugs and/or devices are dispensed and delivered safely and accurately as prescribed;

(ii) that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in subsection (d)(3) of this section;

(iii) assuring that a pharmacist communicates to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(iv) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(v) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(vi) establishing policies for procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(vii) developing a system for the disposal and distribution of drugs from the Class A pharmacy;

(viii) developing a system for bulk compounding or batch preparation of drugs;

(ix) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals;

(x) participating in those aspects of the patient care evaluation program relating to pharmaceutical material utilization and effectiveness;

(xi) implementing the policies and decisions relating to pharmaceutical services;

(xii) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and rules;

(xiii) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(xiv) assuring that records in a data processing system are maintained such that the data processing system is in compliance with this section;

(xv) assuring that the pharmacy has a system to dispose of cytotoxic waste in a manner so as not to endanger the public health; and

(xvi) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(2) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians. Each pharmacist:

(I) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians; and

(II) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(iv) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(v) A pharmacist shall be accessible at all times to respond to patients' and other health professionals' questions and needs. Such access may be through a telephone which is answered 24 hours a day.

(vi) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving verbal prescription drug orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting and evaluating prescription drug orders;

(iii) selection of drug products;

(iv) interpreting patient medication records and performing drug regimen reviews;

(v) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(vi) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in paragraph (3) of this subsection;

(vii) communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(viii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(ix) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act (Texas Civil Statutes, Article 4495b).

(3) Pharmacy technicians.

(A) Qualifications.

(i) General.

(I) All pharmacy technicians shall:

(-a-) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(-b-) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in subparagraph (D) of this paragraph.

(-c-) Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(II) For the purpose of this section, pharmacy technicians are those persons who perform nonjudgmental technical duties associated with the dispensing of a prescription drug order.

(ii) Pharmacy Technician Trainee.

(I) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(II) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This subclause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health- System Pharmacists.

(iii) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(B) Duties.

(i) General.

(I) pharmacy technicians may not perform any of the duties listed in paragraph (2)(B) of this subsection.

(II) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(-a-) a pharmacist conducts in-process and final checks; and

(-b-) pharmacy technicians are under the direct supervision of and responsible to a pharmacist.

(III) A pharmacist may not delegate the act of affixing a label to a prescription container unless the pharmacy technician has completed the education and training requirements of subparagraphs (A) and (D) of this paragraph.

(ii) Certified pharmacy technicians. Effective January 1, 2001, only certified pharmacy technicians may:

(I) affix a label to a prescription container; and

(II) compound sterile pharmaceuticals.

(C) Ratio of pharmacist to pharmacy technicians.

(i) The ratio of pharmacists to pharmacy technicians may not exceed 1:2 provided that only one pharmacy technician may be engaged in the compounding of sterile pharmaceuticals.

(ii) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified and only one may be engaged in the compounding of sterile pharmaceuticals.

(D) Training.

(i) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual which includes training and experience as outlined in subparagraph (E) of this paragraph prior to the regular performance of their duties. Such training:

(I) shall include training and experience as outlined in subparagraph (E) of this paragraph; and

(II) may not be transferred to another pharmacy unless:

(-a-) the pharmacies are under common ownership and control and have a common training program; and

(-b-) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(ii) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(I) may perform all of the duties of a pharmacy technician except affix a label to a prescription container and effective January 1, 2001, compound sterile pharmaceuticals;

(II) may be designated a pharmacy technician trainee for no longer than one year; and

(III) shall be counted in the pharmacist to pharmacy technician ratio.

(iii) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through-in-service education and training to supplement initial training.

(iv) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(I) name of the person receiving the training;

(II) date(s) of the training;

(III) general description of the topics covered;

(IV) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(V) name of the person supervising the training; and

(VI) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(v) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in- charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Training program. Pharmacy technicians training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(i) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(I) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, task and functions performed by such personnel; and

(II) specify duties which may and may not be performed by pharmacy technicians; and

(ii) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(I) Orientation;

(II) Job descriptions;

(III) Communication techniques;

(IV) Laws and rules;

(V) Security and safety;

(VI) Prescription drugs:
(-a-) Basic pharmaceutical nomenclature;
(-b-) Dosage forms;

(VII) Prescription drug orders:
(-a-) Prescribers;
(-b-) Directions for use;
(-c-) Commonly-used abbreviations and symbols;
(-d-) Number of dosage units;
(-e-) Strength and systems of measurement;
(-f-) Route of administration;
(-g-) Frequency of administration;
(-h-) Interpreting directions for use;

(VIII) Prescription drug order preparation:
(-a-) Creating or updating patient medication records;
(-b-) Entering prescription drug order information into the computer or typing the label in a manual system;
(-c-) Selecting the correct stock bottle;
(-d-) Accurately counting or pouring the appropriate quantity of drug product;
(-e-) Selecting the proper container;
(-f-) Affixing the prescription label;
(-g-) Affixing auxiliary labels, if indicated; and
(-h-) Preparing the finished product for inspection and final check by pharmacists;

(IX) Other functions;

(X) Drug product prepackaging;

(XI) Compounding of non-sterile pharmaceuticals;

(XII) Written policy and guidelines for use of and supervision of pharmacy technicians.

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the

direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(I) aseptic technique;

(II) critical area contamination factors;

(III) environmental monitoring;

(IV) facilities;

(V) equipment and supplies;

(VI) sterile pharmaceutical calculations and terminology;

(VII) sterile pharmaceutical compounding documentation;

(VIII) quality assurance procedures;

(IX) aseptic preparation procedures including proper gowning and gloving technique;

(X) handling of cytotoxic and hazardous drugs, if applicable; and

(XI) general conduct in the controlled area.

(ii) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site process validation within seven days of commencing work at the pharmacy.

(iv) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(v) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(I) during orientation and training prior to the regular performance of those tasks;

(II) whenever the quality assurance program yields an unacceptable result;

(III) whenever unacceptable techniques are observed; and

(IV) at least on an annual basis.

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; and

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and end-product testing;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians. In addition to the qualifications and training outlined in paragraph (3) of this subsection, all pharmacy technicians who compound sterile pharmaceuticals shall:

(i) have a high school or equivalent education;

(ii) either:

(I) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through the:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) completion of a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in-process and final checks; and

(iii) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in clause (ii) of this subparagraph.

(iv) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of the person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of the person supervising the training, testing, or process validation; and

(v) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(5) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(B) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(C) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) A Class A pharmacy compounding sterile pharmaceuticals shall register annually with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class A pharmacy compounding sterile pharmaceuticals which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.4 of this title (relating to Change of Ownership).

(C) A Class A pharmacy compounding sterile pharmaceuticals which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.2 of this title (relating to Change of Location and/or Name).

(D) A Class A pharmacy compounding sterile pharmaceuticals owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title (relating to Change of Managing Officers).

(E) A Class A pharmacy compounding sterile pharmaceuticals shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(F) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(G) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(H) A Class A pharmacy compounding sterile pharmaceuticals, licensed under the provisions of the Act, §29(b)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §29(b)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Definitions), §291.52 of this title (relating to Personnel), §291.53 of this title (relating to Operational Standards), and §291.54 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such rules are applicable to the operation of the pharmacy.

(I) A Class A pharmacy engaged in nonsterile compounding of drug products shall comply with the provisions of §§291.31-291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) to the extent such rules are applicable to nonsterile compounding of drug products.

(2) Environment.

(A) General requirements.

(i) The pharmacy shall be enclosed and lockable.

(ii) The pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(iii) The pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(iv) A sink with hot and cold running water, exclusive of restroom facilities, designated primarily for use of admixtures, shall be available within the pharmacy facility to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(v) The pharmacy shall be properly lighted and ventilated.

(vi) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(vii) If prescription drug orders are delivered to the patient at the pharmacy, beginning January 1, 1995, the pharmacy shall contain an area which is suitable for confidential patient counseling.

(I) Such counseling area shall:

(-a-) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(-b-) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(II) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(-a-) the proximity of the counseling area to the check-out or cash register area;

(-b-) the volume of pedestrian traffic in and around the counseling area;

(-c-) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(-d-) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(viii) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(B) Special requirements for the compounding of sterile pharmaceuticals. When the pharmacy compounds sterile pharmaceuticals, the following is applicable.

(i) Aseptic environment control device(s). The pharmacy shall prepare sterile pharmaceuticals in an appropriate aseptic environmental control device(s) or area, such as a laminar air flow hood, biological safety cabinet, or clean room which is capable of maintaining at least Class 100 conditions during normal activity. The aseptic environmental control device(s) shall:

(I) be certified by an independent contractor according to Federal Standard 209E, et seq, for operational efficiency at least every six months or when it is relocated; and

(II) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures, and the inspection and/or replacement date documented.

(ii) Controlled area. The pharmacy shall have a designated controlled area for the compounding of sterile pharmaceuticals that is functionally separate from areas for the preparation of non-sterile pharmaceuticals and is constructed to minimize the opportunities for particulate and microbial contamination. This controlled area for the preparation of sterile pharmaceuticals shall:

(I) have a controlled environment that is aseptic or contains an aseptic environmental control device(s);

(II) be clean, well lighted, and of sufficient size to support sterile compounding activities;

(III) be used only for the compounding of sterile pharmaceuticals;

(IV) be designed to avoid outside traffic and air flow;

(V) have non-porous and washable floors or floor covering to enable regular disinfection;

(VI) be ventilated in a manner not interfering with aseptic environmental control conditions;

(VII) have hard cleanable walls and ceilings (acoustical ceiling tiles that are coated with an acrylic paint are acceptable);

(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials.

(iii) End-product evaluation.

(I) The responsible pharmacist shall verify that the sterile pharmaceutical was compounded accurately with respect to the use of correct ingredients, quantities, containers, and reservoirs.

(II) end product sterility testing according to policies and procedures, which include a statistically valid sampling plan and acceptance criteria for the sampling and testing, shall be performed if deemed appropriate by the pharmacist-in-charge;

(III) the pharmacist-in-charge shall establish a mechanism for recalling all products of a specific batch if end-product testing procedures yield unacceptable results.

(iv) Automated compounding device(s). If automated compounding device(s) are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a routine basis.

(v) Cytotoxic drugs. In addition to the requirements specified in clause (i) of this subparagraph, if the product is also cytotoxic, the following is applicable.

(I) General.

(-a-) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as masks, gloves, and gowns or coveralls with tight cuffs.

(-b-) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile pharmaceuticals.

(-c-) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(-d-) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(II) Aseptic environment control device(s).

(-a-) Cytotoxic drugs must be prepared in a vertical flow biological safety cabinet.

(-b-) If the vertical flow biological safety cabinet is also used to prepare non-cytotoxic sterile pharmaceuticals, the cabinet must be thoroughly cleaned prior to its use to prepare non-cytotoxic sterile pharmaceuticals.

(C) Security requirements.

(i) The pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) All areas occupied by a pharmacy shall be capable of being locked by key or combination, so as to prevent access by unauthorized personnel when a pharmacist is not on-site.

(iii) The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile pharmaceuticals, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(iv) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(3) Prescription dispensing and delivery.

(A) Patient counseling and provision of drug information.

(i) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(I) the name and description of the drug or device;

(II) dosage form, dosage, route of administration, and duration of drug therapy;

(III) special directions and precautions for preparation, administration, and use by the patient;

(IV) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(V) techniques for self monitoring of drug therapy;

(VI) proper storage;

(VII) refill information; and

(VIII) action to be taken in the event of a missed dose.

(ii) Such communication:

(I) shall be provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate, with prescription drug order refills. (For the purposes of this clause, maintenance medications are defined as any medication the patient has taken for one year or longer);

(II) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(III) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(IV) Beginning September 1, 1993, the communication shall be reinforced with written information. The following is applicable concerning this written information.

(-a-) Written information designed for the consumer such as the USP DI Patient Information Leaflets shall be provided.

(-b-) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(-c-) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-1-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-2-) the pharmacist documents the fact that no written information was provided; and

(-3-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(iii) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(iv) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(v) In addition to the requirements of clauses (i)-(iv) of this subparagraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(I) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subclause (II) of this clause.

(II) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(-a-) date of the delivery;

(-b-) unique identification number of the prescription drug order;

(-c-) patient's name;

(-d-) patient's phone number or the phone number of the person picking up the prescription; and

(-e-) signature of the person picking up the prescription.

(III) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in clause (vi) of this subparagraph.

(IV) A Class A pharmacy compounding sterile pharmaceuticals that delivers prescriptions to patients or their agents on-site shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information, such as patient information leaflets.

(vi) In addition to the requirements of clauses (i)-(iv) of this subparagraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(I) The information specified in clause (i) of this subparagraph shall be delivered with the dispensed prescription in writing.

(II) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(III) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."

(IV) The pharmacist-in-charge shall assure that:

(-a-) adequate storage or shipment containers and shipping processes are used to ensure drug stability and potency; and

(-b-) the pharmacy utilizes a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(vii) The provisions of this subparagraph do not apply to patients in facilities where drugs are administered to patients by a person authorized to do so by the laws of the state (i.e., nursing homes).

(B) Prescription containers.

(i) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as follows.

(I) If a drug is susceptible to light, the drug shall be dispensed in a light-resistant container.

(II) If a drug is susceptible to moisture, the drug shall be dispensed in a tight container.

(III) The container should not interact physically or chemically with the drug product placed in it so as to alter the strength, quality, or purity of the drug beyond the official requirements.

(ii) Prescription containers or closures shall not be re-used.

(C) Labeling.

(i) At the time of delivery of the drug, the dispensing container of a sterile pharmaceutical shall bear a label with at least the following information:

(I) name, address and phone number of the pharmacy, including a phone number which is answered 24 hours a day;

(II) date dispensed;

(III) name of prescribing practitioner;

(IV) name of patient;

(V) directions for use, including infusion rate and directions to the patient for the addition of additives, if applicable;

(VI) unique identification number of the prescription;

(VII) name and amount of the base solution and of each drug added unless otherwise directed by the prescribing practitioner;

(VIII) name or initials of the person preparing the product and the pharmacist who checked and released the final product;

(IX) expiration date of the preparation based on published data;

(X) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic/biohazardous warning labels where applicable;

(XI) if the prescription is for a Schedule II-IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(XII) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, §40, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed; and

(XIII) the name of the advanced practice nurse or physician assistant, if the prescription is carried out by an advanced practice nurse or physician assistant in compliance with the Medical Practice Act, §3.06(d).

(ii) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(I) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care facility (e.g., nursing home, hospice, hospital);

(II) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(III) the drug is not in the possession of the ultimate user prior to administration;

(IV) the pharmacist-in-charge has determined that the institution:

(-a-) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(-b-) maintains records of ordering, receipt, and administration of the drug(s); and

(-c-) provides for appropriate safeguards for the control and storage of the drug(s);

(V) the system employed by the pharmacy in dispensing the prescription drug order adequately identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) the name of the patient;

(-e-) name of the prescribing practitioner; and

(VI) the system employed by the pharmacy in dispensing the prescription drug order adequately sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Pharmaceutical care services.

(A) The following pharmaceutical care services shall be provided by pharmacists of the pharmacy.

(i) Drug utilization review. A systematic ongoing process of drug utilization review shall be designed, followed, and documented to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(ii) Drug regimen review.

(I) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate prescription drug orders and patient medication records for:

(-a-) known allergies;

(-b-) rational therapy–contraindications;

(-c-) reasonable dose and route of administration;

(-d-) reasonable directions for use;

(-e-) duplication of therapy;

(-f-) drug-drug interactions;

(-g-) drug-food interactions;

(-h-) drug-disease interactions;

(-i-) adverse drug reactions;

(-j-) proper utilization, including overutilization or underutilization; and

(-k-) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(II) Upon identifying any clinically significant conditions, situations, or items listed in subclause (I) of this clause, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

(iii) Patient care guidelines.

(I) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(II) Patient training. The pharmacist-in-charge shall develop policies that assure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction regarding:

(-a-) appropriate disposition of hazardous solutions and ancillary supplies;

(-b-) proper disposition of controlled substances in the home;

(-c-) self-administration of drugs, where appropriate;

(-d-) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(-e-) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(-1-) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(-2-) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(-3-) handling and disposition of premixed and self-mixed intravenous admixtures; and

(-4-) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(III) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(IV) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(-a-) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider; and

(-b-) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act, §3.061 or §3.06(d);

(ii) managing patient compliance programs;

(iii) providing preventative health care services; and

(iv) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(5) Equipment and supplies. Class A pharmacies compounding sterile pharmaceuticals shall have the following equipment and supplies:

(A) typewriter or comparable equipment;

(B) refrigerator and, if sterile pharmaceuticals are stored in the refrigerator, a system or device (i.e., thermometer)

to monitor the temperature daily to ensure that proper storage requirements are met;

(C) adequate supply of prescription, poison, and other applicable labels;

(D) appropriate equipment necessary for the proper preparation of prescription drug orders;

(E) metric-apothecary weight and measure conversion charts;

(F) if the pharmacy compounds prescription drug orders which require the use of a balance, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and inspected at least every three years by the appropriate authority as prescribed by local, state, or federal law or regulations.

(G) appropriate disposal containers for used needles, syringes, etc., and if applicable, cytotoxic waste from the preparation of chemotherapeutic agents, and/or biohazardous waste;

(H) temperature controlled delivery containers;

(I) infusion devices, if applicable;

(J) all necessary supplies, including:

(i) disposable needles, syringes, and other aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) hand washing agents with bacteriocidal action;

(iv) disposable, lint free towels or wipes;

(v) appropriate filters and filtration equipment;

(vi) cytotoxic spill kits, if applicable; and

(vii) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(6) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(B) at least one current or updated reference from each of the following categories:

(i) patient information (if prescriptions are delivered to patients or their agents on-site):

(I) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(II) a reference text or information leaflets which provide patient information;

(ii) drug interactions. A reference text on drug interactions, such as Hansten's and Horn's Drug Interactions;

(iii) general information:

(I) Facts and Comparisons with current supplements;

(II) United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider);

(III) AHFS Drug Information with current supplements;

(IV) Remington's Pharmaceutical Sciences; or

(V) Micromedex;

(iv) sterile pharmaceuticals. A current or updated reference text on injectable drug products, such as Handbook on Injectable Drug Products;

(C) a specialty reference appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares cytotoxic drugs, a reference text on the preparation of cytotoxic drugs, such as Procedures for Handling Cytotoxic Drugs;

(D) patient education manuals; and

(E) basic antidote information and the telephone number of the nearest regional poison control center.

(7) Drugs.

(A) Procurement and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(ii) Prescription drugs and devices shall be stored within the prescription department or a locked storage area.

(iii) All drugs shall be stored at the proper temperature, as defined by the following terms.

(I) Cold–Any temperature not exceeding 8 degrees Centigrade (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 and 8 degrees Centigrade (36 and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 and -10 degrees Centigrade (-4 and -14 degrees Fahrenheit).

(II) Cool–Any temperature between 8 and 15 degrees Centigrade (46 and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator unless otherwise specified in the labeling.

(III) Room temperature–The temperature prevailing in a working area. Controlled room temperature is a temperature thermostatically between 15 and 30 degrees Centigrade (59 and 86 degrees Fahrenheit).

(IV) Warm–Any temperature between 30 and 40 degrees Centigrade (86 and 104 degrees Fahrenheit).

(V) Excessive heat–Temperature above 40 degrees Centigrade (104 degrees Fahrenheit).

(VI) Protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(B) Out-of-date and other unusable drugs or devices.

(i) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(ii) Outdated and other unusable drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(C) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(8) Prepackaging of drugs and loading bulk drugs into automated compounding or drug dispensing systems.

(A) Prepackaging of drugs.

(i) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Loading bulk drugs into automated compounding or drug dispensing systems.

(i) Automated compounding or drug dispensing systems may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of an automated compounding or drug dispensing system container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(iii) Records of loading bulk drugs into an automated compounding or drug dispensing system shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) manufacturer or distributor;

(III) manufacturer's lot number;

(IV) expiration date;

(V) quantity added to the automated compounding or drug dispensing system;

(VI) date of loading;

(VII) name, initials, or electronic signature of the person loading the automated compounding or drug dispensing system; and

(VIII) name, initials, or electronic signature of the responsible pharmacist.

(iv) The automated compounding or drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in clause (iii) of this subparagraph.

(9) Sterile pharmaceuticals.

(A) Batch preparation.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for each batch of sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) sterilization method(s);

(VII) specific equipment used during aseptic preparation (e.g., specific automated compounding device); and

(VIII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of sterile pharmaceuticals shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) manufacturer lot number for each component;

(III) component manufacturer or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared products;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) end-product evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated yield, when appropriate.

(iii) Label. The label of each batch prepared sterile pharmaceutical shall bear at a minimum:

(I) the unique lot number assigned to the batch;

(II) all solution and ingredient names, amounts, strengths, and concentrations, when applicable;

(III) quantity;

(IV) expiration date and time, when applicable;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(VI) device-specific instructions, when appropriate.

(B) Expiration date.

(i) The expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing.

(ii) Sources of drug stability information shall include the following:

(I) references (e.g., Remington's Pharmaceutical Sciences, Handbook on Injectable Drugs);

(II) manufacturer recommendations; and

(III) reliable, published research.

(iii) When interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared (e.g., drug reservoir, drug concentration, storage conditions).

(iv) Methods used for establishing expiration dates shall be documented.

(C) Quality control. There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities. Procedures shall be in place to assure that the pharmacy is capable of consistently preparing pharmaceuticals which are sterile and stable. Quality control procedures shall include, but are not limited to, the following:

(i) recall procedures;

(ii) storage and dating;

(iii) documentation of appropriate functioning of refrigerator, freezer, and other equipment;

(iv) documentation of aseptic environmental control device(s) certification at least every six months and the regular replacement of pre-filters as necessary; and

(v) a process to evaluate and confirm the quality of the prepared pharmaceutical product.

(D) Quality assurance.

(i) There shall be a documented, ongoing quality assurance program for monitoring and evaluating personnel performance and patient outcomes to assure an efficient drug delivery process, patient safety, and positive clinical outcomes.

(ii) There shall be documentation of quality assurance audits at regular, planned intervals including infection control, sterile technique, delivery systems/times, order transcription accuracy, drug administration systems, adverse drug reactions, and drug therapy appropriateness.

(iii) A plan for corrective action of program of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken.

(iv) A periodic evaluation of the effectiveness of the quality assurance activities shall be completed and documented.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under this section shall be kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies.

(B) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(C) Records of controlled substances, other than original prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Prescriptions.

(A) Professional responsibility. Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Written prescription drug orders.

(i) Practitioner's signature. Written prescription drug orders shall be manually signed by the practitioner (electronically produced or rubber stamped signatures may not be used).

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(ii) Required prescription drug order format.

(I) A pharmacist may not dispense a written prescription drug order issued in Texas unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written."

(II) The two signature line requirement does not apply to the following types of prescriptions drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescription drug orders for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; and

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iii) Preprinted prescription drug order forms. No prescription drug order form furnished to a practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer.

(iv) Prescription drug orders written by practitioners in another state.

(I) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(II) Controlled substance prescription drug orders. A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(-a-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(v) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(I) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(II) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(-a-) the prescription drug order is an original written prescription; and

(-b-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(vi) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(I) A pharmacist may dispense a prescription drug order for a dangerous drug which is carried out or signed by an advanced practice nurse or physician assistant provided:

(-a-) the prescription is for a dangerous drug and not for a controlled substance; and

(-b-) the advanced practice nurse or physician assistant is practicing in accordance with the Medical Practice Act, §3.06(d).

(II) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to the Medical Practice Act, §3.06(d). A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(vii) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on a triplicate prescription form as required by the Texas Controlled Substances Act, §481.075.

(C) Verbal prescription drug orders.

(i) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate

prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) If a prescription drug order is transmitted to a pharmacist verbally, the pharmacist shall note any substitution instructions by the practitioner or practitioner's agent on the file copy of the prescription drug order. Such file copy may follow the two-line format indicated in subparagraph (B)(ii) of this paragraph, or any other format that clearly indicates the substitution instructions.

(iv) A pharmacist may not dispense a verbal prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(v) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(D) Electronic prescription drug orders. For the purpose of this subparagraph, electronic prescription drug orders shall be considered the same as verbal prescription drug orders.

(i) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device unless the operator is authorized to receive the confidential information as specified in subsection (k) of this section.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) A pharmacist may not dispense an electronic prescription drug order for a:

(I) Schedule II controlled substance;

(II) Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act; or

(III) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(iv) The practitioner or practitioner's agent shall note any substitution instructions on the electronic prescription drug order. Such electronic prescription drug order may follow the two-line format indicated in subparagraph (B)(ii) of this paragraph or any other format that clearly indicated the substitution instructions.

(E) Authorization for generic substitution.

(i) A pharmacist may dispense a generically equivalent drug product if:

(I) the generic product cost the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(IV) the practitioner or practitioner's agent does not clearly indicate that the verbal or electronic prescription drug order shall be dispensed as ordered.

(ii) Practitioners shall indicate their dispensing instructions by signing on either the "Dispense as Written" or "Product Selection Permitted" line on the prescription drug order. If the practitioner's signature does not clearly indicate the prescription drug order shall be dispensed as written, the pharmacist may substitute a generically equivalent drug product.

(iii) A pharmacist may not substitute on prescription drug orders identified in subparagraph (B)(iv) and (v) of this paragraph unless the practitioner has authorized substitution on the prescription drug order.

(iv) If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(I) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(II) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-a-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-b-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-c-) Such documentation shall be updated yearly.

(F) Substitution of dosage form.

(i) A pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(I) the patient consents to the dosage form substitution;

(II) the pharmacist notifies the practitioner of the dosage form substitution; and

(III) the dosage form so dispensed:

(-a-) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(-b-) is not an enteric-coated or time release product; and

(-c-) does not alter desired clinical outcomes.

(ii) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(G) Original prescription drug order records.

(i) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(ii) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(iii) Original prescriptions shall be maintained in one of the following formats:

(I) in three separate files as follows:

(-a-) prescriptions for controlled substances listed in Schedule II;

(-b-) prescriptions for controlled substances listed in Schedule III-V; and

(-c-) prescriptions for dangerous drugs and nonprescription drugs; or

(II) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and triplicate prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(iv) Original prescription records other than triplicate prescriptions may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable.

(I) The record of refills recorded on the original prescription must also be stored in this system.

(II) The original prescription records must be maintained in numerical order and as specified in clause (iii) of this subparagraph.

(III) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(H) Prescription drug order information.

(i) All original prescriptions shall bear:

(I) name of the patient;

(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(III) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(IV) name and strength of the drug prescribed;

(V) quantity prescribed;

(VI) directions for use;

(VII) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VIII) date of issuance; and

(IX) if telephoned to the pharmacist by a designated agent, the full name of the designated agent.

(ii) All original prescriptions for dangerous drugs carried out by an advanced practice nurse or physician assistant in accordance with the Medical Practice Act, §3.06(d), shall bear:

(I) name and address of the patient;

(II) name, address, telephone number, and original signature of the practitioner;

(III) name, address, telephone number, identification number, and original signature of the advanced practice nurse or physician assistant;

(IV) name, strength, and quantity of the dangerous drug;

(V) directions for use;

(VI) the intended use of the drug, if appropriate;

(VII) date of issuance; and

(VIII) number of refills authorized.

(iii) All original electronic prescription drug orders shall bear:

(I) name of the patient;

(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as patient medication records;

(III) name and strength of the drug prescribed;

(IV) quantity prescribed;

(V) directions for use;

(VI) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VII) date of issuance;

(VIII) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to:);

(IX) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(X) telephone number of the prescribing practitioner;

(XI) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(XII) if transmitted by a designated agent, the full name of the designated agent.

(iv) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(I) unique identification number of the prescription drug order;

(II) initials or identification code of the person who compounded the sterile pharmaceutical and the pharmacist who checked and released the product;

(III) name, quantity, lot number, and expiration date of each product used in compounding the sterile pharmaceutical; and

(IV) date of dispensing, if different from the date of issuance.

(I) Refills.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order. Such refills may be indicated as authorization to refill the prescription drug order a specified number of times or for a specified period of time period, such as the duration of therapy.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(iii) Refills of prescription drug orders for dangerous drugs or nonprescription drugs shall be dispensed as follows.

(I) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription order.

(II) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(iv) Refills of prescription drug orders for Schedule III-V controlled substances shall be dispensed as follows.

(I) Prescription drug orders for Schedule III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(II) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever comes first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(v) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(I) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(II) either:

(-a-) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(-b-) the pharmacist is unable to contact the practitioner after a reasonable effort;

(III) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(IV) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(V) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(VI) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this paragraph;

(VII) the pharmacist affixes a label to the dispensing container as specified in this paragraph; and

(VIII) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(-a-) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(-b-) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(-c-) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of subclauses (I) and (II) of this clause; and

(IX) the pharmacist complies with the requirements of subclauses (III)-(V) of this clause.

(3) Prescription drug order records maintained in a manual system.

(A) Original prescriptions. Original prescriptions shall be maintained in three files as specified in paragraph (2)(F)(iii) of this subsection.

(B) Refills.

(i) Each time a prescription drug order is refilled, a record of such refill shall be made:

(I) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(II) on another appropriate, uniformly maintained, readily retrievable record, such as patient medication records, which indicates by patient name the following information:

(-a-) unique identification number of the prescription;

(-b-) name, strength, and lot number of each drug product used in compounding the sterile pharmaceutical;

(-c-) date of each dispensing;

(-d-) quantity dispensed at each dispensing;

(-e-) initials or identification code of person who compounded the sterile pharmaceutical and the pharmacist who checks and releases the final product; and

(-f-) total number of refills for the prescription.

(ii) If refill records are maintained in accordance with clause (i)(II) of this subparagraph, refill records for controlled substances in Schedule III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns.

(iv) Both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(E) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(4) Prescription drug order records maintained in a data processing system.

(A) General requirements for records maintained in a data processing system.

(i) Compliance with data processing system requirements. If a pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in paragraph (3) of this subsection.

(ii) Original prescriptions. Original prescriptions shall be maintained as specified in paragraph (2)(F)(iii) of this subsection.

(iii) Requirements for backup systems.

(I) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(II) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in subparagraph (B)(vii) of this paragraph.

(iv) Change or discontinuance of a data processing system.

(I) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records of dispensing to the new data processing system; or

(-b-) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in subparagraph (B) (ii) of this paragraph. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(v) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(B) Records of dispensing.

(i) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(I) unique identification number of the prescription;

(II) date of dispensing;

(III) patient name;

(IV) prescribing practitioner's name;

(V) name and amount of each drug product used in compounding the sterile pharmaceutical;

(VI) total quantity dispensed;

(VII) initials or an identification code of the dispensing pharmacist; and

(VIII) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(-a-) patient's address;

(-b-) prescribing practitioner's address;

(-c-) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(-d-) quantity prescribed, if different from the quantity dispensed;

(-e-) date of issuance of the prescription drug order, if different from the date of dispensing; and

(-f-) total number of refills dispensed to date for that prescription drug order.

(iii) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(iv) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith or John H. Smith) within seven days from the date of dispensing.

(v) In lieu of the printout described in clause (ii) of this subparagraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration. If no printer is available on site, the hard-copy printout shall be available within 48 hours with a certification by the individual providing the printout which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(vi) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(vii) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(I) Such audit trail shall contain all of the information required on the daily printout as set out in clause (ii) of this subparagraph.

(II) The audit trail required in this subparagraph shall be supplied by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration.

(viii) Failure to provide the records set out in this paragraph, either on site or within 48 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ix) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in clause (ii) of this subparagraph of:

(I) the original controlled substance prescription drug orders currently authorized for refilling; and

(II) the current refill history for Schedule III, IV, and V controlled substances for the immediately preceding six-month period.

(x) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(I) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(II) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(i) on the hard-copy prescription drug order;

(ii) on the daily hard-copy printout; or

(iii) via the CRT display.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns or as authorized in paragraph (3)(D) of this subsection.

(iv) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(vii) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(viii) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(ix) If the data processing system has the capacity to store all the information required in clause (v) and (vi) of this subparagraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(x) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(E) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The data processing system shall have a mechanism to send a message to the transferring pharmacy containing the following information:

(I) the fact that the prescription drug order was transferred;

(II) the unique identification number of the prescription drug order transferred;

(III) the name of the pharmacy to which it was transferred; and

(IV) the date and time of the transfer.

(ii) A pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or a log book containing the information required on the message as soon as practical, but in no event more than 72 hours from the time of such transfer.

(iii) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(F) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(5) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in paragraph (3) or (4) of this subsection.

(6) Policy and procedure manual. A policy and procedure manual as it relates to the sterile pharmaceuticals shall be maintained at the pharmacy and be available for inspection. The manual shall include policies and procedures for:

(A) pharmaceutical care services;

(B) handling, storage, and disposal of cytotoxic/biohazardous drugs and waste;

(C) disposal of unusable drugs, supplies, and returns;

(D) security;

(E) equipment;

(F) sanitation;

(G) reference materials;

(H) drug selection and procurement;

(I) drug storage;

(J) drug administration to include infusion devices, drug delivery systems, and first dose monitoring;

(K) drug labeling;

(L) delivery of drugs;

(M) recordkeeping;

(N) controlled substances;

(O) investigational drugs, including the obtaining of protocols from the principal investigator;

(P) quality assurance/quality control;

(Q) duties and education and training of professional and nonprofessional staff; and

(R) emergency preparedness plan, to include continuity of patient and public safety.

(7) Patient Medication Record (PMR). A PMR shall be maintained for each patient of the pharmacy. The PMR shall contain at a minimum the following.

(A) Patient information:

(i) patient's full name, gender, and date of birth;

(ii) weight and height;

(iii) known drug sensitivities and allergies to drugs and/or food;

(iv) primary diagnosis and chronic conditions;

(v) other drugs the patient is receiving;

(vi) documentation of patient training;

(vii) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug.

(B) Prescription drug order information:

(i) date of dispensing each sterile pharmaceutical;

(ii) unique identification number of the prescription;

(iii) physician's name;

(iv) name, quantity, and lot number of each product used in compounding the sterile pharmaceutical;

(v) quantity dispensed; and

(vi) directions for use and method of administration, including infusion rate if applicable.

(C) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(8) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during each calendar year in which the pharmacy is registered; if during the same calendar year it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(i) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

(I) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;

(II) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(III) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration at the close of the month during which the order is filled.

(9) Other records. Other records to be maintained by a pharmacy:

(A) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(B) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(C) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(E) suppliers' credit memos for controlled substances and dangerous drugs;

(F) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a hard copy of any notification required by the Texas Pharmacy Act or these sections, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notifications of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(10) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in clause (i) of this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(E) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

(11) Confidentiality.

(A) A pharmacist shall provide adequate security of prescription drug order and patient medication records to prevent indiscriminate or unauthorized access to confidential health information. If prescription drug orders, requests for refill authorization, or other confidential health information are not transmitted directly between a pharmacy and a physician but are transmitted through a data communication device, confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain the confidential information by this subsection.

(B) Confidential records are privileged and may be released only to:

(i) the patient or the patient's agent;

(ii) practitioners and other pharmacists when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being;

(iii) other persons, the board, or other state or federal agencies authorized by law to receive such information;

(iv) a law enforcement agency engaged in investigation of suspected violations of the Controlled Substances Act or the Dangerous Drug Act;

(v) a person employed by any state agency which licenses a practitioner as defined in the Act if such person is engaged in the performance of the person's official duties; or

(vi) an insurance carrier or other third party payor authorized by a patient to receive such information.

(f) Triplicate prescription requirements.

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

(A) Designated agent or authorized agent–An individual under the supervision of a practitioner, designated in writing by the practitioner, and for whom the practitioner assumes responsibility, who communicates the practitioner's instructions to the pharmacist. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety.

(B) Emergency situation–For the purpose of authorizing an oral prescription for a Schedule II substance, the term "emergency situation" means those situations in which the prescribing practitioner determines that:

(i) immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user;

(ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II; and

(iii) it is not reasonably possible for the prescribing practitioner to provide a written prescription to a pharmacist prior to the dispensing.

(C) Hospital–

(i) General hospital–Any establishment offering services, facilities, and beds for use beyond 24 hours for two or more nonrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy, and regularly maintaining at least clinical laboratory services, diagnostic x-ray services, treatment facilities which would include surgery and/or obstetrical care, and other definitive medical or surgical treatment of similar extent.

(ii) Special hospital–Any establishment offering services, facilities, and beds for use beyond 24 hours for two or more nonrelated individuals who are regularly admitted, treated, and discharged and require services more intensive than room, board, personal services, and general nursing care and which has clinical laboratory facilities, diagnostic x-ray facilities, treatment facilities, and/or other definitive medical treatment and has a medical house staff in regular attendance, and maintains records of the clinical work performed for each patient.

(iii) Ambulatory surgical center–Approved surgical centers licensed by the State Hospital Licensing Board and approved by Medicaid to do day surgery when a patient is not admitted beyond a 24-hour period.

(D) Institutional practitioner–

(i) An individual who meets each of the following qualifications:

(I) not yet licensed by the appropriate state professional licensing board;

(II) enrolled in a bona fide professional training program;

(III) in a base hospital or institutional training facility registered by the federal Drug Enforcement Administration; and

(IV) authorized by the base hospital or training institution to administer, dispense, or prescribe controlled substances.

(ii) Institutional practitioner shall be limited to interns, residents, fellows, or their equivalent.

(E) Medical purpose–The utilization of controlled substances for the purpose of relieving or curing mental or physical diseases or infirmities.

(F) Possession–The actual care, custody, control, or management.

(G) Prescribe–A direction or authorization, by prescription, permitting an ultimate user lawfully to obtain controlled substances from any person authorized by law to dispense such substances.

(H) Triplicate prescription–The official Texas Department of Public Safety prescription form utilized to administer, dispense, prescribe, or deliver a Schedule II narcotic and/or Schedule II-N nonnarcotic controlled substance to an ultimate user.

(I) Ultimate user–A person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or a member of his household.

(2) Special instructions. Information and special instruction information regarding procedures under these rules and regulations will be furnished upon request by writing to the Triplicate Prescription Section, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773.

(3) Purpose of issuing triplicate prescriptions.

(A) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Texas Controlled Substances Act, §481.074 and the person knowingly filling such a purported prescription, as well as the person issuing it, may be subject to the penalties provided for violation of the provisions of law or rules relating to controlled substances.

(B) Prescriptions for Schedule II controlled substances shall be issued on the triplicate prescription form only and may not be refilled.

(4) Emergency dispensing of Schedule II controlled substances. No controlled substance in Schedule II may be administered, dispensed, prescribed, or delivered without the written prescription of a practitioner on a triplicate prescription form, except in emergency situations, as defined as follows.

(A) Schedule II controlled substances may be dispensed upon oral or telephonically communicated prescription of a practitioner or a practitioner's designated agent reduced promptly to writing by the pharmacy and filed by the pharmacy. Within 72 hours after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written triplicate prescription, with the "Check if Emergency" block marked and indicating the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to other requirements of the CFR, Title 21, Chapter 2, Part 1306.05, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The federal regulation will be deemed satisfied by marking the block at the bottom of the triplicate prescription form indicating "Check if Emergency" and filling in "Date Issued" space at top of form.

(B) The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach Copy 2 of the triplicate prescription to the oral emergency prescription which has earlier been reduced to writing.

(C) The dispensing pharmacist shall send Copy 1 of the triplicate prescription to the Department of Public Safety within 30 days from the date the prescription is filled. Copy 2 of the triplicate prescription, along with the copy of the oral emergency prescription, will be retained by the pharmacy for two years for inspection purposes. No prescription for a Schedule II controlled substance may be refilled.

(5) Partial dispensing of Schedule II controlled substances.

(A) If unable to supply the full quantity called for in a written or emergency oral prescription for a Schedule II controlled substance, the pharmacist may partially dispense the prescription and complete the prescription under the following conditions.

(i) The pharmacist notes the initial partial quantity dispensed on the face of the written prescription or emergency oral prescription.

(ii) The remaining portion of the prescription is dispensed within 72 hours of the first partial dispensing. No further quantity may be dispensed beyond 72 hours without a new prescription.

(iii) If the remaining portion of the prescription is not or cannot be dispensed within the 72-hour period, the pharmacist shall notify the prescribing practitioner.

(B) A pharmacist may dispense a prescription for a Schedule II controlled substance in partial quantities to include individual dosage units, for a patient in a long-term facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness under the following conditions.

(i) The pharmacist must record on the prescription whether the patient is terminally ill or an LTCF patient. A prescription that is partially filled and does not contain the notation terminally ill or LTCF patient shall be deemed to have been filled in violation of the Texas Controlled Substances Act.

(ii) If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient.

(iii) For each partial dispensing, the dispensing pharmacist shall record on the back of Copy 1 and Copy 2 of the prescription the:

(I) date of the partial dispensing;

(II) quantity dispensed;

(III) remaining quantity authorized to be dispensed; and

(IV) identification of the dispensing pharmacist.

(iv) Prior to any subsequent partial dispensing, the pharmacist must determine that the additional partial dispensing is necessary.

(v) The total quantity of the Schedule II controlled substances dispensed in all partial dispensings must not exceed the total quantity prescribed.

(vi) Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 30 days from the issue date unless sooner terminated by discontinuance of the medication.

(6) Exceptions to use of triplicate prescriptions.

(A) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be on a triplicate prescription.

(i) "Medication order," as used in this subsection, will mean a drug order issued for administration to a patient admitted to a hospital.

(ii) "Admitted to a hospital," as used in this subsection, will include the following:

(I) general hospital, special hospitals, ambulatory surgical centers, and surgical suites in dental schools;

(II) hospital clinics and emergency room admittance, if the clinic and/or emergency room is under the control, direction, and administration as an integral part of the general or special hospital.

(B) A prescription written and filled for a patient who is admitted to a hospital at the time the prescription is written and filled is not required to be on a triplicate prescription; however, such prescription shall comply with the requirement of the Texas Pharmacy Act, §40(g).

(i) Schedule II controlled substances may be dispensed by a practitioner or pharmacy of the hospital to a patient who has been admitted to a hospital and who will require an emergency quantity of controlled substances upon release from the hospital. These Schedule II controlled substances may only be dispensed to a patient while such patient is still admitted to and a resident of the hospital.

(ii) The amount of Schedule II controlled substances dispensed under this paragraph may only be the amount needed for proper treatment of the patient until access to a pharmacy other than the hospital pharmacy is possible, but in no event may exceed a seven-day supply. However, when an emergency supply is dispensed from the emergency room of the hospital, the amount dispensed may not exceed a 72-hour supply.

(iii) The Schedule II controlled substances dispensed under the situations outlined in clause (ii) of this subparagraph must be in a properly labeled container.

(7) Pharmacist responsibilities.

(A) Upon receipt of Copy 1 and Copy 2 of a properly completed triplicate prescription from a practitioner, each dispensing pharmacist shall utilize the "Pharmacy Use Only" section and record the following:

(i) pharmacy name, address, area code/telephone number, and Drug Enforcement Administration number. This information may be printed, typed, or rubber stamped, or the pharmacist may use a label that is securely affixed in this area;

(ii) the dispensing pharmacist's signature shall be entered in a space located directly below the pharmacy information;

(iii) enter in the spaces provided the date filled and the pharmacy prescription number;

(iv) ensure that the drug prescribed and/or its substitute is legible on Copy 1 and Copy 2 of the triplicate prescription.

(B) No Schedule II prescription may be dispensed after the end of the seventh day following the date of issuance.

(C) a pharmacist may dispense a prescription that is orally or telephonically communicated by a practitioner or his designated agent for a Schedule II controlled substance in emergency situations, as defined by paragraph (1)(B) of this subsection.

(i) In such emergency situations the dispensing pharmacist shall reduce promptly to writing the following:

(I) name, address, and federal Drug Enforcement Administration number of the prescribing practitioner;

(II) drug prescribed, the dosage, and the instructions for use;

(III) name, address, and age of the person for whom the controlled substance is prescribed (or if an animal, the species and owner's name and address).

(ii) The pharmacist shall file the recorded information as set out in subparagraph (C)(i) of this paragraph in the pharmacy's Schedule II prescription files.

(iii) Within 72 hours from the time the emergency oral or telephonic communication was received, the practitioner must provide the dispensing pharmacy with the triplicate prescription order corresponding to the oral prescription order. If such triplicate prescription is not provided, the pharmacist shall contact the Department of Public Safety and the Drug Enforcement Administration.

(iv) The practitioner is required to place the date issued on the triplicate prescription and such date shall be the date the practitioner or his designated agent communicated the emergency oral or telephonic prescription to the pharmacy.

(v) The practitioner shall check the block at the bottom of the triplicate prescription which indicates the prescription is an emergency order. If the practitioner fails to check such block, the pharmacist should do so.

(vi) The pharmacist shall attach Copy 2 to the oral emergency prescription which was reduced to writing upon receipt from the practitioner or practitioner's designated agent.

(D) Within 30 days from the date a pharmacist fills a triplicate prescription, the pharmacy is required to mail Copy 1 of the

form to the Texas department of Public Safety, Triplicate Prescription Section, P.O. Box 4087, Austin, Texas 78773.

(E) Should a prescription be written on a triplicate prescription by a practitioner for a controlled substance other than a Schedule II, the pharmacist may dispense the prescription but shall mark the prescription in such a way as to clearly indicate that the drug dispensed is not a Schedule II controlled substance.

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

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Subchapter C. NUCLEAR PHARMACY (CLASS C)

22 TAC §291.52, §291.53

The Texas State Board of Pharmacy adopts amendments to §291.52, concerning Definitions, and §291.53, concerning Personnel with changes to the proposed text in the July 9, 1999, edition of the *Texas Register* (24 TexReg 5126).

Adoption of the amendments increases safety of the prescription drug supply through the certification of pharmacy technicians and by clarifying the qualifications, duties, and supervision of pharmacy technicians. Specifically, adoption of the amendments: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) require certification of pharmacy technicians effective January 1, 2001.

Comments: The Texas Pharmacy Association (TPA) Section of Pharmacy Technicians, the Texas Society of Health-System Pharmacists (TSHP), and the American Pharmaceutical Association made comments supporting the National Pharmacy Technician Certification Exam as the sole exam for technician certification. The Texas Federation of Drug Stores (TFDS), TPA, Brookshire Grocery Company, Syncor International Corporation, and H.E. Butt Grocery Company made comments requesting the Board allow for other Board approved exams for technician certification. In addition, H.E. Butt Grocery Company made several suggestions for exam alternatives. The Board reviewed both sets of comments and decided not to restrict technician certification to the one national exam but to allow other examinations approved by the Board. This allows the Board greater flexibility to rapidly respond to new certification exams. This change has been incorporated into the rule language.

The TPA Section of Pharmacy Technicians made a comment that the Board should not exempt pharmacy technicians with at least 10 years experience as a pharmacy technician from certification. The Board believes that these individuals have already shown an acceptable skill level to perform the work of a pharmacy technician. Therefore, these pharmacy technicians should be exempted from certification provided the 10 years of experience is within the same pharmacy and the exemption exists for service as a pharmacy technician at this one pharmacy site. However, it is the opinion of the Board that the addition of this exemption constitutes a substantive change and must be considered separately from these rules.

The TPA Section of Pharmacy Technicians and TSHP made a comment that the Board should not exempt pharmacy technicians working in a county of less than 50,000 population from certification. The Board agrees with this comment and believes that simply working in a county of less than 50,000 population does not establish competency as a pharmacy technician. Since this exemption is not addressed in the proposed rules, no action is necessary.

The TPA, TFDS, and TSHP made comments requesting that the January 1, 2001, implementation date for the change to a 3 to 1 technician to pharmacist ratio be deleted to allow the change to take effect upon the effective date of the rule. The Board agrees with this comment provided at least one of the pharmacist technicians is certified. This change has been incorporated into the rule language.

The TPA and TFDS made comments requesting that the Board clarify that a pharmacy technician trainee could remain a trainee for one full year of training regardless of the trainee's pass/fail history on the certification exam during that one year period. The Board agreed with this comment and made appropriate changes to allow a pharmacy technician trainee to remain a trainee for one year from the start of training or until successfully passing a certification exam, whichever comes first.

One individual and the TSHP requested that the Board clarify that pharmacy technician trainees include students that are enrolled in accredited pharmacy technician training programs. In addition, TSHP made a comment that the trainee status while enrolled in an accredited pharmacy technician training program should not count towards the one year limit for designation as a pharmacy technician trainee. The Board agrees with both comments because of the closely supervised training environment and made appropriate changes to the rule language.

The Texas Pharmacy Congress and TPA made a comment that the Board should exempt pharmacy students from the requirement to be certified as pharmacy technicians. This suggested change only applies to pharmacy students in their first year in the professional sequence towards a degree in pharmacy. During the second professional year a pharmacy student can become a pharmacist-intern meeting an entirely different set of requirements. During the first professional year, the student can be a pharmacist trainee and since a person can be a pharmacist trainee for up to one year, the Board disagrees with the need for an exemption from certification.

The amendments are adopted under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b)

as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.52. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §5.

(1) Act–The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended.

(2) Accurately as prescribed–Dispensing, delivering, and/or distributing a prescription drug order or radioactive prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including §40 of the Texas Pharmacy Act.

(3) Administer–The direct application of a prescription drug and/or radiopharmaceutical, by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(4) Airborne particulate cleanliness class–The level of cleanliness specified by the maximum allowable number of particles per cubic foot of air as specified in Federal Standard 209E, et seq. For example:

(A) Class 100 is an atmospheric environment which contains less than 100 particles no greater than 0.5 microns in diameter per cubic foot of air;

(B) Class 10,000 is an atmospheric environment which contains less than 10,000 particles no greater than 0.5 microns in diameter per cubic foot of air; and

(C) Class 100,000 is an atmospheric environment which contains less than 100,000 particles no greater than 0.5 microns in diameter per cubic foot of air.

(5) Authentication of product history–Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

(6) Authorized nuclear pharmacist–A pharmacist who has completed the specialized training requirements specified by these rules for the preparation and distribution of radiopharmaceuticals.

(7) Authorized user–Any individual named on a Texas radioactive material license, issued by the Texas Department of Health, Bureau of Radiation Control.

(8) Automated compounding or drug dispensing device–An automated device that compounds, measures, counts, packages, and/or labels a specified quantity of dosage units for a designated drug product.

(9) Biological Safety Cabinet–Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(10) Board–The Texas State Board of Pharmacy.

(11) Certified Pharmacy Technician–A pharmacy technician who:

(A) has completed the pharmacy technician training program of the pharmacy;

(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and

(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(12) Class B pharmacy license or nuclear pharmacy license–A license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

(13) Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(14) Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(15) Controlled area–A controlled area is the area designated for preparing sterile radiopharmaceuticals.

(16) Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(17) Dangerous drug–A device, drug, or radioactive drug that is unsafe for self medication and that is not included in Penalty Groups I through IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device, drug, or radiopharmaceutical that bears or is required to bear the legend:

(A) "Caution: Federal Law Prohibits Dispensing Without a Prescription"; or

(B) "Caution: Federal Law Restricts This Drug To Be Used By or on the Order of a Licensed Veterinarian."

(18) Data communication device–An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(19) Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(20) Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom

the practitioner assumes legal responsibility, who communicates radioactive prescription drug orders to a pharmacist; or

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a radioactive prescription drug order.

(21) Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(22) Diagnostic prescription drug order–A radioactive prescription drug order issued for a diagnostic purpose.

(23) Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(24) Dispensing pharmacist–The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(25) Distribute–The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(26) Electronic radioactive prescription drug order–A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(27) Internal test assessment–Validation of tests for quality control necessary to insure the integrity of the test.

(28) Nuclear pharmacy technique–The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(29) Original prescription–The:

(A) original written radioactive prescription drug orders; or

(B) original verbal or electronic radioactive prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(30) Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(31) Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs or radiopharmaceuticals under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(32) Pharmacy technician trainee–A pharmacy technician:

(A) participating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(33) Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(34) Radiopharmaceutical–A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(35) Radioactive drug quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final radiopharmaceutical prepared meets predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility and the interpretation of the resulting data in order to determine the feasibility for use in humans and animals including internal test assessment, authentication of product history, and the keeping of mandatory records.

(36) Radioactive drug service–The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(37) Radioactive prescription drug order–An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(38) Sterile radiopharmaceutical–A dosage form of a radiopharmaceutical free from living micro-organisms.

(39) Therapeutic prescription drug order–A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(40) Ultimate user–A person who has obtained and possesses a prescription drug or radiopharmaceutical for his or her own use or for the use of a member of his or her household.

§291.53. Personnel.

(a) Pharmacists-in-Charge.

(1) General.

(A) Every nuclear pharmacy shall have an authorized nuclear pharmacist designated on the nuclear pharmacy license as the pharmacist-in-charge who shall be responsible for a nuclear pharmacy's compliance with laws and regulations, both state and federal, pertaining to the practice of nuclear pharmacy.

(B) The nuclear pharmacy pharmacist-in-charge shall see that directives from the board are communicated to the owner(s), management, other pharmacists, and interns of the nuclear pharmacy.

(C) An authorized nuclear pharmacist may be pharmacist-in-charge for no more than one nuclear pharmacy at any one given time.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) ensuring that radiopharmaceuticals are dispensed and delivered safely and accurately as prescribed;

(B) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of radiopharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(C) establishing policies for procurement of drugs and devices and storage of all pharmaceutical materials including radiopharmaceuticals, components used in the compounding of radiopharmaceuticals, and drug delivery devices;

(D) developing a system for the disposal and distribution of drugs from the Class B pharmacy;

(E) developing a system for the compounding, sterility assurance, and quality control of sterile radiopharmaceuticals;

(F) maintaining records of all transactions of the Class B pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials including radiopharmaceuticals, required by applicable state and federal laws and rules;

(G) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(H) assuring that the pharmacy has a system to dispose of radioactive and cytotoxic waste in a manner so as not to endanger the public health; and

(I) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(b) Authorized nuclear pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional authorized nuclear pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of an authorized nuclear pharmacist. General qualifications for an authorized nuclear pharmacist are the following. A pharmacist shall:

(i) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Texas Regulations for Control of Radiation of the Bureau of Radiation Control, Texas Department of Health;

(ii) be a pharmacist licensed by the board to practice pharmacy in Texas; and

(iii) submit to the board either:

(I) written certification that he or she has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(II) written certification signed by preceptor authorized nuclear pharmacist that he or she has achieved a level of competency sufficient to independently operate as an authorized nuclear pharmacist and has satisfactorily completed 700 hours in a structured educational program consisting of both:

(-a-) 200 hours of didactic training in a program accepted by the Bureau of Radiation Control, Texas Department of Health in the following areas:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiation biology; and

(-5-) chemistry of radioactive material for medical use; and

(-b-) 500 hours of supervised experience in a nuclear pharmacy involving the following:

(-1-) shipping, receiving, and performing related radiation surveys;

(-2-) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(-3-) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(-4-) using administrative controls to avoid mistakes in the administration of radioactive material; and

(-5-) using procedures to prevent or minimize contamination and using proper decontamination procedures.

(C) The board may issue a letter of notification that the evidence submitted by the pharmacist meets the requirements of subparagraph (B)(i)-(iii) of this paragraph and has been accepted by the board and that, based thereon, the pharmacist is recognized as an authorized nuclear pharmacist.

(D) Authorized nuclear pharmacists are solely responsible for the direct supervision of pharmacy technicians and for delegating nuclear pharmacy techniques and additional duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. Each authorized nuclear pharmacist:

(i) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians; and

(ii) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(E) All authorized nuclear pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) The dispensing pharmacist shall ensure that the drug is dispensed and delivered safely and accurately as prescribed.

(2) Duties. Duties which may only be performed by an authorized nuclear pharmacist are as follows:

(A) receiving verbal therapeutic prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) receiving verbal, diagnostic prescription drug orders in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies) and reducing these orders to writing, either manually or electronically;

(C) interpreting and evaluating radioactive prescription drug orders;

(D) selection of drug products; and

(E) performing the final check of the dispensed prescription before delivery to the patient to ensure that the radioactive prescription drug order has been dispensed accurately as prescribed.

(c) Pharmacy Technicians.

(1) General.

(A) Pharmacy technicians in a nuclear pharmacy shall possess sufficient education and training to qualify such individual to perform assigned tasks including nuclear pharmacy techniques.

(B) The pharmacist-in-charge shall document the training and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(C) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affixing a label to a prescription container and routinely compounding sterile radiopharmaceuticals;

(ii) may be designated a pharmacy technician trainee for no longer than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(D) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in- charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Effective January 1, 2001, all pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(2) Duties.

(A) General. Pharmacy technicians may perform any nuclear pharmacy technique delegated by an authorized nuclear pharmacist which is associated with the preparation and distribution of radiopharmaceuticals other than those duties listed in subsection (b)(2) of this section provided:

(i) an authorized nuclear pharmacist conducts in-process and final checks; and

(ii) pharmacy technicians are under the direct supervision of and responsible to an authorized nuclear pharmacist.

(B) Labeling. Effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(3) Ratio of authorized nuclear pharmacist to pharmacy technicians.

(A) The ratio of authorized nuclear pharmacists to pharmacy technicians may not exceed 1:2, provided that only one pharmacy technician may be engaged in the compounding of a sterile radiopharmaceutical.

(B) The ratio of authorized nuclear pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified and only one may be engaged in the compounding of a sterile radiopharmaceutical.

(d) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile radiopharmaceuticals.

(1) General.

(A) All pharmacy personnel preparing sterile radiopharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical and radiopharmaceutical calculations and terminology;

(vii) sterile radiopharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable; and

(xi) general conduct in the controlled area.

(B) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile radiopharmaceuticals shall be observed, evaluated, and documented as satisfactory through written or practical tests and process validation.

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile radiopharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process valida-

tion test indicates that the individual can competently perform aseptic procedures, except that an authorized nuclear pharmacist may temporarily compound sterile radiopharmaceuticals and supervise pharmacy technicians compounding sterile radiopharmaceuticals without process validation provided the authorized nuclear pharmacist:

(i) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this paragraph; and

(ii) completes the on-site process validation within seven days of commencing work at the pharmacy.

(D) Process validation procedures for assessing the preparation of specific types of sterile radiopharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of radioradiopharmaceutical are likely to encounter.

(E) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis.

(2) Pharmacists.

(A) All pharmacists who compound sterile radiopharmaceuticals or supervise pharmacy technicians compounding sterile radiopharmaceuticals shall:

(i) effective January 1, 2000, complete a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; and

(ii) possess knowledge about:

(I) aseptic processing;

(II) quality control as related to environmental, component, and end-product testing;

(III) chemical, pharmaceutical, and clinical properties of drugs;

(IV) container, equipment, and closure system selection; and

(V) sterilization techniques.

(B) Pharmacists shall discontinue preparation of sterile radiopharmaceuticals if the training specified in subparagraph (A) of this paragraph is not completed by January 1, 2000.

(C) The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training in the compounding of sterile pharmaceuticals.

(3) Pharmacy technicians. In addition to the qualifications and training outlined in subsection (c) of this section, all pharmacy technicians who compound sterile radiopharmaceuticals shall:

(A) have a high school or equivalent education;

(B) complete through a single course, a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program;

(C) acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training in the compounding of sterile pharmaceuticals.

(D) effective January 1, 2001, be certified pharmacy technicians.

(E) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(4) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(A) name of the person receiving the training or completing the testing or process validation;

(B) date(s) of the training, testing, or process validation;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or process validation; and

(E) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

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 August 27, 1999.

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Executive Director/Secretary
Texas State Board of Pharmacy
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Subchapter D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72, §291.73

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions, and §291.73, concerning Personnel with changes to the proposed text in the July 9, 1999, edition of the *Texas Register* (24 TexReg 5129).

Adoption of the amendments increases safety of the prescription drug supply by clarifying the qualifications, duties, and supervision of pharmacy technicians. Specifically, adoption of the amendments: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) update identification requirements for pharmacy personnel.

Comments: The Texas Pharmacy Association (TPA) Section of Pharmacy Technicians, the Texas Society of Health-System Pharmacists (TSHP), and the American Pharmaceutical Association made comments supporting the National Pharmacy Technician Certification Exam as the sole exam for technician certification. The Texas Federation of Drug Stores (TFDS), TPA, Brookshire Grocery Company, and H.E. Butt Grocery Company made comments requesting the Board allow for other Board approved exams for technician certification. In addition, H.E. Butt Grocery Company made several suggestions for exam alternatives. The Board reviewed both sets of comments and decided not to restrict technician certification to the one national exam but to allow other examinations approved by the Board. This allows the Board greater flexibility to rapidly respond to new certification exams. This change has been incorporated into the rule language.

The TPA Section of Pharmacy Technicians made a comment that the Board should not exempt pharmacy technicians with at least 10 years experience as a pharmacy technician from certification. The Board believes that these individuals have already shown an acceptable skill level to perform the work of a pharmacy technician. Therefore, these pharmacy technicians should be exempted from certification provided the 10 years of experience is within the same pharmacy and the exemption exists for service as a pharmacy technician at this one pharmacy site. However, it is the opinion of the Board that the addition of this exemption constitutes a substantive change and must be considered separately from these rules.

The TPA Section of Pharmacy Technicians and TSHP made a comment that the Board should not exempt pharmacy technicians working in a county of less than 50,000 population from certification. The Board agrees with this comment and believes that simply working in a county of less than 50,000 population does not establish competency as a pharmacy technician. Since this exemption is not addressed in the proposed rules, no action is necessary.

The TPA, TFDS, and TSHP made comments requesting that the January 1, 2001, implementation date for the change to a 3 to 1 technician to pharmacist ratio be deleted to allow the change to take effect upon the effective date of the rule. The Board agrees with this comment provided at least one of the pharmacist technicians is certified. This change has been incorporated into the rule language.

The TPA and TFDS made comments requesting that the Board clarify that a pharmacy technician trainee could remain a trainee for one full year of training regardless of the trainee's pass/fail history on the certification exam during that one year period. The Board agreed with this comment and made appropriate changes to allow a pharmacy technician trainee to remain a trainee for one year from the start of training or until successfully passing a certification exam, whichever comes first.

One individual and the TSHP requested that the Board clarify that pharmacy technician trainees include students that are enrolled in accredited pharmacy technician training programs. In addition, TSHP made a comment that the trainee status while enrolled in an accredited pharmacy technician training program should not count towards the one year limit for designation as a pharmacy technician trainee. The Board agrees with both comments because of the closely supervised training environment and made appropriate changes to the rule language.

The Texas Pharmacy Congress and TPA made a comment that the Board should exempt pharmacy students from the requirement to be certified as pharmacy technicians. This suggested change only applies to pharmacy students in their first year in the professional sequence towards a degree in pharmacy. During the second professional year a pharmacy student can become a pharmacist-intern meeting an entirely different set of requirements. During the first professional year, the student can be a pharmacist trainee and since a person can be a pharmacist trainee for up to one year, the Board disagrees with the need for an exemption from certification.

The amendments are adopted under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.72. Definitions.

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

(1) Accurately as prescribed–Distributing and/or delivering a medication drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including the Texas Pharmacy Act, §40.

(2) Act–The Texas Pharmacy Act, (Texas Civil Statutes, Article 4542a-1, as amended).

(3) Administer–The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(4) Airborne particulate cleanliness class–The level of cleanliness specified by the maximum allowable number of particles per cubic foot of air as specified in Federal Standard 209E et seq. For example:

(A) Class 100 is an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air;

(B) Class 10,000 is an atmospheric environment which contains less than 10,000 particles 0.5 microns in diameter per cubic foot of air; and

(C) Class 100,000 is an atmospheric environment which contains less than 100,000 particles 0.5 microns in diameter per cubic foot of air.

(5) Aseptic preparation–The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

(6) Automated compounding or drug dispensing system–An automated device that compounds, measures, counts and/or packages a specified quantity of dosage units for a designated drug product.

(7) Batch preparation/compounding–Compounding of multiple sterile-product units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation does not include the preparation of multiple sterile-product units pursuant to medication orders.

(8) Biological safety cabinet–Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(9) Board–The State Board of Pharmacy.

(10) Certified Pharmacy Technician–A pharmacy technician who:

(A) has completed the pharmacy technician training program of the pharmacy;

(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and

(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(11) Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E et seq.

(12) Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(13) Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(14) Confidential record–Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication drug order.

(15) Consultant pharmacist–A pharmacist retained by a facility on a routine basis to consult with the facility in areas that pertain to the practice of pharmacy.

(16) Controlled area–A controlled area is the area designated for preparing sterile pharmaceuticals.

(17) Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I-V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(18) Critical areas–Any area in the controlled area where products or containers are exposed to the environment.

(19) Cytotoxic–A pharmaceutical that has the capability of killing living cells.

(20) Dangerous drug–Any drug or device that is not included in Penalty Groups 1-4 of the controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(21) Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(22) Direct copy–Electronic copy or carbonized copy of a medication order, including a facsimile (FAX), tele-autograph, or a copy transmitted between computers.

(23) Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(24) Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(25) Distributing pharmacist–The pharmacist who checks the medication order prior to distribution.

(26) Downtime–Period of time during which a data processing system is not operable.

(27) Drug regimen review–

(A) An evaluation of medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy–contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions; and

(x) proper utilization, including overutilization or underutilization.

(B) The drug regimen review may be conducted prior to administration of the first dose (prospective) or after administration of the first dose (retrospective).

(28) Electronic signature–A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(29) Expiration date–The date (and time, when applicable) beyond which a product should not be used.

(30) Facility–Hospital or other inpatient facility that is licensed under the Texas Hospital Licensing Law, the Health and Safety Code, Chapter 241, or Texas Mental Health Code, Chapter 6, Texas Civil Statutes, Article 5547-1 et seq., or that is maintained or operated by the state.

(31) Floor stock–Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other hospital department (excluding the pharmacy) for the purpose of administration to a patient of the facility.

(32) Formulary–List of drugs approved for use in the facility by the committee which performs the pharmacy and therapeutics function for the facility.

(33) Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(34) Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc).

(35) Inpatient–A person who is duly admitted to the hospital or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility which is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility.

(36) Institutional pharmacy–Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

(37) Investigational new drug–New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

(38) Medication order–A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(39) Part-time pharmacist–A pharmacist either employed or under contract, who routinely works less than full-time.

(40) Perpetual inventory–An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(41) Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(42) Pharmacist-in-charge–Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(43) Pharmacy and therapeutics function–Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(44) Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(45) Pharmacy technician trainee–a pharmacy technician:

(A) partipating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(46) Pre-packaging–The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original

container into unit-dose packaging or a multiple dose container for distribution within the facility.

(47) Prescription drug–

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(48) Prescription drug order–

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to the Medical Practice Act, §3.06(d)(5) or (6).

(49) Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(50) Quality assurance–The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(51) Quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(52) Sample–A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(53) Sterile pharmaceutical–A dosage form free from living micro-organisms.

(54) Texas Controlled Substances Act–The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(55) Unit-dose packaging–The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(56) Unusable drugs–Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(57) Written protocol–A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act (Texas Civil Statutes, Article 4495b).

§291.73. Personnel.

(a) Requirements for pharmacist services.

(1) A Class C pharmacy in a facility licensed for 101 beds or more shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services; provided, however, that pharmacy technicians may distribute prepackaged and prelabeled drugs from a satellite pharmacy in the absence of on-site supervision of a pharmacist, under the following conditions:

(A) the distribution is under the control of a pharmacist; and

(B) a pharmacist is on duty in the facility.

(2) A Class C pharmacy in a facility licensed for 100 beds or less shall have the services of a pharmacist at least on a part-time or consulting basis according to the needs of the facility.

(3) A pharmacist shall be accessible at all times to respond to other health professional's questions and needs. Such access may be through a telephone which is answered 24 hours a day, e.g., answering or paging service, a list of phone numbers where the pharmacist may be reached, or any other system which accomplishes this purpose.

(b) Pharmacist-in-charge.

(1) General.

(A) Each institutional pharmacy in a facility with 101 beds or more shall have one full-time pharmacist-in-charge, who may be pharmacist-in-charge for only one such pharmacy.

(B) Each institutional pharmacy in a facility with 100 beds or less shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis, if desired, and who may be pharmacist-in-charge for no more than three facilities or 150 beds.

(C) The pharmacist-in-charge shall be assisted by additional pharmacists and pharmacy technicians commensurate with the scope of services provided.

(D) If the pharmacist-in-charge is employed on a part-time or consulting basis, a written agreement shall exist between the facility and the pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) providing the appropriate level of pharmaceutical care services to patients of the facility;

(B) ensuring that drugs and/or devices are prepared for distribution safely, and accurately as prescribed;

(C) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals compounded within the institutional pharmacy;

(D) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(E) providing written guidelines and approval of the procedure to assure that all pharmaceutical requirements are met when any part of preparing, sterilizing, and labeling of sterile pharmaceuticals is not performed under direct pharmacy supervision;

(F) developing a system for bulk compounding or batch preparation of drugs;

(G) establishing specifications for procurement and storage of all pharmaceutical materials including pharmaceuticals,

components used in the compounding of pharmaceuticals, and drug delivery devices;

(H) participating in the development of a formulary for the facility, subject to approval of the appropriate committee of the facility;

(I) developing a system to assure that drugs to be administered to inpatients are distributed pursuant to an original or direct copy of the practitioner's medication order;

(J) developing a system for the filling and labeling of all containers from which drugs are to be distributed or dispensed;

(K) assuring that the pharmacy maintains and makes available a sufficient inventory of antidotes and other emergency drugs as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the facility;

(L) maintaining records of all transactions of the institutional pharmacy as may be required by applicable law, state and federal, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(M) participating in those aspects of the facility's patient care evaluation program which relate to pharmaceutical utilization and effectiveness;

(N) participating in teaching and/or research programs in the facility;

(O) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the facility;

(P) providing effective and efficient messenger or delivery service to connect the institutional pharmacy with appropriate areas of the facility on a regular basis throughout the normal workday of the facility;

(Q) developing a system for the labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions and symptoms of toxicity of investigational new drugs;

(R) assuring that records in a data processing system are maintained such that the data processing system is in compliance with Class C (Institutional) pharmacy requirements;

(S) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(T) assuring the legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(c) Consultant pharmacist.

(1) The consultant pharmacist may be the pharmacist-in-charge.

(2) A written agreement shall exist between the facility and any consultant pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(d) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the institutional pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in subsection (b)(2) of this section and in ordering, administering, and accounting for pharmaceutical materials.

(C) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(D) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) A distributing pharmacist shall ensure that the drug is prepared for distribution safely, and accurately as prescribed.

(2) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to the following:

(A) providing those acts or services necessary to provide pharmaceutical care;

(B) receiving, interpreting, and evaluating prescription drug orders, and reducing verbal medication orders to writing either manually or electronically;

(C) participating in drug and/or device selection as authorized by law, drug and/or device supplier selection, drug administration, drug regimen review, or drug or drug-related research;

(D) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act (Texas Civil Statutes, Article 4495b);

(E) accepting the responsibility for:

(i) distributing drugs and devices pursuant to medication orders;

(ii) compounding and labeling of drugs and devices;

(iii) proper and safe storage of drugs and devices; and

(iv) maintaining proper records for drugs and devices.

(e) Pharmacy technicians.

(1) Qualifications.

(A) General.

(i) All pharmacy technicians shall:

(I) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

(III) Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy

Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(ii) For the purpose of this section, pharmacy technicians are those persons who perform nonjudgmental technical duties associated with the distribution of a medication drug order.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(ii) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health- System Pharmacists.

(C) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(2) Duties.

(A) General. Duties may include, but need not be limited to, the following functions under the direct supervision of and responsible to a pharmacist:

(i) pre-packing and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) bulk compounding or batch preparation provided a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records;

(iv) distributing routine orders for stock supplies to patient care areas;

(v) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in §291.74(e) of this title (relating to Operational Standards); and

(vi) loading bulk unlabeled drugs into an automated compounding or drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records.

(B) Sterile pharmaceuticals.

(i) Only pharmacy technicians who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(ii) effective January 1, 2001, only pharmacy technicians who are certified and who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(3) Procedures.

(A) pharmacy technicians shall handle medication orders in accordance with standard, written procedures and guidelines.

(B) pharmacy technicians shall handle prescription drug orders in the same manner as those working in a Class A pharmacy.

(4) Training.

(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual, prior to the regular performance of their duties. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except effective January 1, 2001, compound sterile pharmaceuticals; and

(ii) may be designated a pharmacy technician trainee for no longer than one year.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in- charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. pharmacy technicians training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(i) Orientation;

(ii) Job descriptions;

(iii) Communication techniques;

(iv) Laws and rules;

(v) Security and safety;

(vi) Prescription drugs:

(I) Basic pharmaceutical nomenclature;

(II) Dosage forms;

(vii) Medication drug orders:

(I) Prescribers;

(II) Directions for use;

(III) Commonly-used abbreviations and symbols;

(IV) Number of dosage units;

(V) Strength and systems of measurement;

(VI) Route of administration;

(VII) Frequency of administration;

(VIII) Interpreting directions for use;

(viii) Medication drug order preparation:

(I) Creating or updating patient medication records;

(II) Entering medication drug order information into the computer or typing the label in a manual system;

(III) Selecting the correct stock bottle;

(IV) Accurately counting or pouring the appropriate quantity of drug product;

(V) Selecting the proper container;

(VI) Affixing the prescription label;

(VII) Affixing auxiliary labels, if indicated;

(VIII) Preparing the finished product for inspection and final check by pharmacists;

(ix) Other functions;

(x) Drug product Prepackaging;

(xi) Compounding of Non-sterile pharmaceuticals;

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians.

(f) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(1) General.

(A) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical calculations and terminology;

(vii) sterile pharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures, including proper gowning and gloving technique;

(x) the handling of cytotoxic and hazardous drugs; and

(xi) general conduct in the controlled area.

(B) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation

must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(i) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this paragraph; and

(ii) completes the on-site process validation within seven days of commencing work at the pharmacy.

(D) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(E) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis.

(2) Pharmacists.

(A) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(i) complete through a single course, a minimum 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be evidenced by either:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; and

(ii) possess knowledge about:

(I) aseptic processing;

(II) quality control and quality assurance as related to environmental, component, and end-product testing;

(III) chemical, pharmaceutical, and clinical properties of drugs;

(IV) container, equipment, and closure system selection; and

(V) sterilization techniques.

(B) The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training as specified in paragraph (2) or (3) of this subsection.

(3) Pharmacy technicians. In addition to the qualifications and training outlined in subsection (e) of this section, all pharmacy technicians who compound sterile pharmaceuticals shall:

(A) have a high school or equivalent education;

(B) either:

(i) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be obtained through the:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; or

(ii) complete a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(I) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph 2 of this subsection; and

(III) the supervising pharmacist conducts in-process and final checks; and

(C) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(D) acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training as specified in this paragraph or paragraph (2) of this subsection.

(4) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(A) name of the person receiving the training or completing the testing or process validation;

(B) date(s) of the training, testing, or process validation;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or process validation; and

(E) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(g) Identification of pharmacy personnel. All pharmacy personnel shall wear an identification tag or badge which bears the person's name and identifies him or her by title or function as follows:

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

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 August 27, 1999.

TRD-9905448
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 16, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 305-8028

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 65. WILDLIFE

Subchapter N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.309, §65.310

The Texas Parks and Wildlife Department adopts amendments to §65.309 and §65.310, concerning the Migratory Game Bird Proclamation, with changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5147). The change to §65.309, concerning Definitions, eliminates the definition for 'normal agricultural planting, harvesting, or post-harvest manipulation' and replaces the definition for 'normal agricultural operation' with a definition for 'normal agricultural practice' in order to be consistent with the intent of federal regulations, and adds a definition for 'livestock.' The change to §65.310, concerning Means, Methods, and Special Requirements: nonsubstantively restructures the section in the interests of eliminating repetition and increasing clarity, and specifically allows the hunting of migratory birds other than waterfowl and cranes where feed or grain has been distributed as the result of livestock feeding operations.

The amendments are necessary to adjust the state's baiting regulations to conform with recent rulemaking by the U.S. Fish and Wildlife Service, in which federal baiting regulations were modified. The amendments will make the state's baiting regulations consistent with those enforced by the federal government.

The amendment to §65.309, concerning Definitions, adds definitions for new regulatory terminology. The amendment to §65.310, concerning Means, Methods, and General Requirements, establishes those practices or activities that may be lawfully conducted and those practices or activities that would constitute the offense of baiting migratory game birds.

The department received no comments concerning adoption of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, Subchapter C, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.309. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation).

(1) Baited area–Any area where salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(2) Baiting–The direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them.

(3) Dark geese - Canada, white-fronted, and all other geese except light geese.

(4) Harvest Information Program (HIP) - A mandatory certification process for all persons who hunt or intend to hunt migratory game birds. To be certified, a person must answer a series of questions about their migratory game-bird hunting habits.

(5) Legal shotgun - A shotgun not larger than 10 gauge, fired from the shoulder, and incapable of holding more than three shells. (Guns capable of holding more than three shells must be plugged with a one-piece filler which is incapable of removal without

disassembling the gun, so the gun's total capacity does not exceed three shells.)

(6) Light geese - Snow, blue, and Ross' geese.

(7) Livestock - Cattle, horses, mules, sheep, goats, and hogs.

(8) Manipulation - The alteration of natural vegetation or agricultural crops, including but not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, and herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(9) Natural vegetation - Any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or propagule. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the planting is considered natural vegetation.

(10) Nontoxic shot–Any shot approved by the director, U.S. Fish and Wildlife Service.

(11) Normal agricultural practice - A normal agricultural planting, harvesting, or post-harvest manipulation, or livestock feeding conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(12) Normal soil stabilization practice - a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(13) Personal residence–One's principal or ordinary home or dwelling place. The term does not include a temporary or transient place of residence or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(14) Sinkbox–Any type of low floating device having a depression which affords the hunter a means of concealing himself below the surface of water.

(15) Waterfowl - ducks (including teal), geese, mergansers, and coots.

(16) Wildlife resource–For the purposes of this subchapter, wildlife resource includes all migratory birds.

§65.310. Means, Methods, and Special Requirements.

(a) It is unlawful to hunt migratory game birds by any means or method other than as authorized in this section.

(1) Lawful means: lawful archery equipment (except crossbows), legal shotguns, and falconry.

(2) Lawful methods: It is lawful to hunt:

(A) with dogs, artificial decoys, manual or mouth-operated birdcalls;

(B) in the open or from a blind or other place of concealment except a sinkbox; including but not limited to:

(i) blinds camouflaged with natural vegetation; and

(ii) blinds camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed;

(C) from floating craft (other than a sinkbox), provided that at the time of hunting:

(i) any motion by the craft is the result of manual propulsion or natural current or wind, and not by sail or motive power; and

(ii) any sails are furled and any motor is completely shut off;

(D) on or over unbaited areas;

(E) by the use of power boats, sailboats, or other craft when used solely as a means of picking up dead or injured birds;

(F) from any stationary motor vehicle or motor-driven land conveyance, provided the hunter is missing at least one leg or is a paraplegic;

(G) on or over standing, flooded, or manipulated natural vegetation;

(H) on or over lands or areas where seeds or grains have been scattered solely as a result of a normal agricultural practice or pre-harvest manipulation of an agricultural crop, except that waterfowl and cranes may not be hunted where grain or other feed has been distributed or scattered as the result of:

(i) pre-harvest manipulation of an agricultural crop; or

(ii) livestock feeding;

(I) on or over normal soil stabilization practice; and

(J) on or over crops where grain has been inadvertently scattered as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(b) No person may possess shotgun shells containing any shot material, or loose shot for muzzleloading firearms, other than nontoxic shot while hunting waterfowl anywhere in Texas, including the shooting of privately owned banded pen-reared mallards on licensed private bird hunting areas.

(c) Nothing in this subchapter applies to persons taking birds pursuant to valid collection or depredation permits when operating within the terms of such permits.

(d) Except for migratory birds processed at a cold storage or processing facility, or doves, one fully-feathered wing or the head must remain attached on dressed migratory game birds while the birds are being transported between the place where taken and the personal residence of the possessor.

(e) No person may place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

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 August 25, 1999.

TRD-9905413
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 14, 1999
Proposal publication date: July 9, 1999

For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 1. CENTRAL ADMINISTRATION

Subchapter A. PRACTICE AND PROCEDURE

Division 1. PRACTICE AND PROCEDURE

34 TAC §1.28

The Comptroller of Public Accounts adopts an amendment to §1.28, concerning comptroller's decision, without changes to the proposed text as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5686).

The amendment conforms the rule to changes to the Administrative Procedure Act, Government Code, §2001.142(c), effective September 1, 1999. The amendment clarifies that (a) effective September 1, 1999, parties, when notified by mail of a Comptroller's Decision, are presumed to have been notified on the third day after notice of the decision is mailed, and (b) the Comptroller's Decision becomes final 20 days from the date of notification, unless a motion for rehearing is filed on or before the 20th day.

No comments were received regarding adoption of the amendment.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §111.009 and §111.105.

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 August 25, 1999.

TRD-9905428
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: September 14, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 463-4062

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34 TAC §1.29

The Comptroller of Public Accounts adopts an amendment to §1.29, concerning motion for rehearing, without changes to the proposed text as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5687).

The amendment conforms the rule to the Administrative Procedure Act, Government Code, §2001.146, by clarifying that the time deadlines for filing a motion for rehearing, for filing a reply to a motion for rehearing, and for ruling on a motion for rehearing are calculated from the date the parties are given notification of a Comptroller's Decision.

No comments were received regarding adoption of the amendment.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §111.009 and §111.105.

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 August 25, 1999.

TRD-9905427
Martin Cherry
Special Counsel
Comptroller of Public Accounts
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Proposal publication date: July 23, 1999
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Part 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

Chapter 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §67.43

The Employees Retirement System of Texas adopts amendments to §67.43, concerning the dismissal of disputed claims, without changes to the proposed text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5460).

This rule is being adopted in order to clarify the authority of the executive director and board to dismiss disputed claims.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code §815.102, which provides authorization for the board to adopt rules for the administration of the funds of the retirement system and the transaction of any other business of the board, and under Texas Insurance Code Article 3.50-2, §4, which provide authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

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

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

TRD-9905454
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas

Effective date: September 16, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 867–7125

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Chapter 81. INSURANCE

34 TAC §§81.1, 81.5, 81.7, 81.11

The Employees Retirement System of Texas (ERS) adopts amendments to §§81.1, 81.5, 81.7, and 81.11, concerning the Uniform Group Insurance Program (UGIP), without changes to the proposed text as published in the July 2, 1999, issue of the *Texas Register* (24 TexReg 4971).

The amendments to Chapter 81 provide greater coordination between the insurance program and the premium conversion plan, expand the availability of certain insurance coverages, and simplify program administration.

Section 81.1 is amended to remove long and short term disability insurance premiums from the definition of "insurance premium expenses" covered by the premium conversion plan; §81.5 is amended to permit certain retirees not covered by optional life insurance or dependent life insurance at the time of retirement an opportunity to apply for minimum retiree optional life insurance and dependent life insurance coverage. Section 81.5 is also amended to permit both parents to carry dependent life and accident insurance on a child if both parents are participants in the UGIP; §81.7 is amended to make participation in the premium conversion plan mandatory and automatic, to make coverage of an adopted child effective on the date of placement for adoption, to make coverage in the life and accident plans begin at the date of birth and to clarify the definition of a qualifying life event for premium conversion purposes; and §81.11 is amended to reflect amendments made in §81.7.

No comments were received regarding the proposed amendments.

These amendments are adopted under Insurance Code, Article 3.50-2, §§4 and 4A, which provide authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities, and to establish standards for determining eligibility for participation in the program.

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

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TRD-9905455
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
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Proposal publication date: July 2, 1999
For further information, please call: (512) 867–7125

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Chapter 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.5, 85.7, 85.13

The Employees Retirement System of Texas (ERS) adopts amendments to §§85.1, 85.3, 85.5, 85.7, and 85.13, concerning the Flexible Benefits Program, without changes to the proposed text as published in the July 2, 1999, issue of the *Texas Register* (24 TexReg 4971).

The amendments to Chapter 85 improve communication of program features by decreasing the complexity of the program, provide greater flexibility to participants to meet their particular needs, and provide greater ease of program administration.

Section 85.1 is amended to revise the definition of "leave of absence without pay"; §85.3 is amended to expand the class of employees eligible to participate in the Flexible Benefits Program, make changes to the effective date of elections, and expand the types of changes that a participant can make in the Health Care Reimbursement Account following a qualifying event; §85.5 is amended to increase the Health Care Reimbursement Account limit from $3,000 to $5,000; §85.7 is amended to add additional events upon which participants may make changes to their elections in the Flexible Benefits Program and to redefine a "change in family" status to be a "qualifying life event"; and §85.13 is amended to make changes to the administrative fees of the Flexible Benefits Program.

No comments were received regarding the proposed amendments.

These amendments are adopted under Insurance Code, Article 3.50-2, §§4 and 4A, which provide authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities, and to establish standards for determining eligibility for participation in the program.

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

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

TRD-9905453
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: September 16, 1999
Proposal publication date: July 2, 1999
For further information, please call: (512) 867–7125

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 49. CONTRACTING FOR COMMUNITY CARE SERVICES

40 TAC §49.19

The Texas Department of Human Services (DHS) adopts an amendment to §49.19, concerning contracting for community care services, without changes to the proposed text as published in the July 2, 1999, issue of the *Texas Register* (24 TexReg 4985).

The justification for the amendment is to ensure more accountability to the public, by providers, regarding recoupment of money owed to the state.

The amendment will function by clarifying rules concerning the application and release of vendor hold for Community Care providers.

The department received no comments regarding adoption of the amendment.

The amendment is adopted 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 amendment implements the Human Resources Code, Chapters 22 and 32, and Government Code, §531.021.

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

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

TRD-9905438
Pul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: October 1, 1999
Proposal publication date: July 2, 1999
For further information, please call: (512) 438–3765

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Part 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

Chapter 700. CHILD PROTECTIVE SERVICES

Subchapter M. SUBSTITUTE-CARE SERVICES

40 TAC §§700.1331–700.1333

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§700.1331-700.1333, concerning the child protective services, without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5153).

The justification for the amendments is to streamline the sections due to the federal requirements of §§471, 473, and 475 of the Social Security Act and the Adoption and Safe Families Act of 1997, Public Law 105-89. The amendment to §700.1333 changes the time frames for child service plan reviews for children in therapeutic care in temporary legal status from three months to match the five-month and nine-month reviews of the other child service plans.

The amendments will function by ensuring continued access to federal funds for foster care. The funding is contingent on implementation of the requirements of this legislation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code (HRC), Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

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 August 30, 1999.

TRD-9905466
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438–3765

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Subchapter R. COST-FINDING METHODOLOGY FOR 24–HOUR CHILD-CARE FACILITIES

40 TAC §700.1807

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §700.1807, concerning incease in residential child care reimbursement rates for fiscal years 2000–2001 without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5155).

The justification for the new section is to increase residential child care reimbursement rates for fiscal years 2000 and 2001. A seven percent increase will be applied across all levels of care effective September 1, 1999.

The new section will function by providing additional resources to 24-hour residential child care providers to care for children in TDPRS's conservatorship.

During the public comment period, TDPRS received comments from two individuals. Both comments were from adoptive parents requesting a cost of living increase for adoption subsidies. The comments stated that, traditionally, adoption subsidies have been tied to the residential reimbursement rates. While these comments do not relate to this specific rule, the department is proposing to amend the current rule in Title 40, Texas Administrative Code, §700.339, Determination of Subsidy Benefits, to clarify adoption subsidy amounts.

The new section 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, specifically §40.029 granting rulemaking authority to TDPRS, and §40.052 regarding delivery of services.

The new section implements the Human Resources Code, 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.

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 August 30, 1999.

TRD-9905467
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: September 19, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438–3765

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Chapter 720. 24-HOUR CARE LICENSING

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§720.42, 720.117, 720.231, 720.302, 720.315, 720.316, 720.334, 720.903, 720.909, and 720.911; and adopts the repeal of §§720.404, 720.1201-720.1228, 720.1301-720.1325, and 720.1401- 720.1425, without changes to the proposed text published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5156).

The justification for the amendments and repeals is to delete requirements and regulations no longer enforced by child care licensing. The justification for the amendment to §720.42 is to clarify the joint responsibility of the child placing agencies and the regulated child-care facilities to the children in care.

The amendments and repeals will function by deleting requirements or procedures that are obsolete.

No comments were received regarding adoption of the amendments and repeals.

Subchapter A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.42

The amendment is adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905468
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter B. STANDARDS FOR AGENCY HOMES

40 TAC §720.117

The amendment is adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905469
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter E. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §720.231

The amendment is adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905470
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter F. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §§720.302, 720.315, 720.316, 720.334

The amendments are adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's

rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendments implement the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905471
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter H. CONSOLIDATED STANDARDS FOR 24–HOUR CARE FACILITIES

40 TAC §720.404

The repeal is adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeal implements the Human Resources Code, Chapters 40 and 42.

§720.404. Audit Requirements.

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

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

TRD-9905472
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438–3765

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Subchapter M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §§720.903, 720.909, 720.911

The amendments are adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendments implement the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905473
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438–3765

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Subchapter P. MINIMUM STANDARDS FOR JUVENILE CORRECTIONAL INSTITUTIONS

40 TAC §§720.1201–720.1228

The repeals are adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905474
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438–3765

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Subchapter Q. MINIMUM STANDARDS FOR JUVENILE CORRECTIONAL CAMPS

40 TAC §§720.1301–720.1325

The repeals are adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905475
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999

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

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Subchapter R. MINIMUM STANDARDS FOR JUVENILE RECEPTION CENTERS

40 TAC §§720.1401–720.1425

The repeals are adopted under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

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 August 30, 1999.

TRD-9905476
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 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) adopts amendments to §§725.1001, 725.1404, 725.1802, 725.2035, 725.2047, and 725.4050; adopts new §§725.1811 and 725.1812; and adopts the repeal of §§725.2018 and 725.3054, without changes to the proposed text published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5162).

The justification for the new sections is to clarify procedures and requirements for facilities and homes that change their locations and to clarify procedures for facilities and homes who want to voluntarily suspend their license or registration. The justification for the amendments is to add requirements to licensing rules to require facilities notified by TDPRS that their licenses/registrations/listings have been revoked or suspended to provide verification to TDPRS that parents have been notified of their status. The amendment to §725.1404 adds adult caregivers who have court-ordered possessory conservatorship as exempt from regulation. The amendment to §725.2047 sets a minimum age requirement of 18 years for listed family home providers. The amendment to §725.4050 clarifies who may request that the State Office of Administrative Hearings combine appeals. The repeals delete rules related to requests for voluntary suspensions which are covered in new §725.1812.

The sections will function by clarifying current information in licensing rules.

No comments were received regarding adoption of the sections.

Subchapter A. DEFINITIONS

40 TAC §725.1001

The amendment is 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

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

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 August 30, 1999.

TRD-9905483
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter O. EXEMPTIONS FROM LICENSING

40 TAC §725.1404

The amendment is 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

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

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 August 30, 1999.

TRD-9905482
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter S. ADMINISTRATIVE PROCEDURES

40 TAC §§725.1802, 725.1811, 725.1812

The amendment and new sections 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendment and new sections implement the Human Resources Code, §§42.001-42.077.

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 August 30, 1999.

TRD-9905481
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter U. DAY CARE LICENSING PROCEDURES

40 TAC §725.2018

The repeal is 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

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

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 August 30, 1999.

TRD-9905480
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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40 TAC §725.2035, §725.2047

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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendments implement the Human Resources Code, §§42.001-42.077.

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 August 30, 1999.

TRD-9905479
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter EE. AGENCY AND INSTITUTIONAL LICENSING PROCEDURES

40 TAC §725.3054

The repeal is 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

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

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 August 30, 1999.

TRD-9905478
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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Subchapter PP. RELEASE HEARINGS

40 TAC §725.4050

The amendment is 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, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

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

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 August 30, 1999.

TRD-9905477
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part 1. TEXAS DEPARTMENT OF TRANSPORTATION

Chapter 2. ENVIRONMENTAL POLICY

Subchapter D. PUBLIC PARTICIPATION PROGRAMS

43 TAC §§2.61, 2.62, 2.71

The Texas Department of Transportation adopts amendments to §2.61 and §2.62, and new §2.71, concerning the Adopt-an-Airport Program. The amendments and new section are adopted without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5165), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

The Texas Department of Transportation presently has various antilitter and beautification programs, including Adopt-a-Highway, Adopt-a-Freeway, Landscaping, and Cost Sharing. New §2.71 will allow private citizens an opportunity to support the department's programs by adopting an airport for the purposes of beautifying and creating a better image and enhancing public awareness for the airport. The new section outlines the eligibility requirements, application procedures, provisions of the agreement, responsibilities of the group adopting the airport and the department, general limiting conditions of the program, and any modification, renewal, or termination of the agreement.

With the adoption of new §2.71, it is also necessary to amend §2.61 and §2.62 to update and revise the sections to include airports for litter pickup, routine maintenance, and landscaping, and to amend and add definitions and references to the Adopt-an-Airport Program. Also, §2.62, Definitions, is being numbered to conform to Texas Register form and style.

COMMENTS

No comments were received on the proposed amendments or new section.

STATUTORY AUTHORITY

The amendments and new section 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 more specifically, Transportation Code, §21.054, which provides the department with the authority to contract as necessary or advisable to encourage and assist the development of aeronautics.

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 August 30, 1999.

TRD-9905492
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 19, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–8630

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Chapter 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

Subchapter G. PORT AUTHORITY PERMITS

43 TAC 28.90–28.92

The Texas Department of Transportation adopts amendments to §§28.90-28.92, concerning port authority permits. The amendments are adopted without changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5172), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 934, 76th Legislature, 1999, amended Transportation Code, Chapter 623, Subchapter K to allow the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to retain up to 15% of the revenue collected from the issuance of permits under this subchapter. This bill also expands the "heavy truck corridor" to include portions of U.S. Highway 77/U.S. Highway 83 to allow for travel to the new Veterans International Bridge at Los Tomates for vehicles possessing the necessary permit.

The amendments to §28.90 allow permitted vehicles carrying cargo to travel on U.S. Highway 77/U.S. Highway 83 or State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the entrance to the Port of Brownsville.

Section 28.91(f)(3), is amended to clarify that in the event the Port of Brownsville's authority to issue permits is revoked, upon termination of the maintenance contract or upon expiration of the subchapter, that any revenue generated but not paid to the department shall be surrendered to the department for deposit in the state highway fund. This amendment is necessary to clarify that the department shall receive any revenue collected due the department minus the administrative costs incurred by the Port of Brownsville, and to ensure that the revenue is properly deposited to support the maintenance of the roadways. This amendment further clarifies that any funds suspensed and not yet transferred to the department shall be rendered upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter. Subsection (g)(1) is amended to provide that the Port of Brownsville may retain up to 15% of permit fees instead of the existing 10% for administrative costs. It also adds the phrase "U.S. Highway 77/U.S. Highway 83" to the reference that the balance of the permit fees shall be used to make payments to the department for maintenance.

Subsection (g) is also amended by adding paragraph (3) to provide that the Port of Brownsville may also issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapter B, concerning Weight Limitations, and Subchapter C, concerning Size Limitations, originating at the Veterans International Bridge at Los Tomates, and the Port of Brownsville.

Subsection (h) is amended to establish that the maintenance contract shall provide for a system of payments from the Port of Brownsville to the department for all maintenance costs expended by the department to maintain U.S. Highway 77/

U.S. Highway 83 and State Highway 48/State Highway 4 to the current level of service or pavement conditions and that maintenance includes routine and preventive maintenance, or total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service.

Section 28.92(a)(8) is amended to establish that the permit application form shall include a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville or the Veterans International Bridge at Los Tomates and the Port of Brownsville using U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4. The amendment to subsection(h)(7) changes the expiration of the subchapter from the year 2001 to 2005.

RESPONSE TO COMMENTS

No comments were received on the proposed amendments.

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 623, which authorizes the department to carry out the provisions of those laws governing the issuance of permits for oversize and overweight permits.

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 August 30, 1999.

TRD-9905493
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 19, 1999
Proposal publication date: July 9, 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 Board of Architectural Examiners

Title 22, Part 1

The Texas Board of Architectural Examiners will review and consider for readoption, revision or repeal Title 22, Texas Administrative Code, the following subchapters of Chapters 1, 3, and 5: Subchapters F (Registrant's Seal), Subchapters G (Compliance and Enforcement), and Subchapters H (Professional Conduct).

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the agency whether reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the agency. The review of all rules must be completed by August 31, 2001.

Comments of the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Cathy L. Hendricks, Executive Director/Secretary, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Box 12337, Austin, TX 78701-3942. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9905426
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Filed: August 25, 1999

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 3, Subchapter A, consisting of §§3.1-3.5, regarding Securities Activities and Subsidiaries, and the following sections of Subchapter B: §3.21, regarding Bank Call Reports; §3.22, regarding Sale or Lease Agreements With an Officer, Director, Principal Shareholder, or Affiliate; §3.34, regarding Posting of Notice in All Financial Institutions Regarding Requirements for Certain Loan Agreements to be In Writing; and §3.34, regarding Safe Deposit Box Facilities. This review is undertaken pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review is scheduled for the Finance Commission meeting on October 15, 1999.

Any questions or written comments pertaining to this notice of intention to review should be directed to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, or by e-mail to everette.jobe@banking.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-9905581
Lynda A. Drake
Alternative Certifying Official
Finance Commission of Texas
Filed: September 1, 1999

♦ ♦ ♦

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (the Board) proposes to review Title 37. Public Safety and Corrections, Part V. Texas Board of Pardons and Paroles, Chapter 141. General Provisions; Chapter 143. Executive Clemency; Chapter 145. Parole; Chapter 146. Revocation of Parole or Mandatory Supervision; Chapter 147. Hearings; Chapter 149. Mandatory Supervision; and Chapter 150. Memorandum of Understanding and Board Policy, pursuant to the General Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Board's reason for adopting the rules continues to exist.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711.

TRD-9905456
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Filed: August 30, 1999

♦ ♦ ♦

State Pension Review Board

Title 40, Part 17

The State Pension Review Board (PRB), beginning September 1999, will review and consider for readoption, of Chapter 601 concerning General Provisions, in accordance with the General Appropriations Act, Article IX, Sections 167, 75th Legislature. The rules tare located in Title 40 Part XVII, of the Texas Administrative Code, and contain the following sections; 601.1 Purpose, 601.20 Citations, 601.30 Severability, 601.40 Definitions, 601.50 Office.

The board will consider, among other things, whether the reasons for readoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing within 30 days following the publication of this notice in the Texas Register, to Ms. Rita Horwitz, Executive Director, P.O. Box 13498, Austin, Texas 78711-3498 or by e-mail to prb@mail.capnet.state.tx.us.

The State Pension Review Board (PRB), beginning September 1999, will review and consider for readoption Chapter 603 concerning Officers and Meetings, in accordance with the General Appropriations Act, Article IX, Sections 167, 75th Legislature. The rules are located in Title 40 Part XVII, of the Texas Administrative Code, and contain the following sections; 603.1 Persons for Service of Process, 603.20 Meetings and Notices Thereof, 603.30 Officers, 603.40 Quorum, 603.50 Committees, 603.60 Robert's Rules of Order.

The board will consider, among other things, whether the reasons for readoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing within 30 days following the publication of this notice in the Texas Register, to Ms. Rita Horwitz, Executive Director, P.O. Box 13498, Austin, Texas 78711-3498 or by e-mail to prb@mail.capnet.state.tx.us.

TRD-9905527
Lynda Baker
Administrative Technician
State Pension Review Board
Filed: August 31, 1999

♦ ♦ ♦

Adopted Rule Reviews

State Aircraft Pooling Board

Title 1, Part 9

The State Aircraft Pooling Board adopts without changes the review of Chapter 183, §183.1, pursuant to the Appropriations Act of 1997, H.B. 1, Article IX, Section 167, as proposed in the April 16, 1999 issue of the *Texas Register* (24 TexReg 3113). The Board finds that the reasons for adopting this rule continue to exist.

No comments pertaining to the adoption of the rule were received. As a result of the review process, the Board proposes amendments to §§183.2, 183.3, 183.4, and repeal of § 183.5. The proposed amendments and repeal may be found in the Proposed Rules section of the *Texas Register*.

TRD-9905442
Jerald A. Daniels
Executive Director
State Aircraft Pooling Board
Filed: August 26, 1999

♦ ♦ ♦

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners readopts without changes § 107.13, 107.14, 107.50, 107.52, 107.59, 107.62, 107.64, 107.65, 107.66, 107.67, 107.68, 107.103, 107.201, 107.300 and 107.400 in conjunction with its review of Chapter 107, and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature, 1997, Section 167, and as proposed in the April 9, 1999 issue of the *Texas Register* (24TexReg2956).

As a result of the review, the Board determined that the reasons for adopting the rules continue to exist.

No comments were received regarding readoption of these rules.

TRD-9905460
Jeffrey Hill
Executive Director
State Board of Dental Examiners
Filed: August 30, 1999

♦ ♦ ♦

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts without changes, Chapter 11, Texas State Technical College, in accordance with the Appropriations Act, Section 167.

No comments were received regarding the adoption of this chapter.

TRD-9905579
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: September 1, 1999

♦ ♦ ♦

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:16 TAC 401.305(d)(1)

Matching Combination (one play)	**Prize Category (one play)**	**Odds of Winning**
Matches all six numbers from the first six numbers drawn by the Lottery	First Prize – Jackpot	1:25,827,165
Matches five numbers from the first six numbers drawn by the Lottery and the seventh number	Second Prize	1:4,304,528
Matches five numbers from the first six numbers drawn by the Lottery	Third Prize	1:91,586
Matches four numbers from the first six numbers drawn by the Lottery and the seventh number	Fourth Prize	1:36,634
Matches four numbers from the first six numbers drawn by the Lottery	Fifth Prize	1:1,593
Matches three numbers from the first six numbers drawn by the Lottery and the seventh number	Sixth Prize	1:1,195
Matches three numbers from the first six numbers drawn by the Lottery	Seventh Prize	1:80
Matches two numbers from the first six numbers that are drawn by the Lottery and the seventh number	Eighth Prize	1:106

Figure: 30 TAC §101.333(1)

$$A = \frac{ER * HI}{2000 \text{ lb / allowance}}$$

Where:

A	=	Number of allowances
HI	=	Total heat input (million British thermal units (MMBtu)) during 1997, determined by subparagraphs (A) or (B) of this paragraph.
ER	=	Emission rate, as defined in subparagraphs (C) - (E) of this paragraph;

Figure: 30 TAC §101.334(e)(1)

$$\frac{HI_{1997} * EF_{1997} - HI_{CP} * EF_{CP}}{2000 \text{ lbs / allowance}}$$

Where:

HI_{1997}	=	Heat input from 1997.
EF_{1997}	=	The emission factor for 1997 in terms of pounds per million British thermal units (lbs/MMBtu).
HI_{CP}	=	Heat input for the control period.
EF_{CP}	=	The emission factor for the control period in terms of lbs/MMBtu.

Figure: 30 TAC 101.334(e)(2)

$$\frac{HI_{1997} * EF_{1997} - HI_{1997} * EF_{CP}}{2000 \text{ lbs / allowance}}$$

Where:

HI_{1997}	=	Heat input from 1997
EF_{1997}	=	The emission factor for 1997 in terms of lbs/MMBtu.
EF_{CP}	=	The emission factor for the control period in terms of lbs/MMBtu.

Figure: 43 TAC §28.30(e)(3)(C)

Number of counties on permit application	Fee
1-20	$125
21-40	$345
41-60	$565
61-80	$785
81-100	$1,005

Figure : 43 TAC §28.42(d)(2)

Actual Mileage to be Traveled	X	Highway Use Factor	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

Figure : 43 TAC §28.43(e)(3)

Hubometer Mileage	X	Highway Use Factor (3%)	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

Figure : 43 TAC §28.62(d)(2)

Mileage to be Traveled	X	Highway Use Factor	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

Figure : 43 TAC §28.63(e)(3)

Hubometer Mileage	X	Highway Use Factor	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

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 Commission on Alcohol and Drug Abuse

Notices of Public Hearings

The Texas Commission on Alcohol and Drug Abuse (Commission), through its Regional Advisory Consortia, will hold public hearings in each Health and Human Services region to solicit input on the Strategic Plan, Statewide Service Delivery Plan, and intended use of the Block Grant. Comments will be directed to the long term goals of the agency and how to best coordinate and deliver substance abuse related services.

A public hearing has been scheduled for the following date, time and place:

Friday, September 24th , 10:00am - 1:00pm, U T Pan American University Edinburgh, Academic Services Building, Room 1.104, Edinburg, Texas.

These sites will be linked via videoconference with the U T Pan American University:

A. U T at Brownsville, 80 Fort Brown, Brownsville, Texas.

B. Texas A & M University in Corpus Christi, Hall 252 at Media Services, 6300 Ocean Drive, Corpus Christi Hall, Room 252, Corpus Christi, Texas. For additional information contact: Bryan Wadkins at (361) 825-5768.

C. Texas A & M International University, Bullock Hall 101 at Laredo, Building A, 5201 University Blvd., Bullock Hall, Room 101, Laredo, Texas.

Representatives from the commission will be present to explain the planning process and members of the Regional Advisory Consortium along with commission staff will be present to consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in preparation of the Strategic Plan, Statewide Services Delivery Plan, and Block Grant Application.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Albert Ruiz at (800) 832-9623, extension ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Albert Ruiz, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6607 or 6967.

TRD-9905514
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 30, 1999

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The Texas Commission on Alcohol and Drug Abuse (Commission), through its Regional Advisory Consortia, will hold public hearings in each Health and Human Services region to solicit input on the Strategic Plan, Statewide Service Delivery Plan, and intended use of Block Grant. Comments will be directed to the long-term goals of the agency and how to best coordinate and deliver substance abuse related services.

A public hearing has been scheduled for the following date, time and place:

Tuesday, September 28th , 4:00pm - 6:00pm, U T School of Social Work, Auditorium (first floor), 211 South Cooper, Arlington, Texas.

Representatives from the commission will be present to explain the planning process and members of the Regional Advisory Consortium along with commission staff will be present to consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in preparation of the Strategic Plan, Statewide Services Delivery Plan, and Block Grant Application.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Albert Ruiz at (800) 832-9623, extension 6607 or Stella Roland at extension 6967, ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Albert Ruiz or Stella Roland 9001 North IH 35, suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6607 or 6967.

TRD-9905513
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 30, 1999

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Ark-Tex Council of Governments

Request for Proposal for Provision of a Regional Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement officer, Basic Jailer Certification, Basic Tele-Communicators, Reserve Officer, and Advanced Law Enforcement training. The period of performance is May 1, 2000-April 30, 2001.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Janell Browning, Program Director, Community Services, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is October 26, 1999, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-9905557
James C. Fisher, Jr.
Executive Director
Ark-Tex Council of Governments
Filed: September 1, 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 August 20, 1999, through August 27, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Eddie Dutko; Location: The project site is located on an approximately 107-acre tract of land in southeast Harris County, Texas. The site is bounded by State Highway 146 to the west, McCabe Road to the north, the Shoreacres residential development to the south, and Taylor Bayou to the east; CCC Project No.: 99-0304-F1; Description of Proposed Action: The applicant proposes to fill 13.88 acres of isolated depressional wetlands to construct a multifamily apartment complex to be known as Bayou Forest Apartments. The apartment complex will encompass 41 acres of the 107-acre tract. Approximately 11,500 cubic yards of clean fill material will be used to construct the project; Type of Application: U.S.A.C.E. permit application #21774 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Bill Pohl; Location: The project site is located on a 10.81-acre tract of land approximately 500 feet west of Interstate Highway 45 North and immediately south of Louetta Road, in Spring, Harris County, Texas; CCC Project No.: 99-0305-F1; Description of Proposed Action: The applicant proposes to fill approximately 3.25 acres of isolated wetlands to develop the tract of land for multifamily residential and commercial uses. Current development plans include an apartment complex along the southern portion of the property and a motel, restaurant, and service station along the Louetta Road frontage. The approximately 10.81-acre tract of land is undeveloped and partially wooded; Type of Application: U.S.A.C.E. permit application #21765 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: City of Houston; Location: The 253-acre project site is located at the George Bush Intercontinental Airport in Houston, Harris County, Texas. The site is bounded by Lee Road to the east, a fence line to the south, additional undeveloped forest to the west, and FM 1960 to the north; CCC Project No.: 99-0306-F1; Description of Proposed Action: The applicant proposes to fill or otherwise impact approximately 13.62 acres of isolated wetlands to construct an air cargo facility and associated taxiways, including an extension of existing Taxiway NB. The applicant also proposes to relocate a nonjurisdictional segment of Garner's Bayou and excavate two storm water detention ponds. Of the approximately 13.62 acres of wetlands to be impacted, forested wetlands account for approximately 5.95 acres and nonforested wetlands account for 7.67 acres; Type of Application: U.S.A.C.E. permit application #21778 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information 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-9905555
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 1, 1999

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Request for Grant Proposal Review Services

The Texas General Land Office (GLO), serving as the staff for the Coastal Coordination Council (CCC), is seeking three contractors

to assist in the review of Coastal Management Program 306A (construction) grant proposals for the upcoming Cycle 5 grants. A reviewer will be selected for each of three coastal areas: the upper coast, the middle coast, and the lower coast. The exact geographical boundaries of each review area will be delineated upon award of the contracts.

The selected reviewers must be familiar with coastal issues and construction in the applied-for area and must not presently hold, participate in, or intend to submit an application for a Coastal Management Program grant. Reviewers will be compensated $50 per project to review a brief pre-proposal and comment on the basic feasibility of the project and budget, and then to assist in the review of the full grant proposal to evaluate the feasibility of the project as a whole and identify additional project requirements.

There will be approximately 30 small-scale construction projects coastwide (most under $150,000) to be reviewed within a two- to three-week time period. The review of pre-proposals will take place in September/October 1999 and the review of full grant proposals at the beginning of December, 1999.

Prospective reviewers should submit the following information: name, address, phone number, preferred area of the coast, statement of qualifications, documentation of contracting history and construction specialties, and documentation of participation in a construction/ engineered project within the last five years. Minimum requirements: licensed professional engineer in Texas and relevant experience in the area of the coast applied for.

All submissions must be received at the Texas General Land Office, Coastal Management Division, Resource Management Program, 1700 North Congress, Room 617, Austin, Texas 78701, by October 1, 1999. For further information contact Sheri Land at 512-463-5058.

TRD-9905554
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 1, 1999

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Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) for the performance of a management and performance review of the Galveston Independent School District (Galveston ISD). The services sought under this RFP will culminate in a final report, which report shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review. The successful proposer will be expected to begin performance of the contract on or about November 15, 1999.

Contact: Parties interested in submitting a proposal should contact Pamela Ponder, Senior Legal Counsel, Comptroller of Public Accounts, 111 East 17th Street, Room G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, September 10, 1999, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also plans to place the RFP on the Texas Marketplace after Friday, September 10, 1999, 2 p.m. (CZT). All written inquiries and mandatory Notice of Intent Form to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Tuesday, September 28, 1999. The Form must be addressed to Pamela Ponder, Senior Legal Counsel and must be filled out completely and signed by an official of that entity. All responses to questions and other information pertaining to this procurement will only be sent to potential proposers who have submitted a timely Notice of Intent Form. The mandatory Notice of Intent Form and Questions received after this time and date will not be considered. Prospective proposers are encouraged to fax the form and questions to (512) 475-0973 to ensure timely receipt. Prospective proposers that have faxed a Notice of Intent Form by the deadline are not required to submit an original Notice of Intent Form.

Closing Date: Proposals must be received in Senior Legal Counsel's Office at the address specified above no later than 2 p.m. (CZT), on Wednesday, October 20, 1999. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP-September 10, 1999, 2 p.m. CZT; Mandatory Notice of Intent Form and Questions Due-September 28, 1999, 2 p.m. CZT; Proposals Due-October 20, 1999, 2 p.m. CZT; Contract Execution-November 1, 1999, or as soon thereafter as practical; Commencement of Project Activities-November 15, 1999.

TRD-9905561
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts
Filed: September 1, 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 Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Texas Finance Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/06/99-09/12/99 is18% for Consumer [1]/Agricultural/ Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/06/99-09/12/99 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 09/01/99 - 09/30/99 is 18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 09/01/99-09/30/99 is18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/99-12/31/99 is18% for Consumer/ Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/99-12/31/99 is18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 10/01/99-12/31/99 is18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Texas Finance Code[1]for the period of 10/01/99-12/31/99 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 4for the period of 10/01/99-12/31/99 is18% for Consumer/ Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/99-12/31/99 is18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 10/01/99-12/31/99 is18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/99-09/30/99 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 09/01/99-09/30/99 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Texas Finance Code.

TRD-9905558
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 1, 1999

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Texas Department of Criminal Justice

Emergency Notice

Pursuant to the emergency provision in Government Code, §2155.074(i) and 10 TAC, §199.109, the Texas Youth Commission has determined that in order to prevent a hazard to life, health, safety, welfare, or property, it must procure electrical utility repairs at Giddings State School quicker than the minimum time for posting notice that would otherwise be required. The state of disrepair of the 30 year old transformers at that facility is so severe that a malfunction could occur at any time and put power out at this facility that houses the state's most violent juvenile offenders. The Texas Youth Commission intends to negotiate a contract immediately with CSS, Inc. for this procurement pursuant to §2155.137, Texas Government Code and 1 TAC §113.1(b)(1). This business presented the lowest and best bid in response to the Invitation for Bids for this project that was released for bid on May 21, 1999, and published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 4047). The Invitation for Bids for this project was not previously posted in the Texas Marketplace.

TRD-9905551
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 1, 1999

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Notice of Cancellations

The Texas Department of Criminal Justice hereby gives notice of cancellation for the Giddings State School Alterations - Notice to Bidders published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 4047) and the Giddings State School Alterations - Notice of Award published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6562) pursuant to Title 10, Government Code, §2155.074(i).

TRD-9905552
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 1, 1999

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Texas Commission for the Deaf and Hard of Hearing

Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing announces the issuance of a Request for Proposals (RFP) for services to eliminate communication barriers and to guarantee equal access for individuals who are deaf or hard of hearing. Funding is available for HHSC Region X to provide Communication access services for the provision of both interpreter services (sign language, oral) and Communication Access Realtime Translation (CART) services.

Contact:

Parties interested in submitting a proposal should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711, 512-407-3250 (Voice) or 512-407-3251 (TTY), to obtain a complete copy of the RFP. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas 78756 on Friday, September 10, 1999, during normal business hours. The RFP is not available through fax.

Closing Date:

Proposals must be received in the Texas Commission for the Deaf and Hard of Hearing Office, 4800 North Lamar, Suite 310, Austin, Texas 78756 no later than 5 p.m. (CDT), on Friday, October 8, 1999. Proposals received after this time and date will not be considered.

Award Procedure:

All proposals will be subject to evaluation by a review panel based on the evaluation criteria set forth in the RFP. The panel will determine which proposal best meets these criteria and will make a recommendation to the Executive Director who will then make a recommendation to the Commission. The Commission will make the final decision. An applicant may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Commission reserves the right to accept or reject any or all proposals submitted. The Texas Commission for the Deaf and Hard of Hearing is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the execution of a contract. The anticipated schedule of events is as follows:

Issuance of RFP - September 10, 1999;

Proposals Due - October 8, 1999, 5 p.m. (CDT); and

Contract Execution - November 1, 1999.

TRD-9905437
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: August 26, 1999

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East Texas Council of Governments

Notice of Request for Proposals

The East Texas Workforce Development Area is requesting proposals for a subcontractor to provide Child Care Management Services in the East Texas Workforce Development Area for a period beginning December 1, 1999 and ending August 31, 2000, with the possibility for extending the subcontract for a period of up to two (2) additional years. Provision of these services will involve a cost reimbursement subcontract with the East Texas Council of Governments, which serves as the Grant recipient and Administrative unit for the East Texas Workforce Development Board.

The purpose of Child Care Management Services is to offer Child Care to eligible families and to arrange for the delivery and payment of child care through the Child Care Management Services (CCMS) system; and to improve the quality, availability and affordability of child care in Texas. The purpose of this Request for Proposals is to identify a contractor for Child Care Management Services for the East Texas Workforce Development Area which covers the counties Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood. The total funding available will be approximately $7,810,628.

Persons or organizations wanting to receive a Request for Proposals should request by letter or by fax. Requests should be addressed to Gary Allen, Section Chief - Planning and Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662. RFP's will not be released prior to August 31, 1999. It is anticipated that the deadline for receipt of proposals shall be October 8, 1999.

Questions concerning the Request for Proposals process should be addressed to Wendell Holcombe, East Texas Council of Governments, at (903) 984-8641.

TRD-9905522
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: August 31, 1999

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Texas Department of Health

Notice of Cancellation of Request for Proposals for Texas Health Steps Medicaid Client Outreach and Informing Services

INTRODUCTION

In the April 16, 1999, issue of the *Texas Register* (24 TexReg 3145) the Texas Department of Health (department) requested proposals for Texas Health Steps Medicaid Client Outreach and Informing Services for state fiscal year 2000, in Public Health Regions 1, 2/3, 6/5 South, 7, 8 (Bexar and contiguous counties) and 9. Proposals were to be reviewed and contracts awarded on a competitive basis.

Cancellation is in accordance with the Request for Proposals (RFP) released, which states the Texas Department of Health (department) reserves the right to alter, amend, or modify any provision of this RFP or to withdraw this RFP at any time prior to the execution of a contract pursuant thereto if it is in the best interest of the department and the state of Texas. The decision of the department is administratively final in this regard.

CONTACT

For further information concerning the RFP, contact Craig Ward, Texas Health Steps, Room M- 422, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-7467, Telephone (512) 458-7745.

TRD-9905538
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 31, 1999

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Notices of Intent to Revoke Certificates of Registration

(Editor's note: In the August 20, 1999, issue of the Texas Register, (24 TexReg 6570), the publication of the "Notice of Intent to Revoke Certificates of Registration" (TRD-9904826) is a duplication of the text for "Notice of Intent to Revoke a Radioactive Material License" (TRD-9904827). The correct text is being published in its entirety.)

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Image Engineering Corporation, Somerville, Massachusetts, Z00204; Diagnostic Technology, Kingwood, R14764; PKP Medical Equipment Repair, Watauga, R20082; Palace Healthcare Corporation, Harlingen, R23805; Xcel Mobile Imaging, Inc., Arlington, R22179; Shenouda-Smith Clinic, Edna, R15765; Bernhard H. Landgrebe, M.D., San Antonio, R23884; Mesa Chiropractic of Pecos/Ultra Venture Group, LLC, Pecos, R19564; Laney Chiropractic and Rehabilitation Center, Keller, R18126; Jeffrey L. Eakin, D.D.S., Houston, R19415; David H. Grinsfelder, D.D.S., Dallas, R17998.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint

to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. 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-9904826
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 5, 1999

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Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Benbrook Family Practice Associates, Benbrook, R11823; Jetta M. Brown, M.D., Edinburg, R14016; Olivia E. Morris, D.O., Amarillo, R23021; Athens Total Wellness Center, Athens, R23900; Odom Chiropractic, Mineral Wells, R22461; H. Meer Dental Supply Company, Houston, R23850; Laserlite F/X, Incorporated, Markham, Ontario, Canada, Z01145; Physicians Resource Group, Galveston, Z01172; Doctor Cohen Investments, Austin, R23921; Corsicana State Home of TYC, Corsiciana, R23977; Robert L. Beck, D.M.D., M.D., San Antonio, R14951.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. 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-9905536
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 31, 1999

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Stewart and Stevenson Services, Inc., Houston, G02080; Fluor Daniel NDE Services, LaPorte, L05034.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. 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-9905537
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 31, 1999

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Notice of Request for Proposals for Projects to Provide Abstinence Education

Introduction

The Texas Department of Health (department), Abstinence Education Program, announces a Request for Proposals (RFP) for the Title V Abstinence Education Grant funding for Federal Fiscal Year 2000. The RFP will be released on September 10, 1999. Proposals will be awarded on a competitive basis.

Purpose

The purpose of the funding is to provide abstinence education information to children, adolescents, parents and others across the state and for programs to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock.

Eligible Applicants

Eligible applicants include current department abstinence education contractors; nonprofit or for-profit organizations; private or public organizations; city, county, or state governmental entities; institutions of higher learning; independent school districts; faith-based organizations; and current department contractors.

Availability of Funds

Approximately $3.5-4.0 million will be available to fund new abstinence education contractors. The funds were appropriated through federal welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act (P.L.104-193), to be administered through Title V of the Social Security Act, the Maternal and Child Health Block Grant. Congress appropriated $50 million

per year beginning October 1, 1997 to conduct abstinence education nationwide. Texas is eligible to receive up to $4,922,091 per year in federal funds, contingent on a state match of $3,691,568. The department will provide $1.6 million for match, and applicants will be required to furnish the remaining match. At a minimum, applicants must provide three local dollars for every seven federal grant dollars. Applicants must specify clearly what local match dollars will be provided as part of their proposals in order to be considered.

Project and Budget Periods

Contracts will be funded for seven months beginning February 1, 2000, and ending August 31, 2000, with the option to renew for up to two 12-month periods ending August 31, 2002. There is no set cap on individual budgets.

General Purpose and Program Goals

The federal legislation states that the purpose of the allotment is to "enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock."

The term "abstinence education," as defined by §912 of the federal legislation, means an educational or motivation program which: (A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity; (B) teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children; (C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; (D) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity; (E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects; (F) teaches that bearing children out of wedlock is likely to have harmful consequences for the child, the child's parents, and society; (G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and (H) teaches the importance of attaining self-sufficiency before engaging in sexual activity. By federal law, funds may not be used for family planning services.

Review Process

Each application will first be screened for completeness and timeliness. Proposals which arrive after the deadline will not be reviewed. Proposals that are incomplete will have points deducted from the final score. Proposals will be reviewed by a team of reviewers. The proposals will be evaluated using the specific areas emphasized in the RFP and review process described in the RFP.

Deadline

Proposals prepared according to instructions in the RFP package must be received by the Texas Department of Health, Child Health and Safety Division, Room T-606, 1100 West 49th Street, Austin, Texas 78756 by 5:00 p.m., Central Daylight Saving Time, on October 22, 1999.

To Obtain a Copy of the RFP

A copy of the RFP may be obtained from the Texas Department of Health, Child Health and Safety Division, Room T-606, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700; or E-Mail your request to Abstinence.Program@tdh.state.tx.us. You may also obtain a copy from the Abstinence Education Web site: http://www.tdh.state.tx.us/abstain/ab_home.htm.

TRD-9905580
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 1, 1999

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Texas Department of Housing and Community Affairs

Announcement of Revision to the Low Income Housing Tax Credit Program's "Application Submission Procedures Manual"

Senate Bill 1155 enacted by the 1999 Legislature amends Section 2, Chapter 1092, Acts of the 70th Legislature, Regular Sessions, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes) to prohibit the Texas Bond Review Board (*TBRB*) from reserving any portion of the state ceiling for a first or second priority project unless the TBRB receives evidence that a tax credit application has been filed with the Department for a multifamily low income housing project that is at least 51 percent financed by tax-exempt private activity bonds. To comply with this legislative mandate, the Department is making the following revisions to the application submission requirements of the *Application Submission Procedures Manual* published for the 1999 QAP and Rules:

APPLICATION SUBMISSION

(1) An Application for a:

(A) Housing Credit Allocation from the State Housing Credit Ceiling, hereinafter referred to as *Application*, may be filed at any time during the Application Acceptance Period(s) published periodically in the Texas Register. For the 1999 Application Round the dates are:

March 15 - Application Acceptance Period Opens;

March 26 - Application 2 point Bonus Period Ends;

April 30 - Application Acceptance Period Closes.

(B) Applications for a Determination Notice for a Tax Exempt Bond Project may be submitted to the Department as described below in subparagraphs (i) and (ii):

(i) Applicants which receive advance notice of a Program Year 2000 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for private activity volume cap must file a complete Application per the requirements of §50.6(h) of the Qualified Allocation Plan and Rules not later than 60 days after the date of the TBRB lottery.

(ii) Applicants which receive advance notice of a Program Year 2000 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit the Application fee along with Volumes 1 and 2 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. All outstanding documentation required under §50.6(h) of the Qualified Allocation Plan and Rules must be submitted to the Department at least 60 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice may be approved.

(C) An Application for a Determination Notice for a Tax Exempt Bond Project must satisfy the soft debt financing requirements described below in subparagraphs (i) through (iii):

(i) Any Federal, State or locally subsidized gap financing of soft debt must be identified at the time of Application. At a minimum, a term

sheet which clearly describes the amount and terms of the funding must be included with the Application.

(ii) Except with respect to a commitment for Department financing, evidence of a firm commitment for such financing will be required no later than 10 working days prior to the Ad Hoc Tax Credit Committee meeting. Such evidence must be:

a) in the form of an enforceable financing commitment from the lender;

b) a written approval of a loan or grant (i.e., approval by the lender's loan committee); and

c) subject only to conditions fully under the control of the Applicant to satisfy.

(iii) Evidence of a commitment for Department financing will not be required as any commitment for such funds will be presented concurrently with the recommendation to the Ad Hoc Tax Credit Committee for tax credits.

For more information regarding this change, please contact the Low Income Housing Tax Credit Program at (512) 475-3340.

TRD-9905586
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 1, 1999

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Notices of Administrative Hearings

Manufactured Housing Division

Tuesday, September 14, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Nicolas Garza dba Nicolas Garza Housemovers to hear alleged violations of Sections 4(d)(f) and 7(d) of the Act and Sections 80.51 and 80.125(e)of the Rules regarding installation of a manufactured home without obtaining, maintaining, or possessing a valid installer's license and not properly installing the manufactured home. SOAH 332-99-1610. Department MHD1998000835UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9905582
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 1, 1999

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Manufactured Housing Division

Tuesday, September 14, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Mark Feinhandler to hear alleged violations of Section 7(j) and 7(j)(2) of the Act and Section 80.123(g)(3)(c) of the Rules regarding not providing a statement that the applicant is the authorized agent for a manufactured housing retailer, furnishing false information on an application and selling of a used manufactured home without lawful authorization retained or converted the payment for a purchase price of a manufactured home. SOAH 332-99-1611. Department MHD1999000895DT.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9905583
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 1, 1999

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Texas Department of Human Services

Open Soliciation #3 for Clay County

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for the construction of a 90-bed nursing facility in **Clay County, County #039**, identified in the **July 9, 1999** issue of the *Texas Register* (**24 TexReg 5235),** where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of **August 1998 through January 1999.** The county occupancy rates for each month of that period were: **97.5%, 93.1%, 93.2%, 90.9%, 94.5%, 91.7%.** Potential contractors seeking to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas, 78714-9030. Upon receipt of a reply from a potential contractor, as specified in 40 TAC §19.2324, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

TRD-9905529
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: August 31, 1999

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Open Soliciation #3 for Donley County

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for the construction of a 90-bed nursing facility in **Donley County, County #065**, identified in the **July 9, 1999**, issue of the *Texas Register* (**24 TexReg 5235**), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of **October 1998 through March 1999**. The county occupancy rates for each month of that period were: **96.9%, 98.0%, 97.0%, 98.4%, 96.6%, 97.6%**.

Potential contractors seeking to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas, 78714-9030. Upon receipt of a reply from a potential contractor, as specified in 40 TAC §19.2324, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

TRD-9905530
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: August 31, 1999

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Open Soliciation #3 for Hansford County

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for the construction of a 90-bed nursing facility in **Hansford County, County #098**, identified in the **July 9, 1999**, issue of the *Texas Register* (**24 TexReg 5236**), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of **August 1998 through January 1999**. The county occupancy rates for each month of that period were: **97.0%, 97.0%, 90.1%, 90.5%, 94.7%, 92.1%.** Potential contractors seeking to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas, 78714-9030. Upon receipt of a reply from a potential contractor, as specified in 40 TAC §19.2324, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

TRD-9905531
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: August 31, 1999

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Open Soliciation #3 for Kent County

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for the construction of a 90-bed nursing facility in **Kent County, County #132**, identified in the **July 9, 1999**, issue of the *Texas Register* (**24 TexReg 5236**), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of **June 1998 through November 1998**. The county occupancy rates for each month of that period were: **90.5%, 92.2%, 97.6%, 93.3%, 93.6%, 93.2%**. Potential contractors seeking to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas, 78714-9030. Upon receipt of a reply from a potential contractor, as specified in 40 TAC §19.2324, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

TRD-9905532
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: August 31, 1999

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Inaugural Endowment Fund Committee

Minutes from the August 31, 1999 Meeting

The Inaugural Endowment Fund Committee met on Tuesday, August 31, 1999, in Room E.1.024 of the Texas State Capitol Extension. The meeting was called to order at 9:15 a.m. by Mrs. Laura Bush, Chair of the Committee.

Members present: Mrs. Laura Bush, Mrs. Anita Perry, Mrs. Nelda Laney, Mr. John Nau. Members absent: none

The minutes of the meeting of September 30, 1998, were approved as circulated on a motion by Mrs. Laney with a second by Mr. Nau.

The committee was informed that the balance in the Inaugural Endowment Fund, as of August 31, 1999, was $835,458.99. The funds were to be encumbered at this meeting as legislation authorizing the committee and its functions were to expire at the end of this fiscal year.

The committee reviewed requests which had been submitted for funding. Mrs. Laney moved and Mrs. Perry seconded a motion that the following grants be made from the Inaugural Endowment Fund:

(1) State Preservation Board for the Texas Capitol Historical Art Collection Project in the amount of $250,223.99. The funds may be used for acquisitions for the collection or for production of a brochure on the collection.

(2) State Preservation Board for the Bob Bullock Texas History Museum in the amount of $100,000.00. Curriculum guides for 4th and 7th grade social studies will be developed to support and enhance the Texas Essential Knowledge and Skills (TEKS) social studies curriculum components, and the Educational Activity Carts will be designed to be used in the exhibit to augment Curriculum Guide teaching points.

(3) State Preservation Board in the amount of $50,000.00. The grant will fund collection of archival materials documenting the life and career of former Lt. Governor Bob Bullock to be used in educational exhibits and programs in the Bob Bullock Texas State History Museum.

(4) The Historical Commission in the amount $227,235.00. Funds are to be used for furniture and interior restoration for the historic Carrington-Covert House at 1511 Colorado Street, Austin, Texas.

(5) Texas Historical Commission in the amount $49,000. The grant is to support the Commission’s Preservation Education Training (P.E.T.) Project including the "Envisioning Preservation in the 21st Century" conference and six educational workshops.

(6) Texas libraries for unrestricted grants in the amount of $3,000 each for a total of $159.000.00 to the following public libraries:

Andrews County Library, Andrews, Texas

Baylor County Free Library, Seymour, Texas

Boyd Public Library, Boyd, Texas

Bullard Community Library, Bullard, Texas

Buna Public Library, Buna, Texas

Callahan County Library, Baird, Texas

Chico Public Library, Chico, Texas

Childress Public Library, Childress, Texas

City-County Library, Munday, Texas

Claude Public Library, Claude, Texas

Coke County Library, Robert Lee, Texas

DeLeon city County Library, DeLeon, Texas

El Paso County Library, Fabens, Texas

Everman Public Library, Everman, Texas

Flatonia Public Library, Flatonia, Texas

Fort Hancock/Hudspeth County Public Library, Fort Hancock, Texas

Gatesville Public Library, Gatesville, Texas

Gruver City Library Gruver, Texas

Harry Benge Crozier Memorial Library, Paint Rock, Texas

Haskell County Library, Haskell, Texas

Hockley County Memorial Library, Levelland, Texas

Hooks Public Library, Hooks, Texas

La Joya Municipal Library, La Joya, Texas

Lake Cities Library, Lake Dallas, Texas

Lake Whitney Public Library, Whitney, Texas

Little Elm Community Library, Little Elm, Texas

Marfa Public Library, Marfa, Texas

Mary Ruth Briggs Library, Belton, Texas

McGinley Memorial Public Library, McGregor, Texas

Memphis Public Library, Memphis, Texas

Moody Community Library, Moody, Texas

Naples Public Library, Naples, Texas

Nellie Pederson Civic Library, Clifton, Texas

Newton County Public Library, Newton, Texas

Nixon Public Library, Nixon, Texas

Noonday Community Library, Flint, Texas

Poteet Public Library, Poteet, Texas

Rhome Public Library, Rhome, Texas

Rio Hondo Public Library, Rio Hondo, Texas

Rotan Public Library, Rotan, Texas

Sam Fore, Jr., Wilson County Public Library, Floresville, Texas

Santa Anna Library, Santa Anna, Texas

Shackelford County Library, Albany, Texas

Springtown Public Library, Springtown, Texas

Starr County Public Library, Rio Grande County, Texas

Tornillo Media Center, Tornillo, Texas

Upton County Public Library, McCamey, Texas

Valley Mills Public Library, Valley Mills, Texas

Ward County Library, Monahans, Texas

Whitehouse Community Library, Whitehouse, Texas

Wildwood Civic Library and Museum, Villages Mills, Texas

Winkler County Library, Kermit, Texas

Winters Public Library, Winters, Texas

The motion passed

A motion by Mrs. Perry with a second by Mr. Nau authorized the drafting of a resolution in accordance with the "Memorandum of Understanding" with the Secretary of State's Office, to be signed by Mrs. Bush as chair and forwarded to the Secretary of State and the Comptroller for the disbursement of funds to the appropriate entities.

The meeting was adjourned at 10:45 a.m.

TRD-9905698
Jeff Eubank
Assistant Secretary of State
Inaugural Endowment Fund Committee
Filed: September 3, 1999

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Resolution

WHEREAS, The Inaugural Endowment Fund (" the Fund") was established by the 74th Legislature in section 401.11 of the Government Code with the balance of inaugural funds in excess of $100,000 plus the amount necessary to cover fund obligations; and

WHEREAS, the Legislature created the Inaugural Endowment Fund Committee (the Committee") to oversee the expenditures of these funds; and

WHEREAS, the Secretary of State's office has determined that the Fund had a balance of $835,458.99 as of August 31, 1999; and

WHEREAS, the Inaugural Endowment Fund Committee met on August 31, 1999, to consider proposals for expenditures from the Fund and approved such expenditures; and

WHEREAS, according to the "Memorandum of Understanding" between members of the Inaugural Endowment Fund Committee and the Office of the Secretary of State executed December 18, 1996, the Committee shall provide the Secretary a copy of the resolution and Fund Committee minutes approving such expenditures; and

WHEREAS, the Committee authorized Mrs. Laura W. Bush as Chair to the request the disbursement of funds as voted at the meeting of August 31, 1999.

THEREFORE, BE IT RESOLVED, that Mrs. Laura W. Bush, on behalf of the Inaugural Endowment Fund Committee, requests that vouchers be approved by the Secretary of State for disbursement from the Fund to the following entities for the projects specified:

(1) State Preservation Board for the Texas Capitol Historical Art Collection Project in the amount of $250,223.99. The funds may be used for acquisitions for the collection or for production of a brochure on the collection.

(2) State Preservation Board for the development of educational activity carts and curriculum guides for the Bob Bullock Texas State History Museum in the amount of $100,000. The Curriculum Guides for 4th and 7th grade social studies will be developed to support and enhance the Texas Essential Knowledge and Skills (TEKS) social studies curriculum components, and the Educational Activity Carts

will be designed to be used in the exhibit areas to augment Curriculum Guide teaching points.

(3) State Preservation Board in the amount of $50,000 to fund the collection of archival materials documenting the life and career of former Lt. Governor Bob Bullock to be used in educational exhibits and programs in the Bob Bullock Texas State History Museum.

(4) The Historical Commission for furniture and interior restoration of the historic Carrington-Covert House at 1511 Colorado Street, Austin, Texas, in the amount of $227,235.00.

(5) Texas Historical Commission for support of the Commission's Preservation Education Training (P.E.T.) Project in the amount of $49,000.00. The grant will be used for the "Envisioning Preservation in the 21st Century" conference and for six educational workshops.

(6) Texas libraries for unrestricted grants in the amount of $3,000 each for a total of $159.000.00 to the following public libraries:

Andrews County Library, Andrews, Texas

Baylor County Free Library, Seymour, Texas

Boyd Public Library, Boyd, Texas

Bullard Community Library, Bullard, Texas

Buna Public Library, Buna, Texas

Callahan County Library, Baird, Texas

Chico Public Library, Chico, Texas

Childress Public Library, Childress, Texas

City-County Library, Munday, Texas

Claude Public Library, Claude, Texas

Coke County Library, Robert Lee, Texas

DeLeon city County Library, DeLeon, Texas

El Paso County Library, Fabens, Texas

Everman Public Library, Everman, Texas

Flatonia Public Library, Flatonia, Texas

Fort Hancock/Hudspeth County Public Library, Fort Hancock, Texas

Gatesville Public Library, Gatesville, Texas

Gruver City Library Gruver, Texas

Harry Benge Crozier Memorial Library, Paint Rock, Texas

Haskell County Library, Haskell, Texas

Hockley County Memorial Library, Levelland, Texas

Hooks Public Library, Hooks, Texas

La Joya Municipal Library, La Joya, Texas

Lake Cities Library, Lake Dallas, Texas

Lake Whitney Public Library, Whitney, Texas

Little Elm Community Library, Little Elm, Texas

Marfa Public Library, Marfa, Texas

Mary Ruth Briggs Library, Belton, Texas

McGinley Memorial Public Library, McGregor, Texas

Memphis Public Library, Memphis, Texas

Moody Community Library, Moody, Texas

Naples Public Library, Naples, Texas

Nellie Pederson Civic Library, Clifton, Texas

Newton County Public Library, Newton, Texas

Nixon Public Library, Nixon, Texas

Noonday Community Library, Flint, Texas

Poteet Public Library, Poteet, Texas

Rhome Public Library, Rhome, Texas

Rio Hondo Public Library, Rio Hondo, Texas

Rotan Public Library, Rotan, Texas

Sam Fore, Jr., Wilson County Public Library, Floresville, Texas

Santa Anna Library, Santa Anna, Texas

Shackelford County Library, Albany, Texas

Springtown Public Library, Springtown, Texas

Starr County Public Library, Rio Grande County, Texas

Tornillo Media Center, Tornillo, Texas

Upton County Public Library, McCamey, Texas

Valley Mills Public Library, Valley Mills, Texas

Ward County Library, Monahans, Texas

Whitehouse Community Library, Whitehouse, Texas

Wildwood Civic Library and Museum, Villages Mills, Texas

Winkler County Library, Kermit, Texas

Winters Public Library, Winters, Texas

TRD-9905699
Jeff Eubank
Assistant Secretary of State
Inaugural Endowment Fund Committee
Filed: September 3, 1999

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for incorporation to the State of Texas by LEGACY HEALTH PLAN, INC., a domestic non-profit group hospital service company. The home office is in San Angelo, Texas.

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-9905560
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 1, 1999

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Notices

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by Germania Mutual

Group proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(l). They are proposing to increase Germania's companion policy discount from 5% to 10%. The discount provides a reduction in premium on certain personal auto policy coverages when the applicant has specified residential property coverage and liability coverage under one or more policies issued by Germania Insurance Company, Germania Fire and Casualty Company or Germania Farm Mutual Insurance Association. The discount is applicable to premiums for bodily injury, property damage, combined single limits, personal injury protection, medical payments, collision and other than collision, and specified causes of loss.

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 Senior Associate Commissioner for Regulation and Safety, Rose Ann Reeser, at the Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9905518
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 30, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by Travelers Property Casualty Corporation proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(l). They are proposing to adopt a companion policy discount that provides a 5% reduction in premium on certain personal auto policy coverages when the insured concurrently has property insured under any of the following Travelers policy forms: HO-A, HO-B, HO-C, HO-2, HO-3, HO-5, 630, 631, 632, 633, 635, 676, 677 and 678.

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 Senior Associate Commissioner for Regulation and Safety, Rose Ann Reeser, at the Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9905519
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 30, 1999

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Texas Lottery Commission

Public Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.305, concerning "Lotto Texas" on-line game rule will be held at 10:00 a.m. on September 27, 1999 at the Texas Lottery Commission headquarters building, first floor auditorium, 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-9905504
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 30, 1999

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Texas Natural Resource Conservation Commission

Notice of Consultant Contract Award

In compliance with the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Texas Natural Resource Conservation Commission (commission) furnishes this notice of consultant contract award for the Texas Water Resource Data Standards Development project. The selection of a consultant was made after an evaluation of proposals received in response to the Request for Proposals published in June 4, 1999 issue of the *Texas Register* (24 TexReg 4292).

The consultant will: identify and document, through process diagraming/flowcharting, the processes used by the commission, the Texas Parks & Wildlife Department, and the Texas Water Development Board (state agencies) to collect and manage water resource data in Texas; recommend standard processes for collecting, managing, and presenting water resource data/information to the state agencies; document and analyze the software/hardware architecture currently used at the state agencies; and recommend a future architecture that will facilitate the exchange of information between water- related entities in Texas.

The contract is awarded to Infranet Technology Group, LLC, 13039 Scofield Farms Drive, Austin, Texas 78727. The total dollar value of the contract is not to exceed $89,900. The beginning date of the contract is August 23, 1999, and continues until full performance, which is scheduled for January 1, 2000. The final report of the consultant is due on November 20, 1999.

For questions or information related to the consultant work or the report, please contact Robert Erickson, Applications Development Manager in the commission's Office of Water Resource Management, located at 12100 Park 35 Circle, Building F, Austin, Texas 78753, phone (512) 239- 5652, fax (512) 239-4303.

TRD-9905533
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 31, 1999

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Notice of Public Hearing (Chapter 115)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code,

Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 115 and the SIP, concerning Loading and Unloading of Volatile Organic Compounds.

This proposal would revise the "loading lockout" requirement of §115.212(a)(4)(C) and (D) by deleting the requirement to equip gasoline terminals in the Dallas/Fort Worth (DFW), El Paso (ELP), and Houston/Galveston (HGA) ozone nonattainment areas with sensors and other equipment which monitors either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. The proposal would also revise §115.211 by deleting the emission limit of 140 milligrams per liter (mg/l) of gasoline transferred for gasoline bulk plants in the Beaumont/Port Arthur, DFW, ELP, and HGA ozone nonattainment areas, and in 95 counties in the eastern half of Texas.

A public hearing on the proposal will be held October 4, 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 answer questions before and after the hearing.

Comments may be submitted to Lola Brown, 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., October 11, 1999, and should reference Rule Log Number 99053-115-AI. For further information, please contact Eddie Mack, (512) 239-1488.

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-9905511
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 30, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of August 25, 1999 through August 31, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

JAMES R. ADAMOLI, DBA NORTHWOODS HOME PARK has applied for a renewal of TNRCC Permit Number 12811-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located at 7115 Fairview Drive which is approximately 750 feet northwest of the intersection of Farm-to-Market Road 529 (Spencer Road) and Fairview Drive in Harris County, Texas.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12070-004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located in the southwest corner of the Orange Grove Elementary School campus at 4514 Mount Houston Road in Harris County, Texas.

AQUASOURCE UTILITY, INC has applied for a renewal of TNRCC Permit Number 12563-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located approximately 1.3 miles west of the intersection of Farm-to-Market Road 729 and Farm-to-Market Road 1969 and approximately 4 miles southwest of the intersection of State Highway 49 and Farm-to-Market Road 1969 in Marion County, Texas.

BEACH ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 13563-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the east side of Farm-to-Market Highway 2301, approximately 2.8 miles south of the intersection of State Highway 60 and Farm-to-Market Highway 2031 and approximately 2.8 miles south of the City of Matagorda in Matagorda County, Texas.

BELLVILLE TUBE CORPORATION has applied for a renewal of TNRCC Permit Number 03716, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via Outfall 001; stormwater on an intermittent and flow variable basis via Outfalls 002 and 003; and cooling tower blowdown and stormwater runoff at a daily average dry weather flow not to exceed 6,300 gallons per day via Outfall 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0082791 issued on July 18, 1986 and TNRCC Permit Number 03716, issued on February 14, 1997. The applicant operates a low carbon-steel tubing manufacturing plant. The plant site is located approximately 3.0 miles southeast of the intersection of State Highway 36 and Farm-to-Market Road 2429 and adjacent to the intersection of State Highway 36 and Miller Road, approximately 5.2 miles southeast of the City of Bellville, Austin County, Texas.

BETZ DEARBORN, INC. has applied for a renewal of TNRCC Permit Number 02791, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates the Houston Plant which produces dry and liquid water treatment chemicals by blending organic and/or inorganic chemicals. The plant site is located at 6900 Nelms Avenue immediately west of Houston Hobby Airport in the City of Houston, Harris County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 5 has applied for a renewal of TNRCC Permit Number 12295-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,400,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day in the final phase. The plant site is located at 3711 Soho Drive, approximately 2200 feet south of Clear Creek, and approximately 8000 feet northeast of the intersection of State Highway 288 and Hughes Ranch Road in Brazoria County, Texas.

BRAZOS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 11719-001, which authorizes the

discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 1.0 mile southeast of the City of Wallis and approximately 1000 feet south of State Highway 36 in Austin County, Texas.

CITY OF CLEVELAND has applied for a renewal of TNRCC Permit Number 10766-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The plant site is located south of State Highway 105, approximately 0.5 mile west of the intersection of State Highway 105 and U.S. Highway 59 in Liberty County, Texas.

COLORADO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 2 has applied for a renewal of TNRCC Permit Number 10152-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 25 feet east of the intersection of Mansfield and Wirtz Streets in the City of Garwood in Colorado County, Texas.

CITY OF CONROE has applied for a renewal of TNRCC Permit Number 10008-002, which authorizes the discharge of treated domestic wastewater a daily average flow not to exceed 10,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The plant site is located immediately north of the confluence of Lake Creek with the San Jacinto River, at the end of Old Magnolia Road, approximately 2.5 miles west of Interstate Highway 45 and approximately 2.5 miles south of Farm-to-Market Road 2854 in Montgomery County, Texas.

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit Number 13478-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day via subsurface drainfields with a minimum area of 51,200 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located at 9701 West 16th Street approximately 4000 feet east of the intersection of West 16th Street and Moss Avenue in Ector County, Texas.

CITY OF ELSA has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0104990 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11510-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located approximately 0.5 mile southwest of the intersection of Farm-to-Market Road 1925 and State Highway 88 in the City of Elsa in Hidalgo County, Texas.

EMPACK INC. has applied for a renewal of TNRCC Permit Number 03627, which authorizes the discharge of variable volume stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates the Hockley Facility, which disposes of stormwater from a railcar cleaning facility. The plant site is located at 17020 Premium Drive in the City of Hockley, Harris County, Texas.

ETHYL CORPORATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 03890, which authorizes the discharge of storm water on an intermittent and flow variable basis to the Albemarle Corporation treatment plant (TPDES Permit Number 00492) via Outfalls 001 and 003; the discharge of non-process area storm water on an intermittent and flow variable basis via Outfall 002; and the discharge of storm water and ground water recovery water on an intermittent and flow variable basis to the Albemarle Corporation treatment plant (TPDES Permit Number 00492) via Outfall 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0113450 issued on March 12, 1996, and TNRCC Permit Number 03890 issued October 18, 1996. The applicant operates a facility that produces organic chemicals and oil additive blends. The plant site is located at 1000 N. South Avenue, approximately two miles north of State Highway 225 at the intersection of N. South Avenue and the Houston Ship Channel Tidal (Buffalo Bayou), in the City of Pasadena, Harris County, Texas.

EVANGELISTIC TEMPLE has applied for a renewal of TNRCC Permit Number 11878- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located approximately 2400 feet north- northwest of the intersection of U.S. Highway 59 and McClellan Road and 250 feet west of McClellan Road in Montgomery County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 112 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13628-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located approximately 3,000 feet north of the Brazos River and 4,800 feet west of Sartartia Road (Farm-to-Market Road 1464 south of U.S. Highway 90A), and 8,000 feet south of U.S. Highway 90A in Fort Bend County, Texas.

GARDNER GLASS PRODUCTS, INC. has applied for a major amendment to TNRCC Permit Number 02919 to authorize an increase in the discharge of treated process wastewater from a daily average flow not to exceed 34,000 gallons per day to a daily average flow not to exceed 102,000 gallons per day via Outfall 001. The current permit authorizes the discharge of treated process wastewater at a daily average flow not to exceed 34,000 gallons per day via Outfall 001, and storm water runoff on an intermittent and flow variable basis via Outfall 002, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0102121 issued on October 21, 1987 and TNRCC Permit Number 02919 issued on March 25, 1993. The applicant operates a facility which manufactures flat and beveled-edge mirrors from sheet glass. The plant site is located on the east side of State Highway 75, immediately south of the Goree State Prison Farm, approximately four miles southeast of the City of Huntsville, Walker County, Texas.

CITY OF GORMAN has applied for a renewal of TNRCC Permit Number 10091-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located southwest of the City of Gorman, west of Farm-to-Market Road 679 (Crescent Street) in Eastland County, Texas.

CITY OF GRANBURY has applied for a renewal of TNRCC Permit Number 10178-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located on the east bank of Lake Granbury, approximately 0.9 miles south of the intersection of U. S. Highway 377 and Old Cleburne Road, in Hood County, Texas.

GRIZZARD PARTNERSHIP LTD. 4747 Bellaire Blvd., Suite 355, Bellaire, Texas 77401, has applied to the Texas Natural Resource

Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12716-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,750,000 gallons per day. The plant site is located adjacent to the west bank of Carpenters Bayou, approximately 1 mile north of Wallisville Road Bridge and 2800 feet east of East Belt Drive in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 238 has applied for a renewal of TNRCC Permit Number 12802-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for South Mayde Creek (in Addicks Reservoir) for incorporation into 30 TAC §§307.2(d)(4). The variance would authorize a three year period in which the Commission will consider a recommended site-specific standard for South Mayde Creek (in Addicks Reservoir) and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The plant site is located approximately 1 mile north of the intersection of Saums Road and Barker-Cypress Road, approximately 2.1 miles north-northwest of the intersection of Interstate Highway 10 and Barker-Cypress Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 344 has applied for a renewal of TNRCC Permit Number 13483-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 2500 feet east of Beltway 8 along the south boundary of HCMUD Number 344, which is approximately 10,000 feet north of Mount Houston Parkway and 9200 feet south of the Missouri Pacific Railroad in Harris County, Texas.

CITY OF HENDERSON has applied for a renewal of TNRCC Permit Number 10187-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 1.5 miles southwest of the intersection of State Highway 79 and Farm-to-Market Road 225, in Rusk County, Texas.

THE CITY OF HOUSTON, DEPARTMENT OF PUBLIC WORKS AND ENGINEERING has applied for a renewal of TNRCC Permit Number 10495-143, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 1200 feet east of U.S. Highway 59 and approximately 2200 feet north of Kingwood Drive in Montgomery County, Texas.

CITY OF HUNTSVILLE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0022373 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10781-002. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The plant site is located approximately 1.4 miles southwest of the Elkins Lake Dam and 3.5 miles south of the intersection of Farm-to-Market Road 1374 and Interstate Highway 45, south of the City of Huntsville in Walker County, Texas.

THE CITY OF LOTT has applied for a renewal of TNRCC Permit Number 10017-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located on the northwest side of the City of Lott on Avenue "G" between Bone Branch and the Southern Pacific Railroad in Falls County, Texas.

LOWER COLORADO RIVER AUTHORITY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11982- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 4,500 feet southeast of the intersection of Farm-to-Market Road 581 and U.S. Highway 190, west of Kirby Creek and south of the City of Lomita in Lampasas County, Texas.

MATAGORDA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 5 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0091260 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10217-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.075 million gallons per day. The plant site is located The plant site is located immediately west of the intersection of Pecan Street and 6th Street in Matagorda County, Texas.

CITY OF NEW BOSTON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0026018 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10482-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The plant site is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas.

NIRANJAN SHANTILAL PATEL has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14064-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on Stafford Run Creek, approximately 3800 feet northeast of the intersection of Farm-to-Market Road 1092 and 5th Street in Fort Bend County, Texas.

NORTHGATE CROSSING MUNICIPAL UTILITY DISTRICT NUMBER 2 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12979-004, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The plant site is located 5,000 feet east-southeast of the crossing of Spring Creek under Interstate 45 and 8,000 feet northeast of the intersection of Spring Stuebner Road and Interstate Highway 45 in Harris County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10481- 001, which authorizes the discharge of settled filter backwash effluent during emergency conditions (loss of power) from a water treatment plant on an intermittent flow variable basis. The plant site is located at 505 E. Brown Street, at the corner of U.S. Highway 78 and Brown Street in the City of Wylie in Collin County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 16 has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11935-001 which authorizes the discharge

of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located approximately 5,800 feet southwest of the intersection of Farm-to-Market Road 529 and State Highway 6 in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NOS. 21, 22 & 23 has applied for renewal of an existing wastewater permit. The applicant has submitted an application for renewal of the National Pollutant Discharge Elimination System (NPDES) Permit Number TX0079821 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12144-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,900,000 gallons per day. The plant site is located approximately one mile southeast of the intersection of Stuebner-Airline Road and Bammel-North Houston Road, northwest of the City of Houston in Harris County, Texas.

CITY OF PEARLAND has applied for a renewal of TNRCC Permit Number 10134-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The plant site is located at 1092 « Barry Rose Street, immediately west of Clear Creek and approximately 7,000 feet north of Farm-to-Market Road 518 in Brazoria County, Texas.

PRINTPACK, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0101192 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02858. The draft permit authorizes the discharge of cooling tower blowdown, domestic wastewater, and stormwater runoff at a daily average flow not to exceed 85,000 gallons per day (dry weather flow) via Outfall 001 and domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 101. The plant site is located in the southwest quadrant of the FM 1006 intersection with Foreman Road, approximately one mile north of Cow Bayou and 1000 feet south of Round Bunch Road in Orange County, Texas

CITY OF RICHLAND SPRINGS has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10665-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located adjacent to the north bank of Richland Springs Creek, approximately 0.3 of a mile east of Farm-to-Market Road 45 and 0.6 of a mile northeast of the intersection of Farm-to-Market Road 45 and U.S. Highway 190 in San Saba County, Texas.

CITY OF ROCKSPRINGS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0107654 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13490-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day. The plant site is located approximately 4,000 feet northwest of the intersection of U.S. Highway 377 and State Highway 55 in Edwards County, Texas.

THE SILVER CREEK FISHING LODGE, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0063746 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11394-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The plant site is located on the north side of Lake Buchanan within the Silver Creek Village Subdivision, approximately one mile south of Farm-to-Market Road 2341 in Burnet County, Texas.

SOUTH CENTRAL CALHOUN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0104205 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13774-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located 0.8 miles northeast of the intersection of State Highway 316 and Farm-to- Market Road 2760 on the south corner of the intersection of Blackburn Avenue Bay/Chocolate Bay in Calhoun County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0092789 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11180-002. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The plant site is located on the Smither's Farm Road, outside the southeast corner of the security compound of Ellis II Unit; approximately 2 miles north of the intersection of Farm-to-Market Road 980 and Turkey Creek in Walker County, Texas.

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION has applied for a renewal of Permit Number 10634-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day via irrigation of 35 acres of grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 16 miles northwest of the City of San Angelo on U.S. Highway 87 in Tom Green County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of Permit Number 11364-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,800 gallons per day via irrigation of 1.5 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located adjacent to Interstate Highway 10, approximately 4.0 miles east of the intersection of Interstate Highway 10 and Farm-to-Market Road 1604 in Bexar County, Texas.

UNIMIN TEXAS COMPANY L.P. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 01401, which authorizes the discharge of mine seepage and storm water runoff at a daily average flow not to exceed 500,000 gallons per day via Outfall 001 and Outfall 002, and the discharge of mine seepage and storm water runoff at a daily average flow not to exceed 600,000 gallons per day via Outfall 003. The applicant operates a sand mining and processing operation. The plant site is located on County Road 308 approximately 3/4 miles north of the intersection of County Road 308 and U.S. Highway 67 in the northeast corner of Somervell County, Texas.

UNITED STATES DEPARTMENT OF AGRICULTURE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES)

Permit Number TX0020699 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12263-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located near the shore of Sam Rayburn Reservoir, approximately 0.5 mile northeast of the dead end of Farm-to-Market Road 2743 and approximately 5.5 miles east of the intersection of Farm-to-Market Road 2743 and State Highway 63 in Angelina County, Texas.

WAL - MART STORES, INC. has applied for a renewal of TNRCC Permit Number 03597, which authorizes the discharge of treated wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03597, issued on January 24, 1994. The applicant operates a warehouse distribution center. The plant site is located immediately north of U.S. Highway 79/84, east of Farm to Market Road 645 and west of County Road 2206, approximately seven miles southwest of the City of Palestine, Anderson County, Texas.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 11 has applied for a renewal of TNRCC Permit Number 13689-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The plant site is located adjacent to the west side of Sam Houston Toll Road and the north side of a Harris County Flood Control Ditch, south of West Road and east of Whiteoak Bayou in Harris County, Texas.

CITY OF WOODSBORO has applied for a renewal of TNRCC Permit Number 10156-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1,500 feet south of the intersection of Farm-to-Market Road 1360 and Churchill Road, and approximately 3 miles southeast of the intersection of U.S. Highway 77 and Farm-to-Market 2441, southeast of the City of Woodsboro in Refugio County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

CLARK REFINING & MARKETING, INC. has applied for a renewal of TNRCC Permit Number 00309, which authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, ballast water, domestic wastewater, remediation wastewater and stormwater at a daily average flow not to exceed 30,000,000 gallons per day via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfalls 004 and 005. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0005991 issued on March 29, 1996 and TNRCC Permit Number 00309. The applicant operates a petroleum refinery. The plant site is located approximately 0.5 miles north of the Martin Luther King bridge on Highway 82, southwest of the City of Port Arthur, Jefferson County, Texas.

TRD-9905534
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 31, 1999

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Notice of Water Rights Applications

CITY OF CONVERSE, 403 S. Seguin, P.O. Box 36, Converse, TX 78109-0036, applicant, seeks a permit to appropriate public water 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 not to exceed 48.61 acre-feet of water per annum from Salitrillo Creek, a tributary of Martinez Creek, tributary of Cibolo Creek, tributary of the San Antonio River, for industrial use and not to exceed 748.36 acre-feet of water per annum from the creek for irrigation use within the City of Converse's Certifcate of Convenience and Necessity area in Bexar County. Irrigation water will be supplied to individual customers for their lawns and to city parks, recreational playgrounds and sport fields. The amount of land to be irrigated per annum will not exceed 426 acres. Applicant would retain sole ownership of the water rights granted within this appropriation, and it will not be appurtenant to the land areas irrigated. The location of the diversion point is Latitude 30.733° North, Longitude 98.431° West, bearing North 45° West 100 feet from the Southeast corner of the Richard Mockett Survey Number 316, Abstract Number 497, approximately 1.5 miles southeast of Converse. The total maximum diversion rate will be 3.34 cfs (1500 gpm). The proposed diversion site is on land currently not owned by the City of Converse. The applicant has indicated that the primary source of the water requested is wastewater discharged into the creek by the San Antonio River Authority. Salitrillo Creek, a tributary of Martinez Creek, tributary of Cibolo Creek, tributary of the San Antonio River, Bexar County.

TERRY M. AND VICKI L.WHITAKER, P.O. Box 931, Port Lavaca, TX 77979, applicants, seek to appropriate public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Applicants seek authorization to divert and use not to exceed 40 ac-ft of water from Coloma Creek for irrigation purposes on 80 acres of land, out of a 287.73 acre tract in the John J. Ogsberry survey, Abrstact Number 127, Calhoun county, Texas. Ownership of the land to be irrigated is evidenced by a Deed of Trust dated October 14, 1997, and recorded in Volume 106, pg 450, Deed Records of Calhoun County. Applicants currently irrigate part of the aforesaid 287.73 acres and part of an adjacent 274.622 acre tract of land by contract with Guadalupe Blanco River Authority, using water delivered from the Guadalupe River via a canal system south of the applicant's property. Applicants have indicated plans to divert additional, exempt Coloma Creek water to 3 off-channel impoundments for domestic and wildlife use, for which no permit is required. Applicants also indicated that those reservoirs will have no part of the proposed irrigation project in this application, and that the water diverted for irrigation use will not be combined or comingled with the water in the impoundments. The diversion point on Coloma Creek is located at Latitude 28.592° North, Longitude 96.772°West, and 300 feet Northwest of the Northwest corner of the aforesaid 287.73 acre tract of land. Maximum diversion rate will not exceed 11.16 cfs (5000 gpm).

Notice is given that OLD BRICKYARD GROUP, L.L.C., P.O. Box 8199, Ennis, Texas 75120, 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 application was received on June 4, 1998. Additional information and fees necessary to process the application were received on March 4, 1999. The application was declared administratively complete on June 4, 1999. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC §295.152. Notice should be mailed pursuant to 30 TAC §295.153.(a) and (b) to the water right holders in the Trinity River Basin. The applicant seeks authorization

to divert 228 acre-feet of water per annum from Ten Mile Creek, tributary of the Trinity River, Trinity Basin for storage to an off-channel reservoir for subsequent diversion to irrigate 90 acres in the Mason Phelps Survey, Abstract Number 824, Ellis County, Texas. Diversion of the water will be from Ten Mile Creek in Dallas County at a maximum rate of 400 gpm (0.89 cfs) at a point N 42° E, 5560 feet from the West corner of the aforesaid survey, also being at 32.55° N Latitude and 96.658° W Longitude approximately 16 miles northeast of Waxahachie, Texas. The off-channel reservoir is an incised structure having an areal coverage of 10 feet at normal maximum operating level and a normal operating capacity of 120 acre-feet at Latitude 32.51° N and 96.67° W, also described as bearing N 6°E, 8062 feet from the West corner of the aforesaid survey. Ownership of the land to be irrigated in the Mason Phelps Survey, is held by the City of Ferris Ellis County and is leased on a long term basis to the Applicant as evidenced by a Business Premises Lease executed March 3, 1998.

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 this 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 any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may 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 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9905535
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 31, 1999

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Texas Department of Protective and Regulatory Services

Notice of Meeting Open to the Public-Foster Care Payment Rules

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a meeting open to the public to receive input about a planned revision of agency rules governing the continuation of foster care payments during temporary absences from foster homes and child care facilities. The meeting is not a meeting of the Board, but is held by PRS staff to aid in revision of rules before presenting them to the Board for publication for comment. The meeting will be held on Thursday, October 14, 1999, in the Board Room on the first floor of the East Tower of the John H. Winters Complex, 701 W. 51st Street, Austin, Texas 78751. The meeting will begin at 9:30 a.m. and close at 12:00 p.m.

If you are unable to attend the meeting, but wish to provide input to the rule revision related to the continuation of foster care payments during temporary absences from foster care facilities, written comments and suggestions are welcome and appreciated. They will be accepted if received by October 20, 1999. Please mail written comments to Kathy Campbell, Child Protective Services Program, Mail Code E-557, P. O. Box 149030, Austin, Texas 78714-9030. Written comments may also be faxed to Kathy Campbell at 512-438- 3782.

Persons with disabilities who need auxiliary aids or services may contact Mary Comeford at 512-438-3312 by October 7, 1999, so that appropriate arrangements can be made.

TRD-9905515
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: August 30, 1999

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 27, 1999, ITC^DeltaCom filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60202. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of ITC^DeltaCom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21279.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 15, 1999. You may contact the PUC 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. All correspondence should refer to Docket Number 21279.

TRD-9905521
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Filed: August 31, 1999

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Notice of Application for Refund of Fuel Cost Revenues

Notice is given to the public of the filing with the Public Utility Commission of Texas an application for authority to make an interim refund of fuel cost over-recoveries and related good cause exceptions on August 24, 1999, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §36.203 (Vernon 1998).

Docket Style and Number: Application of Southwestern Electric Power Company for Authority to Make an Interim Refund of Fuel Cost Over-Recoveries and Related Good Cause Exceptions. Docket Control Number 21264.

The Application: Southwestern Electric Power Company (SWEPCO) requests authority to make an interim refund of fuel cost over-recoveries on the bills of its Texas retail customers, pursuant to the Public Utility Regulatory Act §36.203. SWEPCO proposes to make refunds in October 1999, except for customers receiving service under the C-1 Rider who will receive a refund in the billing of November 1999. SWEPCO requests a good-cause waiver of the one-month refund requirement of P.U.C. Substantive Rule §25.236(e)(5). SWEPCO's proposed total refund is approximately $7.5 million. The amounts refunded will be subject to final review in SWEPCO's next fuel reconciliation proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than September 23, 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-9905494
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 1999

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Notices of Applications 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 August 25, 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 Koyote Telephone, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21267 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based and voice telecommunications services.

Applicant's requested SPCOA geographic area includes the areas currently served by all incumbent local exchange companies within the state of Texas.

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 September 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905495
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 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 August 25, 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 A.R.C. Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21268 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange services to business and residential customers.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

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 September 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905496
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 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 August 26, 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 Pathnet, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21274 before the Public Utility Commission of Texas.

Applicant intends to provide point to point private line services derived from facilities based collocations including resale of digital and copper UNEs.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

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 September 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905497
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: August 30, 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 August 26, 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 Sager Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21275 before the Public Utility Commission of Texas.

Applicant intends to provide digital subscriber lines to residents and businesses. Initially, the Applicant will collocate DSLAM equipment with the incumbent local exchange carrier, and then intends to provide Voice Over Internet to its DSL subscribers.

Applicant's requested SPCOA geographic area includes the area comprising the Dallas and Longview Local Access and Transport Areas in the state of Texas currently served by GTE Southwest, Inc., and Southwestern Bell Telephone Company.

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 September 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905498
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 1999

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Notice of Application Pursuant to P.U.C. Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 16, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval to offer new services.

Tariff Title and Number: Application of Cap Rock Telephone Cooperative, Inc. for Approval to Offer New Services Pursuant to P.U.C. Substantive Rule §23.94. Tariff Control Number 21242.

The Application: Cap Rock Telephone Cooperative, Inc. (Cap Rock or the company) seeks approval for the following optional new service offerings: Residence Optional One-Way Extended Local Calling and Business Optional One-Way Extended Local Calling between Cap Rock exchanges that presently have inter-exchange toll calling. The company estimates the proposed new services will increase the intrastate gross annual revenues by $18,936. Cap Rock proposes an effective date of November 16, 1999.

Subscribers of Cap Rock have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 246 affected local service customers, and must be received by the commission no later than October 18, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 18, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21242.

TRD-9905539
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

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Notices of Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §26.212

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 27, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of GTE Southwest, Inc. to Provide a Cash Back Equivalent for Specified Discretionary Services, New Single-Line or Multi-Line Business Customers Who Subscribe to Voice Messaging, Caller ID, or Enhanced Call Forwarding During October 1, 1999 through December 29, 1999 Pursuant to Substantive Rule §26.212. Tariff Control Number 21277.

The Application: GTE Southwest, Inc. has notified the Public Utility Commission of Texas that it is offering a 90-day promotion from October 1, 1999 through December 29, 1999 during which new single-line or multi-line business customers who subscribe to Voice Messaging, Caller ID, or Enhanced Call Forwarding will receive a rebate. Customers subscribing to one service will receive a $25 rebate. Customers subscribing to two services will receive a $50 rebate. Customers subscribing to three services will receive a $75 rebate.

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 September 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905542
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 27, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of Contel of Texas, Inc. to Provide a Cash Back Equivalent for Specified Discretionary Services, New Single-Line or Multi-Line Business Customers Who Subscribe to Voice Messaging or Caller ID During October 1, 1999 through December 29, 1999 Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21278.

The Application: Contel of Texas, Inc. has notified the Public Utility Commission of Texas that it is offering a 90-day promotion from October 1, 1999 through December 29, 1999 during which new

single-line or multi-line business customers who subscribe to Voice Messaging or Caller ID will receive a rebate. Customers subscribing to one service will receive a $25 rebate. Customers subscribing to two services will receive a $50 rebate. Customers subscribing to three services will receive a $75 rebate.

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 September 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905543
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 30, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of Contel of Texas, Inc. to Revise Tariff, Schedule Number A-6; Rate for Non-Published and Nonlisted Numbers Pursuant to Substantive Rule §26.212. Tariff Control Number 21282.

The Application: Contel of Texas, Inc. has notified the Public Utility Commission of Texas that it is revising the Application of Rate for Nonpublished or Nonlisted Numbers section in its Schedule Number A-6, Directory Listings tariff. If a customer has a published telephone number, no monthly charge would apply for any nonpublished or nonlisted number at that address. If the customer has no published telephone number, only one monthly charge would apply for any nonlisted or nonpublished numbers at that address. This applies to residential and business customers.

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 September 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905540
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 30, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of GTE Southwest, Inc. to Revise Tariff, Section 12, Sheet Numbers 4, 4.1 and 6; Rate for Non-Published and Nonlisted Numbers Pursuant to Substantive Rule §26.212. Tariff Control Number 21283.

The Application: GTE Southwest, Inc. has notified the Public Utility Commission of Texas that it is revising the Application of Rate for Nonpublished or Nonlisted Numbers section in its Texas General Exchange Tariff. If a customer has a published telephone number, no monthly charge would apply for any nonpublished or nonlisted number at that address. If the customer has no published telephone number, only one monthly charge would apply for any nonlisted or nonpublished numbers at that address. This applies to residential and business customers.

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 September 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905541
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On August 20, 1999, Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to 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 21254. 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 amendment to 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 amendment to 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 21254. 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 September 22, 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 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 21254.

TRD-9905528
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 1999

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Request for Comments on Business Separation Plan Filing Package

The Public Utility Commission of Texas (commission) proposes a new form, *Business Separation Plan Filing Package* (BSP-FP) to be used by utilities to fulfill the statutory requirements of the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, 76th Legislature, Regular Session (1999) (SB7) and the separation of competitive energy services under PURA §39.051. Project Number 21083 is assigned to this proceeding. At the August 26, 1999 Open Meeting, the commission approved publication of proposed new rule §§25.341 relating to Definitions, 25.342 relating to Electric Business Separation, 25.343 relating to Competitive Energy Services, 25.344 relating to Cost Separation Proceeding, 25.345 relating to Recovery of Stranded Costs Through Competition Transition Charge, and 25.346 relating to Separation of Electric Utility Metering and Billing Costs and Activities. The proposed new rules may be found in the *Texas Register*, or in the commission's Central Records under Project Number 21083, or through the commission's web page at www.puc.state.tx.us. The proposed form will be used in implementing the new rules.

Copies of the proposed form are available in the commission's Central Records Division, Room G-113, under Project Number 21083. Written comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 within 20 days after publication of this notice. Reply comments, if any, should be submitted 30 days after publication of this notice. All comments should refer to Project Number 21083.

Any questions pertaining to the proposed form should be directed to Harika Basaran at (512) 936-7374 or Kit Pevoto at (512) 936-7375. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9905499
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 1999

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Office of the Secretary of State

Notices of Public Hearings

The Office of the Secretary of State will hold a public hearing at 6:30 p.m. on October 5, 1999, at the Del Rio City Hall in regard to the submission the State of Texas Step II Application to the Border Environmental Cooperation Commission (BECC).

The purpose of this meeting is to allow citizens an opportunity to discuss the application. After certification, it is the intent of the State of Texas to request funding from the North American Development Bank (NADBank) to provide grant assistance for connecting to the water and/or wastewater projects being constructed under the economically distressed areas program for the city of Del Rio, Val Verde Estates, Val Verde County. A copy of the Draft Application to the BECC is available at the office of the County Judge.

The Secretary of State encourages citizens to participate in the development of this application and to make their views known at this public hearing. Citizens unable to attend this meeting may submit their views and proposals to Scott D. Storment, Director of Colonia Initiatives at the Office of the Secretary of State, Executive Offices, P.O. Box 12697, Austin, Texas, 78711-2697.

Persons with disabilities that wish to attend this meeting should contact Elsa Reyes at 830-744-8695 to arrange for assistance. Individuals who require auxiliary aids or services for this meeting should contact Ms. Reyes at least two days before the meeting so that appropriate arrangements can be made.

TRD-9905700
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Filed: September 3, 1999

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The Office of the Secretary of State will hold a public hearing at 7:00 p.m. on October 6, 1999, at the Hidlago County Commissioners Court in regard to the submission the State of Texas Step II Application to the Border Environmental Cooperation Commission (BECC).

The purpose of this meeting is to allow citizens an opportunity to discuss the application. After certification, it is the intent of the State of Texas to request funding from the North American Development Bank (NADBank) to provide grant assistance for connecting to the water and/or wastewater projects being constructed under the economically distressed areas program for the cities of Mercredes, San Juan and Donna, Hidalgo County. A copy of the Draft Application to the BECC is available at the office of the County Judge.

The Secretary of State encourages citizens to participate in the development of this application and to make their views known at this public hearing. Citizens unable to attend this meeting may submit their views and proposals to Scott D. Storment, Director of Colonia Initiatives at the Office of the Secretary of State, Executive Offices, P.O. Box 12697, Austin, Texas, 78711-2697.

Persons with disabilities that wish to attend this meeting should contact Mr. Storment to arrange for assistance. Individuals who require auxiliary aids or services for this meeting should contact Mr.

Storment at least two days before the meeting so that appropriate arrangements can be made. He can be contacted by mail, phone 512-436-8948 or RELAY TEXAS 1-800-735-2989.

TRD-9905701
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Filed: September 3, 1999

♦ ♦ ♦

The Office of the Secretary of State will hold a public hearing at 7:00 p.m. on October 7, 1999, at the Cameron County Commissioners Court in regard to the submission the State of Texas Step II Application to the Border Environmental Cooperation Commission (BECC).

The purpose of this meeting is to allow citizens an opportunity to discuss the application. After certification, it is the intent of the State of Texas to request funding from the North American Development Bank (NADBank) to provide grant assistance for connecting to the water and/or wastewater projects being constructed under the economically distressed areas program for the cities of Primera, Combes and San Benito, Cameron County. A copy of the Draft Application to the BECC is available at the office of the County Judge.

The Secretary of State encourages citizens to participate in the development of this application and to make their views known at this public hearing. Citizens unable to attend this meeting may submit their views and proposals to Scott D. Storment, Director of Colonia Initiatives at the Office of the Secretary of State, Executive Offices, P.O. Box 12697, Austin, Texas, 78711-2697.

Persons with disabilities that wish to attend this meeting should contact Mr. Storment to arrange for assistance. Individuals who require auxiliary aids or services for this meeting should contact Mr. Storment at least two days before the meeting so that appropriate arrangements can be made. He can be contacted by mail, phone 512-436-8948 or RELAY TEXAS 1-800-735-2989.

TRD-9905702
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Filed: September 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:

Brookeland Fresh Water Supply District, P.O. Drawer 350, Sam Rayburn, Texas, 75951, received August 2, 1999, application for financial assistance in the amount of $1,945,000 from the Texas Water Development Funds and Drinking Water State Revolving Fund.

Northeast Texas Municipal Water District, P.O. Box 955, Hughes Springs, Texas, 75656-0955, received August 1, 1999, application for financial assistance in the amount of $6,800,000 from the Drinking Water State Revolving Fund.

Golden Water Supply Corporation, P.O. Box 148, Golden, Texas, 75444-0148, received July 30, 1999, application for financial assistance in the amount of $850,000 from the Drinking Water State Revolving Fund.

Jim Hogg County Water Control and Improvement District Number 2, 601 North Cedar, Hebbronville, Texas, 78361, received June 1, 1999, application for financial assistance in the total amount of $1,800,000 from the Drinking Water State Revolving Fund and the Texas Water Development Funds.

Town of Pecos City, 110 East 6th Street, Pecos City, Texas, 79772, received June 21, 1999, application for financial assistance in the amount of $8,845,000 from the Drinking Water State Revolving Fund and the Texas Water Development Funds.

City of Los Fresnos, 200 North Brazil, Los Fresnos, Texas, 78566, received August 3, 1998, application for grant/loan assistance in the total amount of $10,297,261 from the Texas Water Development Funds, the Economically Distressed Areas Account and the Research and Planning Fund.

Brazos River Authority, P.O. Box 7555, Waco, Texas, 76714-7555, received July 28, 1999, application for grant assistance in an amount not to exceed $150,000 from the Research and Planning Fund.

Nueces River Authority, 6300 Ocean Drive, NCR 3100, Corpus Christi, Texas, 78412, received September 1, 1999, application for grant assistance in an amount not to exceed $50,000 from the Research and Planning Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

TRD-9905559
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: September 1, 1999

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Texas Workers' Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

Standards and Procedures for the Medical Advisory Committee

The Texas Workers' Compensation Commission at its August 5, 1999 public meeting revised the Standards and Procedures for the Medical Advisory Committee. The revisions include the addition of an insurance carrier representative and qualifications for that new position, and revision of the terms of appointment for all positions. The approved Standards and Procedures are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of 12 health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership The committee, appointed by the Commissioners, is composed of 17 members who must be knowledgeable and qualified regarding work-related injuries and diseases.

Twelve (12) members of the committee shall represent specific health care provider groups. These members shall include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, and a registered nurse. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint an insurance carrier representative to serve on the MAC. This member may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The Commissioners shall appoint a representative of employers, a representative of employees, and two representatives of the general public. These appointees shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term. Abandonment will be deemed to occur if any primary or alternate member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. The terms of appointment will be maintained as follows:

Primary: Year Ending in Odd Number Chiropractor Osteopath Pharmacy Dentist General Public1 Private Health Care Facility Occupational Therapist Insurance Carrier

Primary: Year Ending in Even Number Registered Nurse Public Health Care Facility Medical Equipment Physical Therapist General Public 2 Medical Doctor Podiatrist Employer Employee

Alternate: Year Ending in Odd Number Chiropractor Osteopath *Pharmacy Dentist *General Public 1 Private Health Care Facility Occupational Therapist Insurance Carrier

Alternate: Year Ending in Even Number Registered Nurse Public Health Care Facility Medical Equipment Physical Therapist General Public 2 Medical Doctor Podiatrist Employer Employee

(* These alternate positions were initially appointed to serve staggered terms from the primary positions. In order to return to a consistent application of the Procedures and Standards, when these terms expire August 31, 2000, the alternate positions' expiration date will revert to the year ending in odd number format).

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC a. in advertising to promote themselves or their business, b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advertising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the Standards and Procedures for the Medical Advisory Committee. Each member must be knowledgeable and qualified regarding work-related injuries and diseases.

Commissioners for the Texas Workers' Compensation appoint the Medical Advisory Committee members, which is composed of 17 primary and 17 alternate members representing health care providers, employees, employers, insurance carriers, and the public.

The purpose and tasks of the Medical Advisory Committee 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 positions currently open: 1. Primary member - Registered Nurse, term through 8/31/2000 2. Primary member - General Public 1, term through 8/31/2001 3. Primary member - Insurance Carrier, term through 8/31/2001 4. Alternate member - Public Health Care Facility, term through 8/31/2000 5. Alternate member - Chiropractor, term through 8/31/2001 6. Alternate member - Employee, term through 8/31/2000 7. Alternate member - Dentist, term through 8/31/2001 8. Alternate member - Insurance Carrier, term through 8/31/2001

For an application, call Teresa Barajas at 512-440-3962 or Ruth Richardson at 512 440 3518.

TRD-9905549
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 31, 1999

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